



Report of the Cabinet Member for Corporate Service & Performance

Cabinet – 19 January 2023

Update Estate Management Report on Swansea Airport

Purpose:	The purpose of the report is to update on the current estate management activities at Swansea Airport and seeks authority to proceed with the recommendations as outlined below.
Policy Framework:	Asset Management Plan 2017 - 2021; Land Transaction Procedure Rules
Consultation:	Finance, Legal, Access to Services
Recommendation(s):	It is recommended that Cabinet: 1) In accordance with the legal advice provided by the Council's legal officers in conjunction with external advisers Geldards LLP, Cabinet does not oppose the principle of the S.26 request (Landlord and Tenant Act 1954) for a new tenancy with its existing tenant, Swansea Airport Limited but proposes alternative lease terms. 2) Delegates authority to the Head of Property Services and Chief Legal Officer to negotiate and agree the appropriate terms of the lease renewal to safeguard the Council's position whilst ensuring the Tenant continues to invest further in the asset.
Report Author:	Geoff Bacon
Finance Officer:	Ben Smith
Legal Officer:	Debbie Smith
Access to Services Officer:	Rhian Millar

1.0 Introduction

- 1.1 Swansea Council owns the freehold interest in Swansea Airport, which is currently leased to a third-party operator.
- 1.2 Since the date of the last report to Cabinet, Officers have been continuing to work closely with Tenant to ensure the various actions have been completed and this report seeks to update Cabinet on the progress to date.

2.0 Background of the Airport and Existing Lease

- 2.1 The site of Swansea Airport originally formed part of Fairwood Common, which was transferred as a gift to the Council's predecessor in title in 1938 to commemorate the coronation of King George VI. The freehold interest in the site is now held by the Council by virtue of the various local government reorganisations that have taken place since the original transfer. The site was requisitioned during the Second World War for use as an air defence airfield. Once not required for military use, the Council decided to establish a municipal aerodrome and secured the enactment of the Swansea Corporation (Fairwood Common) Act 1956.

That Act, inter alia, extinguished the rights of common in respect of the airport site and allowed the Council to operate an airport under the provisions of the Civil Aviation Act 1949.

- 2.2 The 1956 Act also provided that, were the aerodrome use to be abandoned for a period of five years, the land should be "held by the Corporation for the purpose of being preserved as an open space for the enjoyment of the public under the Open Spaces Act 1906 and the provisions of that Act shall apply.....as if they had been acquired by the Corporation thereunder". The provisions of the 1956 Act were re-enacted in the West Glamorgan Act 1987 and again by the Local Government (Wales) Act 1994.
- 2.3 The entire airport site is currently leased to Swansea Airport Ltd under the original lease which expired on 31st December 2016 (holding over), at an annual rent of £5,000. The lease includes an obligation on the lessee not to use the premises for any purpose other than that of an airfield with at least one runway licensed by the Civil Aviation Authority to "Category One" level, together with various associated uses. The lessee is responsible for all repairs and for insuring the premises. There is attached to the lease a schedule of equipment and furnishings that were provided by the Council and which the lessee is also obliged to maintain or replace as necessary.

3.0 Current Situation

- 3.1 The Airport has always been subject of complaints and expressions of dissatisfaction in connection with the management of the airport. Issues in

connection with lack of aviation fuel, general management, staffing levels, etc. have all been raised over the years since the lease was first granted. The Council have the ability to influence a very limited number of elements of the operations at the airport via the terms of the lease but broadly speaking the day-to-day operations of the airport fall outside of Council control.

- 3.2 Cabinet will be aware that one of the key conditions of the lease is that the Airport holds a Civil Aviation Authority (CAA) licence. This licence was suspended a few years ago due to non-compliance but was subsequently reinstated in 2021. Since that point, the CAA has carried out a number of audits and the most recent report is contained within **Appendix A**. The CAA report contains 5 level two findings and 4 observations which require rectification by December 2022. The Tenant has confirmed the 5 level two findings have now been dealt with and actioned as 'closed'. The points of observations are ongoing but are not mandatory.
- 3.3 Since Officers last reported to Cabinet, a copy of the original Schedule of Condition dated 1991 has been located and is contained within **Appendix B & C**. Whilst the Tenant still has an obligation to keep the property in repair and decorate frequently, the Tenant is not obligated to put into better condition.
- 3.4 On the personnel side, a new management team has formed over the last 12/18 months and all mandatory positions have now been filled including the Accountable Manager, Operations Manager and Safety Officer. Whilst there are still concerns that the existing staffing structure does not provide for full resilience, this ultimately not within the Council's gift to control whilst it is operational.
- 3.5 There is no doubt that the airport still requires ongoing investment in order to attract/retain new operators and customers. There are clear financial challenges associated with running an airport which have been highlighted to Cabinet previously.
- 3.6 Cabinet will be aware that the Council has received expressions of interest from other parties to take on management of the airport. Whilst it is reassuring to know there is interest from alternative user groups, the Council should not take these into account when considering a renewal of the lease under the statutory provisions governed by the Landlord and Tenant Act 1954.
- 3.7 The Tenant has recently served a S.26 notice on the Council requesting a new tenancy, subject to terms to be negotiated. The Council as a duty to respond to this application by 3rd February should it wish to oppose the request.
- 3.8 Whilst the current airport operation is supported in principle, it would not be one that the Council could justify supporting financially either directly or by stepping in and funding its day to day management.

3.9 In a situation where the lease has come to an end, the Council must be mindful that if the airport was run internally, along with the considerable additional financial costs it would impact the authority's commitment to deliver climate change as the resulting carbon emissions would be significant. As part of its Corporate Plan, the Council is committed to enhancing nature and biodiversity throughout Swansea and to reduce its carbon footprint. Therefore, the decision to manage the airport in-house would likely conflict with this key objective, especially given its net zero carbon targets.

4.0 Conclusion

4.1 Given the progress which has been made to date and the legal advice which has been received from the Council's independent solicitors, Geldards LLP, the Tenant has legally demonstrated sufficient progress in order to support its S.26 application and the request for a new tenancy.

4.2 The Council has a number of options available to it:-

4.2 (a) It is able to contest the S.26 application and formally refuse the request for new tenancy. However, the legal advice received to date, relating to the sufficient grounds to oppose the notice (under S.30) and the associated risks needs to be taken into account.

4.2 (b) The Council can acknowledge the request for a new tenancy and commence negotiations on the specific lease terms with a view to protecting the Council's interest and also with the objective of ensuring that recent progress is maintained and confidence established. This option is dependent on negotiation and tenant engagement which if unsuccessful could still lead to legal proceedings at a later date. Therefore, the recommendation for this option would be for Cabinet to agree the principle of granting a new lease whilst giving the Head of Property the specific delegation to agree the final terms of the lease.

4.2 (c) The third option would be for the Council not to respond to the S.26 notice. This however would result in the renewal of the lease as the Council would have lost the opportunity to oppose the s.26 notice and the grant of a new tenancy. The Council's unwillingness to engage or respond may have cost implications and the final terms of the lease would ultimately be decided by a Court.

4.3 If Cabinet are minded to make a decision to renew the lease in-line with legal advice provided to the Council rather than exploring alternative options, then the terms of the new lease would need to be carefully considered.

4.4 Authority would need to be given to the Head of Property Services and Chief Legal Officer to decide on the appropriate terms of the lease renewal

to safeguard the Council's position whilst ensuring the Tenant continues to invest further in the site.

- 4.5 Cabinet are reminded that the Council is acting in its capacity as Landlord and therefore often needs to take a commercial and pragmatic view given the options which it has available. Up to this point the Council has attempted to assist to improve the relationships at the Airport however officers cannot be involved in any ongoing day to day management discussions which are specialist, not fundamental to its estate management position and are outside of its Landlord and Tenant relationship.

5. Integrated Assessment Implications

- 5.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.
- Deliver better outcomes for those people who experience socio-economic disadvantage
- Consider opportunities for people to use the Welsh language
- Treat the Welsh language no less favourably than English.
- Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

- 5.1.1 The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.

- 5.1.2 Our Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.

- 5.2 An IIA screening form (**Appendix D**) has been completed with the outcome that a full IIA report will not be required as there is no disproportionate impact at this stage.

The IIA process will need to be revisited dependant on the agreed direction of travel although will not be required in the event of a lease renewal to the existing tenant.

6.0 Financial Implications

- 6.1 As explained within the previous Cabinet reports, the financial implications will be very much dependent on the direction of travel as there are substantial costs associated with proceeding with litigation and in turn, alternative options.
- 6.2 The Council does not currently contribute to the capital/revenue costs whilst it is leased to a third party. Additional base funding will need to be identified in order to pursue alternative options.
- 6.3 The Council may still require some modest funding if specialist support is retained on an ad-hoc basis but this can be potentially accommodated from within existing service budgets or if necessary contingency.

Appendices:

Appendix A – CAA Audit Report (September 2022)

Appendix B – Schedule of Condition (dated 20th December 1991) – Narrative

Appendix C – Schedule of Condition (dated 20th December 1991) – Photos

Appendix D – IIA Screening Form