

**Birmingham City Council**

**Report to Leader and Cabinet Member Finance and Resources**

17<sup>th</sup> February 2022



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**Subject:** **Sale of Premises at 10 Upper Gough Street, Birmingham, B1 1JG**

**Report of:** Strategic Director for Place, Prosperity and Sustainability – Paul Kitson  
Director of Council Management – Rebecca Hellard  
City Solicitor and Monitoring Officer (Interim) – Satinder Sahota

**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
Ladywood		
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 interest in Premises at 10 Upper Gough Street, Birmingham, B1 1JG to the current lessee, Jason Wayne Kirby.
- 1.2 The subject property has a site area of 810 sqm approximately and is shown edged bold on the attached plan 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 Strategic Director Place, Prosperity and Sustainability, Director of Council Management and City Solicitor and Monitoring Officer - Interim), 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 this property interest have been fully considered and the recommended sale 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 interest, to the current lessee, Jason Wayne Kirby.
- 2.2 Notes that the purchaser will pay a contribution towards the Council's surveyor's and legal costs, as detailed in Exempt Appendix 2.
- 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 property is land and premises comprising offices / workshops, currently held within the Council's Investment Portfolio. The property is located within a locality of established workshop / commercial uses in close proximity of the city centre.
- 3.2 The property is shown edged bold on the plan at Appendix 1 of this report.
- 3.3 The property is owned freehold subject to a lease for 99 years from 20th August 1982, at a ground rent of £7,750 per annum (subject to 7 yearly rent reviews). The lease is currently held by Jason Wayne Kirby.
- 3.4 Following a comprehensive review of the Council's Investment Portfolio supported by appointed advisors Avison Young in 2020, the Council's interest in this property has been identified for potential sale.
- 3.5 In accordance with agreed process, terms have initially been offered to, and agreed with the current lessee to acquire the Council's freehold interest in the property.
- 3.6 The outcome of the negotiations and recommendations for sale are detailed at Exempt Appendix 2 of this report.

- 3.7 The proposed sale represents best consideration and has been validated by the Assistant Director of Property based upon an analysis of the financial terms of the recommended sale, consideration the Council's Property Strategy, and wider aspirations and ambitions for the City.
- 3.8 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 the 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 negotiated capital receipt would not be realised at this time and would not be available to fund the Council's transformation programme and there would be no guarantee of a future opportunity. The property is not allocated, nor does it have planning consent for an alternative use and is therefore not an immediate development opportunity. The property does not have an obvious alternative use which would benefit the Council.
- 4.2 **Option 2 – Dispose of the Property to Council Wholly Owned Company (WOC).** The property is not deemed to be of a strategic value to the Council or a significant development opportunity such that it would wish to retain overall control of the asset through transfer into a WOC. In addition, there is limited income from the property to support and fund a sale of this nature.
- 4.3 **Option 3 – Proceed with Agreed Transaction.** It is recommended to proceed with the transaction 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 a capital receipt to fund the Council's transformation programme and remove the Council management obligation. The sale to lessee will give the tenant the ability to invest in the asset and create jobs.

#### **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 this commercial transaction.

#### **6. Risk Management**

- 6.1 There are no immediate risks to the Council's holding if the transaction does not complete since its interests are protected under the terms of the existing lease. The 'risk' of not proceeding could only be seen of in terms of a lost opportunity to generate a potential capital receipt.
- 6.2 The 'risk' of not proceeding could only be seen in terms of a lost opportunity to generate a capital receipt for potential reinvestment via a sale of the Council's interest in the property.

#### **7. Compliance Issues:**

- 7.1.1 The proposed sale transaction 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 approved Birmingham Property Strategy 2018-2023 and Property Investment Strategy.

## **7.2 Legal Implications**

- 7.2.1 Sections 120 - 123 of the Local Government Act 1972 authorise 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 transaction will generate a capital receipt for the Council, as set out in Exempt Appendix 2. 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 is currently subject to an annual rental of £7,750 per annum which will be lost to the City Council. 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 from 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.
- 7.3.3 As the property is currently let on full repairing and insuring terms (the lessee picks up all of those costs), the holding costs related to this asset are limited to the cost of BCC officer time incurred in managing the lease as part of the wider city centre portfolio of properties, and not specifically recorded or measured.
- 7.3.4 The purchaser will pay a contribution towards the Council's professional costs related to the disposal as detailed in Exempt Appendix 2.

- 7.3.5 The purchase price and any future overage, including any contribution to the Council's costs, is exclusive of VAT. However, as the City Council has not opted to tax the site, nor intends to do so prior to the disposal, VAT is not chargeable on the purchase price.

#### **7.4 Human Resources Implications**

- 7.4.1 Internal resources are being used to evaluate and execute the transaction.

#### **7.5 Public Sector Equality Duty**

- 7.5.1 An Equality Assessment has been carried out EQUA dated xxxx 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

### **9 Background Documents**

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