Approve lease arrangements for 53-57 High Street Margate to deliver the Margate Levelling Up Fund project

Extraordinary Cabinet	29 February, 2024
Report Author	Louise Askew, Head of Regeneration and Growth
Portfolio Holder	Cllr Ruth Duckworth
Status	For Decision
Classification:	Unrestricted
Key Decision	No
Previously Considered by	Cabinet - 17 June, 2021 Cabinet - 28 April , 2022 Cabinet - 13 October, 2022
Ward:	Margate Central

Executive Summary:

The Margate Digital Campus is to be hosted within 53-57 High Street Margate, a building which is owned by a Joint Venture agreement between Thanet District Council and Homes England. Following previous decisions, this paper sets out the terms in which the lease arrangements are to be made with East Kent Colleges Group in the leasing of 53-57 High Street.

Recommendation(s):

It is recommended that Cabinet:

1. Agree that the grant agreement at Annex 1 between the Council and East Kent Colleges Group be signed by the Section 151 Officer, with the seal to be witnessed by two authorised officers.

2. Approve the proposed Lease to East Kent Colleges Group of 53-57 High Street, Margate on 125 year term at a peppercorn rent, and approve that the appointed Joint Venture Steering Group members confirm consent to the same. The approval is required under the Joint Venture Agreement dated 14 December 2007 between the South East England Development Agency and Thanet District Council.

4. Authorise the Head of Regeneration and Growth in consultation with the Head of Property to finalise the terms.

5. Authorise the Head of Legal and Democracy to negotiate and complete the necessary legal formalities and all necessary deeds and agreements arising from or ancillary to the grant of the lease of the property.

Corporate Implications

Financial and Value for Money

The Margate Digital project, funded through the Levelling Up Fund has already received budget approval and has been incorporated into the council's capital programme. This project is required to be fully funded from external grant funding allocations and there is currently no scope for Council investment in this scheme.

For all the Government funded programmes, we have already received part of this funding, to commence delivery. In addition, all future Department for Levelling up Housing and Communities (DLUHC) funding will be drawn down in advance of any works being undertaken. The Section 151 Officer is required to scrutinise and approve regular monitoring returns to DLUHC. These returns will cover actual and forecast spend, alongside programme delivery and output metrics.

The council is required to provide regular monitoring and evaluation returns to central government and this information will be provided by East Kent Colleges Group. An outcome of being part of the Simplification Pathfinder Pilot is that the council will have a streamlined approach to the monitoring and evaluation requirements.

The Joint Venture Agreement between Thanet District Council and Homes England requires any income derived from the site to be used to offset the councils costs, excluding overheads, with the balance to be sent to Homes England. This clause does not differ on whether the asset is sold, or leased out. This is because the original grant used to purchase the building was provided from South East England Development Agency (SEEDA) (now transferred to Homes England). In this context, Thanet District Council would not receive any revenue income if the building was leased out on a commercial basis, and/or if it was sold at a market price. As the council did not provide any funding for the purchase of the property the disposal value is returned to Homes England. This is a public sector owned asset which provides significant opportunity for regeneration purposes in the heart of the town centre.

Legal

The Council has the power under Section 123 of the Local Government Act 1972 (the Act) to grant the lease referred to in this report and will meet its obligations under Section 123 of the Act as to best consideration as the estimated undervalue is below £2 million and the lease will support a number of regeneration and levelling up initiatives in the District. The nature of funding for Further Education Colleges means they are over-reliant on government policy that does not provide opportunity for investment of the scale of the proposed use without project match funding, with strict criteria and outcomes applied to them.

Subsidy control implications have been considered with advice from the Department for Levelling Up, Housing and Skills suggesting that Further Education activities are primarily funded through public funds/ central government so are not considered to be economic activities for the purposes of the Act. This project is therefore considered to be exempt from subsidy checks as higher educational facilities are outside of the scope.

Risk Management

Through the development of the application to the Levelling Up Fund East Kent colleges Group were required to put together a robust risk assessment, through the monitoring and evaluation process back to central government there has been a requirement for this to be maintained and kept up to date. The College has established the apparatus and experience for reviewing and managing the various key risks of delivering large capital programmes across their portfolio of sites.

The council is still responsible for ensuring that there are effective and adequate risk management and control systems in place to manage the major risks to which the external funding programmes are exposed, as it remains the accountable body for the funding.

This project will derisk the council as we will no longer be liable for the building and all building maintenance and management requirements that go with it.

<u>Key risks, and mitigation measures</u>
Significant Inflation pressure c20-30% increases

- Continue to lobby central government on the impact of the increase in costs of materials and labour and the subsequent inflationary increases.
- Possible value engineering required.
- Possible cancellation of projects if unaffordable
- Constant reviews of other investment opportunities/funding sources.
- A risk/contingency allowance is included within the cost plan.

Availability of materials and labour

- A risk/contingency allowance is included within the cost plan.
- Suitable contract terms between the client and the main contractor will be included at the point of agreeing the Main Works Contract.
- Cost/delay likelihood expected to be known far in advance of commencing on site.
- Constant reviews of the market and supply chain will be undertaken to establish lead in times and general market concerns and issues.
- Possible value engineering required.

Capacity of East Kent Colleges Group to support delivery of significant spend within programme timescales

- Review use of extra external resources to add capacity to existing teams within the council.
- Utilise funding for fees within the projects to add capacity.
- Use a design and build contractor to reduce potential challenges down the line.

Third party management of a project with the council as the Accountable Body

- Ensure there are requirements set out in the grant agreement for regular meetings/reporting on delivery.
- The council should sign off any changes to the scheme
- The council is required to approve the final works.

Corporate

The Margate Levelling Up Fund Project delivers against the Council's corporate priority four by creating a thriving place. Introducing an education campus into the heart of the high street encourages the rejuvenation of our towns, creating new opportunities to gain skills and therefore employment. Proving the campus will encourage footfall and bring people to the town centre for other reasons than just retail, providing a hub of activity.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

There are no direct equalities considerations arising from this decision. The decision to enter into a lease will not directly impact either adversely or positively, those with a protected characteristic. The decision is however likely to have a positive impact on residents in the area including those with protected characteristics, providing both training and employment opportunities.

Corporate Priorities

This report identities delivery against Priority Four - to create a thriving place, in the councils newly adopted Corporate Plan 2024-28. Its approval with support delivery against the multi-million pound Levelling Up Fund regeneration scheme being delivered in Margate.

1.0 Introduction and Background

1.1 53-57 High Street was formerly home to Marks and Spencers in Margate High Street and was purchased through grant provision from the South East England Development Agency (SEEDA). A joint Venture Agreement (JVA) was entered into between Thanet District Council and SEEDA, with a Joint Venture Board put in place. The JVA allowed for a pooling of resources to undertake targeted acquisitions, with the council holding the relevant title interest in trust, on behalf of the JVA. The site was passed to Homes England, who are now responsible for the legacy left by SEEDA in terms of the regeneration opportunity provided by this site. The legal title for the property is in the name of Thanet Council, and Homes England have the benefit of a restriction on title to protect the terms of the Grant Agreement and the requirement to enter into the Joint Venture Agreement as a term of that Grant Agreement.

1.2 To date, efforts to undertake significant redevelopment of the property have not been successful. The site assembly, undertaken within the JV, was predicated on a retail-led regeneration masterplan which ultimately stalled due to a number of factors relating to commercial viability driven by previous economic recessions and changing town centre demographics. Due to both sporadic occupation, falling demand and high running costs, the building has declined in condition, making the prospect of any meaningful, long-term solution more challenging. While the council has an obligation to keep the property in reasonable repair, without an income from the property, this has been limited to reactive maintenance to fulfil compliance requirements.

1.3 In 2021 the JV Steering Group approved the use of £750,000 of Towns Fund monies awarded to Thanet District Council by the Department for Levelling Up, Housing and Communities. This funding allowed works such as asbestos strip out, roof and fire escape improvements and general electric works to take place.

1.3 The building provides the public sector the opportunity to utilise one of its assets to support a number of regeneration and levelling up initiatives in Margate, and in particular one of the most deprived wards in the country. The property was purchased through grant funding for regeneration purposes, with any income gained from the property going to Homes England, with a limited amount provided to the council to cover our costs (exclusive of overheads), if the building were to be leased on a commercial basis. The council would not retain any funding from a sale of the property on the basis of the JVA.

1.4 The Council submitted the bid for the Margate Digital Campus on behalf of East Kent Colleges Group in support of the Council's corporate priority for 'creating a thriving place', including encouraging the rejuvenation of our high streets and providing opportunities to people for skills and training, particularly young people. This was approved at a Cabinet meeting on 17 June, 2021. The Government's priorities and aspirations for town centres is to see improvements within town centres, including the repurposing of empty commercial properties, to help create jobs and build stronger and more resilient local economies.

1.5 Through the submission of the Margate Digital project to the Levelling Up Fund, the council was awarded £6.3m of capital funding for East Kent Colleges Group to deliver the project. Margate Digital is an educational and industry training campus primarily aimed at 16- to 19-year-olds. The Colleges Group is proposing to deliver more than 2,000m^2 of cutting edge, industry relevant training space with aims to work with more than 200 learners. The Campus will offer a range of qualifications including T Levels, HNDs and HNCs. It will be a specialist industry-focused college purposefully positioned in Margate. It should be noted that Margate currently has no further education facilities. Students from the most deprived town in Thanet need to travel to Broadstairs/Ramsgate or out of the area to places like Canterbury to pursue their education.

2.0 Lease Arrangements

2.1 In October 2022 Cabinet approved a lease to East Kent Colleges Group for the building in order to deliver the Margate Digital Campus. This was for a ten year lease at a peppercorn rent, with the ability to review the lease at year eleven. It was considered that given the transformational benefits the establishment of a college in the town could bring to the area on the basis of regeneration returns from the proposed project. Periodic rent reviews based on an agreed formula for assessing the performance of the project against the business plan was proposed through the Heads of Terms.

2.2 Shortly after the decision was made the Office for National Statistics ('ONS') reclassified further education corporations, sixth form college corporations and designated institutions in England ('Colleges'), as public sector bodies, forming part of central government. This decision was a significant change for the sector. Prior to it, colleges were classified as private sector bodies and had been since 2012. The decision came after a review from the ONS of the classification of all sectors of the economy, and as a result of it colleges are officially part of central government once again. This change has impacted the way in which colleges manage their money, and in this instance, lease buildings. Capital investment can only be made in an asset owned by a college in freehold or on a long lease. The Department for Education expects a long-term lease to be 125+ years at a peppercorn or nominal rental. East Kent Colleges Group has been advised that it is highly unlikely that the tenure arrangements in commercial leases would satisfy the Department for Education's value for money requirements.

2.3 The way further education colleges are funded also means that the government sets the price and contract limits for different types of provision. The funding model does not allow for any headroom that enables colleges to afford to lease premises for this scale of provision. The East Kent Colleges Group does not own anything in Margate, and has no way of investing in projects without capital funding approaches like the successful Levelling Up Fund (LUF) project. Using an asset already owned in the public sector makes sense.

2.3 This proposal would see the East Kent Colleges Group enter into a new 125-year lease at a peppercorn rent, for 53-57 High Street, Margate. The lease would be upon fully repairing and insuring (FRI) terms, handing control for the significant maintenance of the property from the council to East Kent Colleges Group. The lease would allow for the use of the property for education and ancillary purposes only. A sublet would be allowed within the property, with approval from the council, and for organisations that fit with the education terms of the planning approval.

2.4 The council has a statutory duty to dispose of land at the best price reasonably obtainable in accordance with Section 123 of the Local Government Act 1972. Due to the nature of funding for Further Education Colleges, the financial model means they are over-reliant on government policy that does not provide opportunity for investment of the scale of Margate Digital without project match funding, and with strict criteria and outcomes applied to them. East Kent Colleges Group expects that the eventual growth in student numbers at the Margate Digital campus will enable the project to start to break-even by year eight or nine of opening the provision. The College are planning to then have an overt income to reinvest back into Margate Digital by year ten of operating; therefore, creating a sustainable model for the offer. Within the Heads of Terms for the lease arrangement a provision will be included that should the College start to make ‘profit’ from the provision in Margate, through open book accounting, the council and Homes England may require to see a return on the original investment - a repayment of grant funding. This will happen in year ten.

2.5 Officers have been in negotiation with Homes England, East Kent Colleges Group, Department for Levelling Up, Housing and Communities and the Department for Education since the changes came into force that impacted this project. Originally it was thought that it would require a Secretary of State decision, however due to the nature of the output from the funding, and the use of the building, Homes England were able to approve the decision internally. This now requires the council to approve the lease arrangement, before the Joint Venture Steering Group members meet to complete the decision making process.

2.6 Decision making was supported by East Kent Colleges Group high level business plan for the Margate Digital Campus. The proposals have been reviewed in detail by appointed valuation consultants, Thomas Lister. The 20-year projections are based upon an initial intake of 90 students, rising to an estimated capacity of 220 students by year eight. Income for the campus is provided by way of fee income from a variety of courses including adult learning courses. The anticipated revenue also includes operating and service charge contributions from leasing out space within the building. Negotiations are taking place on the type of operation that could happen within the building to support the campus.

2.7 Following analysis of the proposed terms, Thomas Lister has, on behalf of the JV partners, concluded that the property could potentially secure a capital value in the region of £390,000 on an existing use basis, assuming a Freehold or Long Leasehold (FRI) disposal. If the property was let in its current condition, it would likely be for a short-term, internal repairing basis with break options in favour of the tenant due to the unstable retail market. The above options would not make the most of this key asset in the heart of the town centre. They do not take into account the Levelling Up Fund allocation and would unlikely provide the regeneration benefit required in Margate town centre. If the property continued to be occupied with secondary retail on Internal Repairing and Insuring (IRI) basis only, it would leave the council with a large ongoing management and maintenance responsibility. Still with no financial benefit at the end of any lease arrangements, or sale.

2.8 With regard to using the property solely for the purposes of education (and associated ancillary uses), Thomas Lister concluded that the assumptions made in relation to the potential income that could be gained as an education provision and the impact of the requirements from the Department for Education, any occupier seeking to operate the building on an educational basis would have the same challenges. Noting that the value would revert at the end of the Lease or should East Kent Colleges Group surrender the Lease at any point during the term.

2.9 On the basis of the above Thomas Lister confirmed that the proposed grant of a new lease to East Kent Colleges Group, subject to the user clause restricting the use for education purposes only, at a peppercorn rent represents Best Consideration in accordance with the requirements of Section 123 of the Local Government Act 1972 and Section 10 of the Housing and Regeneration Act 2008.

2.10 Should the Colleges Group seek to use the property for any other purposes than that contained within the user clause of the Lease, there would be a very clear Landlord's consent process required which would see the JV partners consider the merits of the proposal, which would include both impact/compliance on the funding provisions relating to the Levelling Up Fund, and impact on value in terms of rental.

3.0 Options

3.1 The only alternatives are to either give the funding back to central government, or for the council to deliver the Margate Digital campus themselves. There are currently no other Further Education or Universities in Thanet that could add a new campus to their provision. The council is not in the position to deliver an education campus, and therefore the only option is to provide East Kent Colleges Group with a lease in order that they can deliver the scheme they put forward for the Levelling Up Fund programme, which was awarded the grant funding.

4.0 Next Steps

4.1 The annexed grant agreement will be signed by both parties - Thanet District Council and East Kent Colleges Group.

4.2 Using the Heads of Terms the lease will be finalised for signing by Thanet District Council and East Kent Colleges Group.

4.3 Joint Venture Steering Group members meet to complete the decision making process.

Contact Officer: *Louise Askew - Head of Regeneration and Growth*
Reporting to: *Bob Porter - Director of Place*

Annex List

Annex 1: Draft Grant Agreement

Background Papers

Margate Digital Levelling Up Fund bid

Corporate Consultation

Finance: Chris Blundell (Director of Corporate Services - Section 151)
Legal: *Ingrid Brown (Head of Legal and Democracy & Monitoring Officer)*