

Birmingham City Council
Report to Cabinet
14th May 2019



Subject: To extend the International Convention Centre and Birmingham Arena Headleases and the Underleases of Symphony Hall

Report of: Director, Inclusive Growth

Relevant Cabinet Member: Councillor Ian Ward, Leader of the Council

Relevant O & S Chair(s): Councillor Tahir Ali, Economy & Skills

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): LADYWOOD		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 006318/2019		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<p>The financial consequences of the report recommendations are summarised in the attached Exempt Appendix 1. This is covered under Exempt information – discretion to exclude private information falling within the categories outlined in 12A of the Local Government Act 1972 (as amended): paragraph 3. Information relating to the financial or business affairs of any particular person (including the council)</p>		

1. Executive Summary

- 1.1 To approve terms for the reversionary extension of the headlease dated 1 May 2015 between Birmingham City Council (the City Council) and The NEC Ltd relating to the International Convention Centre (**ICC Headlease**) and the headlease dated 1 May 2015 between the City Council and The NEC Ltd for Birmingham Arena (**BA Headlease**) both for a period of ten years upon the expiry of the current Headleases on 30th April 2040 in return for a consideration payment [set out in Exempt Appendix 1] and a temporary waiving of prohibitive rights on structural alteration contained within the underlease of Symphony Hall (granted to the City Council) to enable redevelopment of Symphony Hall.
- 1.2 To approve terms with The NEC Ltd for the extension of the underlease between The NEC Ltd and the City Council of Symphony Hall dated 1st May 2015 (**SH Underlease**) to be co terminous (less 1 day) with the expiry of the 10 year supplemental reversionary ICC Headlease.

- 1.3 To approve terms with Performances Birmingham Limited (PBL) for the extension of the sub-underlease made the 14 January 2005 between the City Council and Symphony Hall (Birmingham) Ltd of the Symphony Hall (**the SH Sub-underlease**) by way of reversionary lease for such term as to make the end date co-terminus (less 2 days) with the reversionary ICC Headlease and the BA Headlease. These changes are required to enable PBL to proceed with their plans for large scale investment and structural changes to create a defined entrance for Symphony Hall.

2. Recommendations

- 2.1 The grant of: (i) a supplemental reversionary 10 year lease term of the ICC Headlease to come into effect on the expiry of the existing ICC Headlease term [on the same terms as the existing ICC Headlease except for the consideration set out in in Exempt Appendix 1]; and (ii) a supplemental reversionary 10 year lease of the BA Headlease to come into effect on the expiry of the existing BA Headlease term [on the same terms as the existing BA Headlease except for the consideration set out in Exempt Appendix 1]
- 2.2 To agree to take a supplemental reversionary 10 year lease term of the SH Underlease [on the same terms as the existing SH Underlease except in relation to a waiver of the existing lease covenants prohibiting external structural alterations] to be co-terminous (less 1 day) with the expiry of the supplemental reversionary 10 year lease of the ICC Headlease and waiver.
- 2.3 To agree a supplemental reversionary term of such length of the SH Sub-underlease with Performances Birmingham Limited to be co-terminous (less 2 days) with the expiry of the ICC Headlease extended term on the same terms as the existing SH Sub-underlease except for where alterations of the SH Underlease have occurred.
- 2.4 Authorises the City Solicitor to prepare, negotiate, execute and complete all relevant legal documentation to give effect to the above.

3. Background

- 3.1 Both the ICC and Birmingham Arena are held Freehold by the City Council and are subject to independent Headleases of 25 years to the NEC. BCC have taken a lease of Symphony Hall for a period of 25 years (less 1 day) and are direct landlord of PBL who occupy Symphony Hall under the terms of a lease dated 14th January 2005.
- 3.2 The buildings require further capital expenditure to ensure their ongoing economic life and viability as venues.
- 3.3 The new leases for the venues will allow the extension of the agreement on Symphony Hall to PBL and enable them to bring forward plans to demolish the existing façade fronting the area and create a new fit for purpose vestibule.
- 3.4 Investment in the properties cannot proceed without the grant of the lease extensions because the existing lease only has 21 years remaining which is not of

sufficient longevity to secure the necessary funding for the required expenditure for investment and modernisation. Extension of the leases will enable the respective viability funding models to be achieved.

4. Options considered and Recommended Proposal

4.1 Do nothing.

4.1.1 The City Council would not benefit, as freeholder of the properties, by the additional capital investment in the asset.

4.1.2 No modernisation investment would be made to the properties

4.1.3 The redevelopment of the exterior would not proceed thereby creating viability issues for PBL and the future of Symphony Hall as a destination venue.

5. Consultation

5.1 Both Ward Members for Ladywood have been consulted and are supportive of the report moving forward to an executive decision, as shown in the Consultation Report in Appendix 2 annexed to this report.

5.2 Officers from City Finance, Legal and Governance have been involved in the preparation of this report.

6. Risk Management

6.1 The inability to reach milestone dates will result in the funding streams currently open to enable the redevelopment of Symphony Hall not being confirmed. Mitigation to milestone dates not being achieved and the redevelopment not proceeding would be by way of basic cap expenditure investment requirements contained within the existing leases.

7. Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1.1 The proposal contributes towards the Vision and Forward Plan (2019/20) and Property Strategy. – The Property Strategy is aligned with the strategic outcomes outlined in the Council Plan – to create a city of inclusive growth where every child, citizen and place matters. The Property Strategy will help make Birmingham: a great city to learn, work and invest in; a great city to grow up in; a great city to age well in; a great city to live in; and for residents to gain maximum benefit from hosting the Commonwealth Games.

7.1.2 It supports the Council Plan and Budget by generating revenue resources and thus helping to achieve a balanced budget.

- 7.1.3 This scheme will create jobs for the construction phase and the ongoing operational phase in managing the property.

7.2 Legal Implications

- 7.2.1 The power to acquire, dispose and manage assets in land and property is contained in Sections 120 and 123 of the Local Government Act 1972.
- 7.2.1 The financial elements of the proposal are not deemed to be in the public interest due to the risk of the commercially sensitive figures becoming known in the marketplace being able to prejudice the transaction.
- 7.2.3 Exempt information 12A of the Local Government Act 1972 (as amended) 3. Information relating to the financial or business affairs of any particular person (including the council). The Exempt appendix 1 considered to be in the public interest as public disclosure of the commercially sensitive information contained would be prejudicial to the financial aspects or business of a person individual or company”

7.3 Financial Implications

- 7.3.1 The proposals will generate a revenue sum resource for the City Council and ensure investment into the asset to provide a world class venue which will drive visitor numbers and associated benefits to the City as well as increasing the capital value of an asset for which the City Council is freeholder.
- 7.3.2 The settlement value of the extension grant has been provided by Avison Young and recommended as the maximum that could be achieved in the market given the parameters. The Director of Property has confirmed the findings of Avison Young as being Best Value.

7.4 Procurement Implications (if required)

- 7.4.1 Not applicable in this transaction.

7.5 Human Resources Implications (if required)

- 7.5.1 There are no Human Resource implications in respect of this decision.

7.6 Public Sector Equality Duty

- 7.6.1 The report recommendations raise no equality issues, as referenced in EA report number EQUA287 attached at appendix 8.3 as they will not have a negative impact on the protected characteristics and groups under the Equality Act 2010.

8 Appendices

- 8.1 Site Plans
- 8.2 Consultation Report
- 8.3 Equality Assessment Report – EQUA287

8.4 Exempt Appendix 1

9 Background Documents
None further to Appendices