

Birmingham City Council

Report to Leader and Cabinet Member Finance and Resources

17th January 2022



Subject: **Proposed Sale of Commercial Freehold Ground Rents By Public Auction**

Report of: Director of Planning, Transport & Sustainability – Ian MacLeod
Director of Council Management – Rebecca Hellard
City Solicitor and Monitoring Officer – Suzanne Dodd

Relevant O & S Chairs: Councillor Mohammed Aikhlaq – Resources
Councillor Saima Suleman – Economy & Skills

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Balsall Heath West, Bordesley & Highgate, Ladywood, Nechells, Newtown, Sparkbrook & Balsall Heath East		
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
Exempt information schedule 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) Exempt Appendix 2 contains sensitive commercial information on the purchase price and valuation.		

1 Executive Summary

- 1.1 This report seeks authority for the sale of the Council's freehold reversionary interests listed in Exempt Appendix 2 of this report by public auction.
- 1.2 The subject properties are shown edged bold on individual attached plans at Appendix 1.
- 1.3 The report seeks authority under paragraph 3.2(xi) of Part E of the constitution, for the approval of acquisitions and disposals from the Investment Property portfolio to the Leader and Cabinet Member for Finance and Resources, jointly with the Director - Inclusive Growth, Chief Finance Officer and the City Solicitor (or their delegates, now Acting Director, Inclusive Growth, Director of Council Management (Interim) and City Solicitor and Monitoring Officer) up to a limit of £25m in any one transaction.
- 1.4 The recommendations contained in this and the Exempt Appendix 2 are fully in line with the Council's wider ambitions and plans for inclusive growth and financial stability. The recommendations are in compliance with the Birmingham City Council Plan and Budget 2018-2022 and the Property Strategy.
- 1.5 Options for these property interests have been fully considered and the recommended sale route provides the best outcomes for the City as detailed in the Exempt Appendix 2.

2 Recommendations:

- 2.1 Authorises the Assistant Director of Property to conclude the sale of the Council's freehold reversionary interests listed in Exempt Appendix 2 by public auction.
- 2.2 Authorises the Assistant Director of Property, where deemed appropriate, to set individual reserve prices in excess of £200,000.
- 2.3 Authorises the City Solicitor to prepare, negotiate, execute and complete all relevant legal documentation to give effect to the above.

3 Background

- 3.1 The subject properties comprise primarily commercial / industrial warehouses currently held within the Council's Investment Portfolio.
- 3.2 The current property lease, rent and registered lessee details are shown at Exempt Appendix 2. Individual identification plans showing the properties edged bold are attached at Appendix 1 of this report.
- 3.3 Following a comprehensive review of the Council's Investment Portfolio supported by appointed advisors Avison Young in 2020, the Council's interests in these properties have been identified for potential sale.
- 3.4 In accordance with agreed process, Property Services' Officers have offered terms to the current lessee for the sale of the Council's freehold interest in the property, and in each of the listed cases either the lessee has not taken up the Council's offer or terms have not been agreed.
- 3.5 In the absence of a sale being agreed with the lessee, the Council now proposes to secure a sale of its interests via public auction.
- 3.6 The sales methodology to deliver the proposed sale programme will fully recognise market sentiment and individual circumstance. The proposed delivery strategy and mode of sale adopted is tailored to maximise both the prospect of a sale completion and receipt realisation in order to demonstrate best consideration.

- 3.7 The City Council Financial Plan 2020-2024 and Financial Plan 2021-2025 approved in February 2021 approved the flexible use of capital receipts to support the transformation programme and it is proposed that the receipts from this disposal be allocated to support this programme.

4 Options Considered and Recommended Proposal

- 4.1 **Option 1 – Do Nothing.** The Council is under no obligation to proceed with this proposal and would suffer no reputational consequences if it did not proceed. It would not however, be in line with the aims of the Property Strategy or the external advice obtained to support delivery of the Strategy. The capital receipts realised would not be realised and would not be available to fund the Council's transformation programme and there would be no guarantee of a future opportunity. The properties are not allocated, nor do they have planning consent for an alternative use and are therefore not immediate development opportunities. The properties do not have an obvious alternative use which would benefit the Council.
- 4.2 **Option 2 – Dispose of the Properties to Council Wholly Owned Company (WOC).** The properties are not deemed to be of a strategic value to the Council nor offer a significant development opportunity such that it would wish to retain overall control of the assets through transfer into a WOC. In addition, there is limited income from the properties to support and fund a sale of this nature.
- 4.3 **Option 3 – Proceed with Agreed Transaction.** It is recommended to proceed with the recommendations outlined in this report, in line with the aims of the Property Strategy and the external advice obtained to support delivery of the Strategy, in order to deliver capital receipts to fund the Council's transformation programme and remove the Council management obligation.

5. Consultation

- 5.1 The Property Investment Board comprising officers from Property Services, Finance and Legal Services recommends proceeding with the transaction.
- 5.2 No further external consultation is necessary for these commercial transactions.
- 5.3 Ward members will be notified as each asset comes forward for sale.

6. Risk Management

- 6.1 There are no immediate risks to the Council's holding if the proposed transactions do not complete since its interests are protected under the terms of the existing leases. The 'risk' of not proceeding could only be seen of in terms of a lost opportunity to generate a potential capital receipt for potential reinvestment.

7. Compliance Issues:

- 7.1.1 The proposed sale programme and generation of a capital receipt supports the Financial Plan 2021-2025 by generating resources and thus helping to achieve a balanced budget.
- 7.1.2 It is consistent with Birmingham City Council Plan and Budget 2018-2022 (2019 update) priorities as the additional income helps the Council to meet the aspirations to be an entrepreneurial city to learn, work and invest in – an aspirational city to grow up in, a fulfilling city to age well in, a great city to live in, a city where residents gain the most from hosting the Commonwealth Games and a city that takes a leading role in tackling climate change.
- 7.1.3 It supports the aims set out in both the Birmingham Property Strategy 2018-2023.

7.2 Legal Implications

- 7.2.1 Sections 120 - 123 of the Local Government Act 1972 authorises the Council to hold, appropriate and dispose of land. The disposal power in Section 123 of the Local Government Act 1972 is subject to the best consideration test. The Assistant Director of Property has confirmed that the recommended sale, as detailed in Exempt Appendix 2 represents best consideration and satisfies the Council's obligations, under Section 123 of the Local Government Act 1972.
- 7.2.2 Section 1 of the Localism Act 2011 contains the Council's general power of competence, which is circumscribed only to the extent of any applicable pre-commencement restrictions and any specific post-commencement statutory restriction of the power, and Section 111 of the Local Government Act 1972 contains the Council's ancillary financial and expenditure powers in relation to the discharge of its functions including the disposal and acquisition of property.
- 7.2.3 The Local Government Act 2003 and guidance issued under it authorises the Council's investment management functions
- 7.2.4 Exempt information: Schedule 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). Exempt Appendix 2 is considered to be exempt as it contains commercially sensitive information of a financial or business nature, which if disclosed to the public could be prejudicial to a named person, individual or company.
- 7.2.5 The Council's in-house Legal team will complete all legal matters associated with the transaction.

7.3 Financial Implications

- 7.3.1 The proposed sale programme, as set out in Exempt Appendix 2, will generate capital receipts for the Council. The capital receipt will be available to fund the City Council's transformation programme, in line with the Financial Plan 2020-2024 and the Financial Plan 2021-2025 approved in February 2021, providing resources to support delivery of a balanced budget.
- 7.3.2 The property interests listed currently produce an annual rental of £0.097m, which will be lost to the City Council when the properties are sold. This income forms part of the existing Property Services budget allocation. The loss of income will be mitigated on a one-off basis in 2021/22 by use of corporate resources and factored in on an ongoing basis with effect from 2022/23 as part of the City Council rolling Medium Term Financial Plan (MTFP) refresh.
- 7.3.4 As the properties are currently let on full repairing and insuring terms (the lessees pick up all of those costs), the holding costs related to these assets are limited to the cost of Council officer time incurred in managing the leases as part of the wider city centre portfolio of properties, and are not specifically recorded or measured.
- 7.3.5 The purchasers will pay a contribution towards the Council's professional costs related to the disposal of these interests.
- 7.3.6 The purchase price, including any contribution to the Council's costs, is exclusive of VAT.

7.4 Human Resources Implications

- 7.4.1 Internal resources are being used to evaluate and execute the proposed sales programme. The property interests will be offered for sale via the Council's retained auctioneers, Bond Wolfe.

7.5 Public Sector Equality Duty

7.5.1 An Equality Assessment has been carried out EQUA770 dated 16th November 2021 and is attached at Appendix 3. This identifies no adverse impacts on any groups protected under the Equality Act 2010.

8. Appendices

8.1 List of Appendices accompanying this report:

- Appendix 1 – Site Plan
- Appendix 2 - (Exempt) – Recommendations
- Appendix 3 – Equality Assessment EQUA 770

9 Background Documents

- Property Strategy (Approved by Full Cabinet – November 2018)
- Property Investment Strategy (Approved by Full Cabinet – July 2019)