



**URGENT ACTION TO APPROVE**

**Settlement of Dilapidations**

Property	Porter Building, Slough
Tenant	Was occupied by Fiserv (Europe) Ltd (Company Number 02467435).
Extent of letting	1st floor comprising 28,316 sq. ft.
Lease Term	<b>The floor is currently void.</b> The former Tenant occupied the floor under a 10 year lease from 18/09/2017 with a break option on 18/09/2022. The tenant exercised the break option and vacated in September 2022.
Landlord & Tenant Terms	Outside L&T Act 1954
Break	Tenant break on 5th anniversary 18/09/2022 subject to nine months' notice. <b>The Tenant validly exercised the break and vacated the floor.</b>
Annual Rent	£0 – The Tenant was paying £966,518 pa under the terms of their lease, which was broken on 18/09/2022.
Annual void cost for floor	£352,817 pa

The appropriate Committee to decide the settlement of the dilapidations between Spelthorne Borough Council and Fiserv (Europe) Ltd is the Commercial Assets Sub-Committee. The next scheduled Commercial Assets Sub-Committee is 16<sup>th</sup> September 2024 (the agenda and report has already been issued for CASC on 5<sup>th</sup> August 2024). The concern is that if approval of the agreement to settle the dilapidations is delayed, the former tenant may renege on their agreement to settle which could result in the Council receiving a less favourable settlement.



## 1. Background

Porter Building is a Grade A office building which was developed in 2017 and provides 119,450 sq. ft of office accommodation over ground and four upper floors. It is located in a prominent position in Slough town centre opposite the entrance to Slough Station. It is multi-let to IWG/Spaces, Starbucks, Mattel, Orange Business Services and AFL Fleet Management. It is currently 76% let with a vacancy on the first floor and part 4<sup>th</sup> floor.

Fiserv (Europe) Ltd occupied the first floor (28,316 sq. ft) under a ten year lease which was subject to a break option at the 5<sup>th</sup> anniversary of the term. The tenant validly exercised their break option and vacated the premises on 18<sup>th</sup> September 2022.

The Council instructed Knight Frank's Building Consultancy Team to draft the Schedule of Dilapidations and negotiate the Council's claim. The Schedule was drafted in March 2022 and served on the tenant. Fiserv decided not to undertake the remedial works noted in the Schedule before they vacated instead opting to negotiate a financial settlement (this is typically the course of action taken by commercial tenants). Once vacated the Council undertook a comprehensive strip out and refurbishment returning the floor to a Cat A condition. The refurbishment works commenced in February 2023 and were necessary to allow the office floor to be marketed to let. Following the completion of the works in May 2023 and having proved the cost of reinstating the office floor, Knight Frank have negotiated and agreed a full and final dilapidations settlement.

## 2. Proposal

This Urgent Action seeks to approve the settlement of dilapidations for the 1<sup>st</sup> floor at a figure of £100,000.

The Schedule of Dilapidations originally served on Fiserv in March 2022 estimated the refurbishment cost including professional fees to be £600,016 (comprising of the works at £540,519). This was a full Schedule to allow the Council to progress the highest claim possible. The cost of the works to remove Fiserv's extensive fit out, repair and redecorate were in line with the building cost index and it included all professional fees.

The lease to Fiserv which was granted prior to the Council's ownership had an unusual repairing and reinstatement clause. The clause did not place an obligation on the tenant to reinstate their 'fit out works' which were documented in a licence to alter. The Council took legal opinion from Clyde & Co. on the implication of lease clause and the wording of the licence to alter on the Council's claim. Consequently, the Council's claim was limited to elements of repair, redecoration and the removal of mechanical and electrical equipment. Following legal advice, the Council's Building Surveyor advised that the value of the claim was £65,484 and we should expect a settlement at this level.

The Council competitively tendered the strip out and refurbishment works on the first floor. The tender prices varied from £307,563 to £512,260 for the works. The total cost of the refurbishment including all professional fees was £440,337. The completion of the refurbishment works crystallised the Council's claim.



The proposed settlement of £100,000 is more than our Building Surveyor's original valuation of £65,484. The tenant has agreed to the higher offer in a bid to draw matters to a close. This figure exceeds their actual liabilities, and we recommend that it is accepted.

### 3. Market Commentary

The first floor is currently being marketed through joint agents with no confirmed interest at present.

### 4. Business Case

The Council has undertaken the refurbishment works at a total cost of £440,337. It is prudent to recover the proportion of costs due from the tenant under the terms of the lease to reduce the Council's total revenue expenditure without further delay. The settlement of £100,000 is above the settlement figure initially costed and will reduce the total spend on the 1<sup>st</sup> floor refurbishment to £340,337.

There are two options available to the Council: -

**Option 1** - Reject the offer or delay in completing the Settlement Agreement. This is not recommended as there is no legal justification to argue for a higher settlement. Any delay may result in Fiserv reneging on the agreement.

**Option 2** – Accept the offer and enter into the Settlement Agreement. This will be a full and final settlement with Fiserv. The dilapidations settlement of £100,000 has not been factored into the revenue account so will benefit the income budget.

### 5. Recommendation

In light of the business case outlined above, it is recommended that the dilapidations settlement of £100,000 is agreed (option 2).

*Under Part 3(a) of the Council's Scheme of Delegations... "In order to enable an urgent decision to be made, the Chief Executive has delegated power to take any decision which is so urgent that it cannot wait until the next scheduled meeting of the Council or relevant Committee and where the decision is not in contravention of established policies. In following this procedure, the Chief Executive is required to consult with the relevant Committee Chair and Vice-Chair. The use of such urgent action must be reported to the next relevant Committee meeting".*

Please could you therefore confirm that you will give approval to authorise this urgent action for the settlement of dilapidations of the 1<sup>st</sup> floor Porter Building, Slough with Fiserv (Europe) Ltd. If you are mindful to authorise this action, the Group Head of Assets will ensure that the action taken is noted on the following Commercial Assets Sub-Committee agenda.



I confirm that I give my delegated authority to take urgent action to agree to settle the dilapidations of the 1<sup>st</sup> floor, Porter Building on the terms agreed by the Group Head of Assets and summarised in this note. I can confirm that I have consulted with the Chair and Vice Chair of the relevant Committee, and they are in full agreement.

---

Chief Executive

---

Date