

BIRMINGHAM CITY COUNCIL

CABINET MEMBER AND CHIEF OFFICER

WEDNESDAY, 02 MARCH 2022 AT 00:00 HOURS
IN CABINET MEMBERS OFFICE, COUNCIL HOUSE, VICTORIA
SQUARE, BIRMINGHAM, B1 1BB

A G E N D A

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Director of Council Management – Rebecca Hellard
City Solicitor and Monitoring Officer (Interim) – Satinder Sahota</p> |
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Birmingham City Council

Report to Leader and Cabinet Member Finance and Resources

17th February 2022



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

Report author: Rob King
Business Manager - Property Services
0121 303 3928 / robert.king@birmingham.gov.uk

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

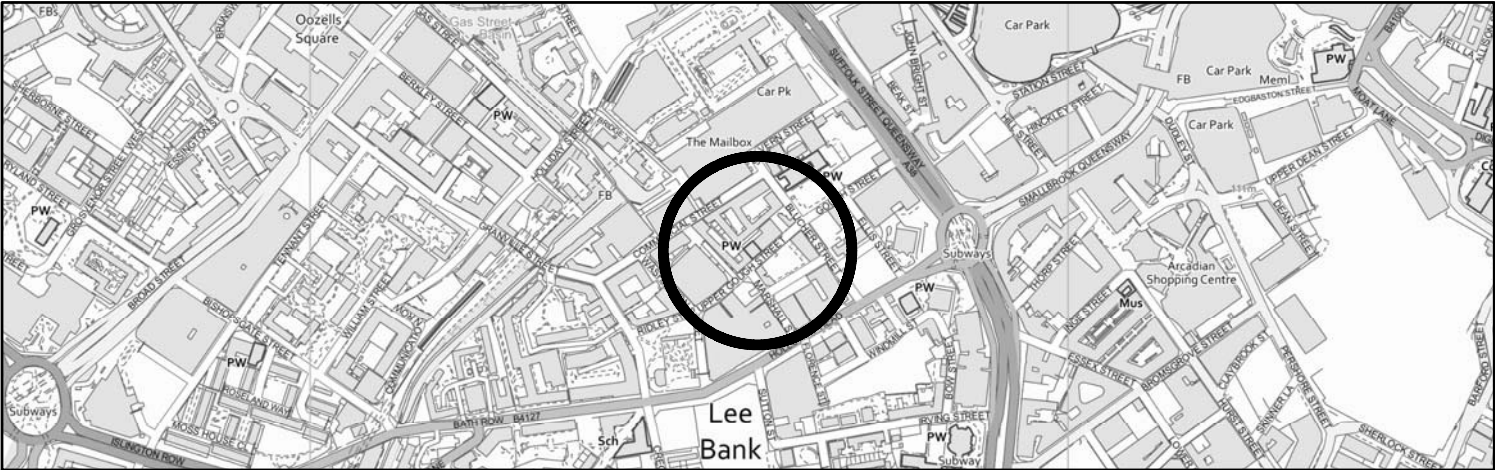
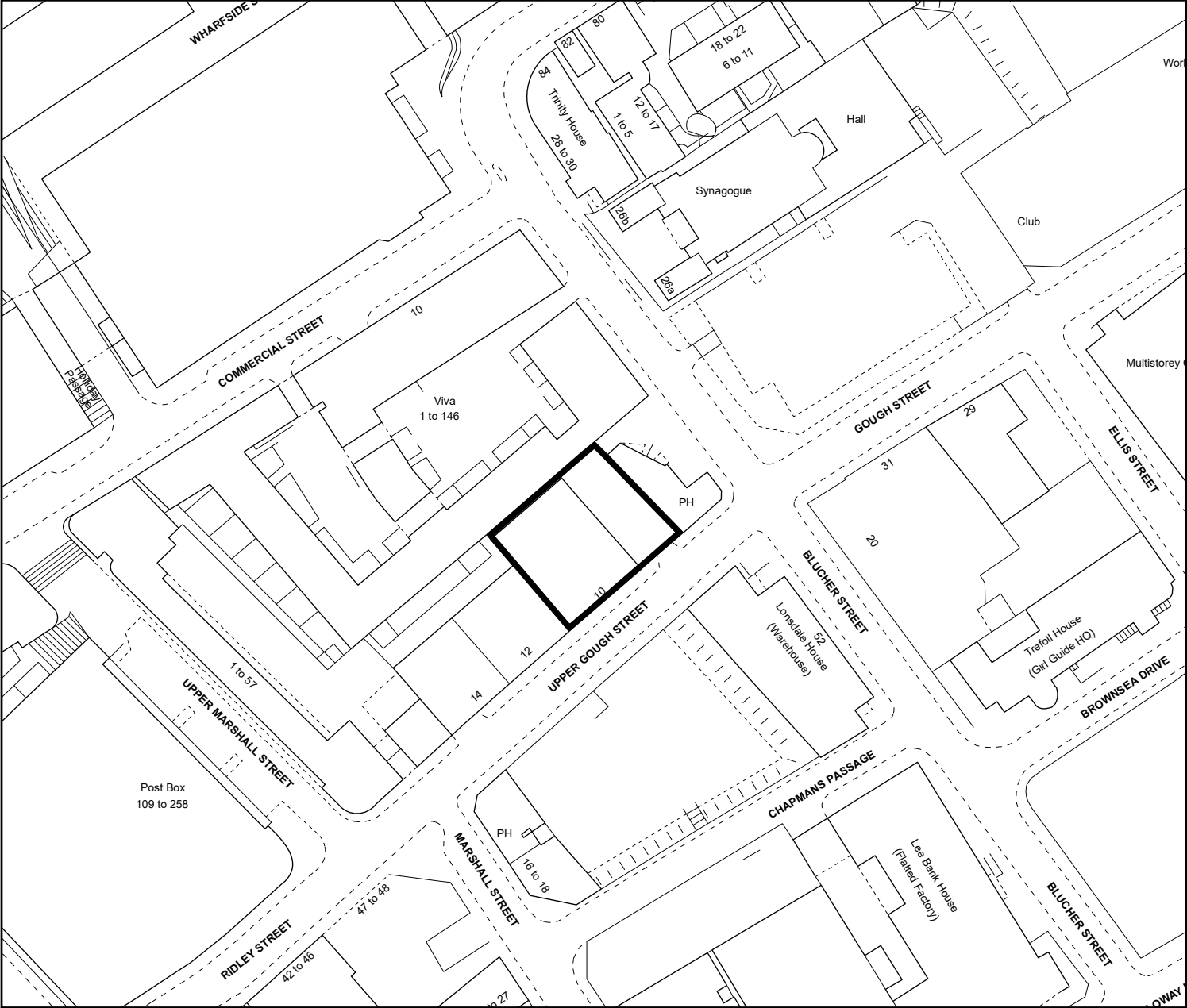
- 7.5.1 An Equality Assessment has been carried out EQUA dated xxxx 2021 and is attached at Appendix 3. This identifies no adverse impacts on any groups protected under the Equality Act 2010.

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)



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 Birmingham City Council		Kathryn James Assistant Director Property Inclusive Growth Directorate 10 Woodcock Street Birmingham, B7 4BG		
10 Upper Gough Street Ladywood		Scale (Main Map)	Drawn	Date
		1:1,250	Bharat Patel	02/12/2021
		Page 9 of 32 O.S.Ref SP0686SE		

Title of proposed EIA	Sale of Premises at 10 Upper Gough Street, Birmingham, B1 1JG
Reference No	EQUA859
EA is in support of	New Function
Review Frequency	Annually
Date of first review	17/02/2023
Directorate	Inclusive Growth
Division	Property Services
Service Area	Property Valuation & Sales
Responsible Officer(s)	<input type="checkbox"/> Felicia Saunders
Quality Control Officer(s)	<input type="checkbox"/> Eden Ottley
Accountable Officer(s)	<input type="checkbox"/> Eden Ottley
Purpose of proposal	To seek authority for the sale of the Council's freehold reversionary interest in in Premises at 10 Upper Gough Street, Birmingham, B1 1JG to the current lessee
Data sources	Consultation Results; relevant reports/strategies; relevant research
Please include any other sources of data	
ASSESS THE IMPACT AGAINST THE PROTECTED CHARACTERISTICS	
Protected characteristic: Age	Service Users / Stakeholders; Wider Community; Not Applicable
Age details:	The sale of 10 Upper Gough Street will not have a negative impact on the grounds of age due to the fact any sale will have to be to an individual of an adult age.
Protected characteristic: Disability	Service Users / Stakeholders; Wider Community; Not Applicable
Disability details:	The sale of 10 Upper Gough Street will have no negative impact on the grounds of disability. However, subject to future use the purchaser/new owner would be responsible for any access to work obligations.
Protected characteristic: Sex	Service Users / Stakeholders; Wider Community; Not Applicable

Gender details:

The sale 10 Upper Gough Street has been a solus negotiation with the existing lessee, and has not been conducted on the basis of gender. Therefore, there are no negative impacts in relation to this protected characteristic.

Protected characteristics: Gender Reassignment

Service Users / Stakeholders; Wider Community; Not Applicable

Gender reassignment details:

The sale of 10 Upper Gough Street has been a solus negotiation with the existing lessee, and has not been conducted on the basis of gender reassignment. Therefore, there are no negative impacts in relation to this protected characteristic.

Protected characteristics: Marriage and Civil Partnership

Service Users/ Stakeholders; Wider Community; Not Applicable

Marriage and civil partnership details:

There are no known conditions for which this asset will be disposed of in the context of marital status. It has been conducted on a solus negotiation with the existing lessee. Therefore there are no negative impacts or implications for this characteristic.

Protected characteristics: Pregnancy and Maternity

Service Users / Stakeholders; Wider Community; Not Applicable

Pregnancy and maternity details:

There are no criteria which prevent pregnant individuals wishing to purchase this asset, as it has been a solus negotiation with the existing lessee. By implication there will be no negative impact on the grounds pregnancy.

Protected characteristics: Race

Service Users / Stakeholders; Wider Community; Not Applicable

Race details:

The sale of 10 Upper Gough Street has been a solus negotiation with the existing lessee, and will not be conducted on the basis of race. Therefore, there are no negative

impacts in relation to this protected characteristic.

Protected characteristics: Religion or Beliefs

Service Users / Stakeholders; Wider Community; Not Applicable

Religion or beliefs details:

The sale of 10 Upper Gough Street has been a solus negotiation with the existing lessee, and will not be conducted on the basis of religion. Therefore, there are no negative impacts in relation to this protected characteristic.

Protected characteristics: Sexual Orientation

Service Users / Stakeholders; Wider Community; Not Applicable

Sexual orientation details:

The sale of 10 Upper Gough Street has been a solus negotiation with the existing lessee, and will not be conducted on the basis of sexual orientation.

Therefore, there are no negative impacts in relation to this protected characteristic.

Socio-economic impacts

Please indicate any actions arising from completing this screening exercise.

Please indicate whether a full impact assessment is recommended

NO

What data has been collected to facilitate the assessment of this policy/proposal?

Consultation analysis

Adverse impact on any people with protected characteristics.

Could the policy/proposal be modified to reduce or eliminate any adverse impact?

How will the effect(s) of this policy/proposal on equality be monitored?

What data is required in the future?

Are there any adverse impacts on any particular group(s)

No

If yes, please explain your reasons for going ahead.

Initial equality impact assessment of your proposal

The proposal 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, for an appropriate premium.

The site is currently held within the Council's Commercial Portfolio and located within a locality of largely commercial land uses close to the City Centre.

The purchaser will also pay a contribution towards the Council's surveyor's and legal costs.

The sale represents best consideration and value, and has been validated by the Assistant Director of Property and Property & Investment Board members based upon the needs for investment and growth.

Consulted People or Groups

Informed People or Groups

Summary and evidence of findings from your EIA

The Property Investment Board comprising officers from Property Services, Finance and Legal recommends proceeding with the transaction.

The Leader of the Council and Cabinet Member for Finance and Resources have been consulted regarding the contents and are fully supportive of this proceeding to an executive decision.

As this is a routine commercial transaction between the Council as freeholder and the current lessee, neither Ward Members nor external consultation is required.

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.

This asset has been identified as an asset the City Council should consider disposing to assist and promote investment.

Having reviewed all protected

QUALITY CONTORL SECTION

Submit to the Quality Control Officer for reviewing?	Yes
Quality Control Officer comments	
Decision by Quality Control Officer	
Submit draft to Accountable Officer?	Yes
Decision by Accountable Officer	
Date approved / rejected by the Accountable Officer	
Reasons for approval or rejection	
Please print and save a PDF copy for your records	Yes

Birmingham City Council

Report to the Cabinet Member for Transport and Environment and Cabinet Member for Finance and Resources

2 March 2022



Subject: Snow Hill Public Realm – Revised Financial Appraisal

Report of: Strategic Director of Place, Prosperity and Sustainability

Relevant Cabinet Member: Councillor Waseem Zaffar – Transport and Environment,
Councillor Tristan Chatfield – Finance and Resources

Relevant O & S Chair(s): Councillor Liz Clements – Sustainability and Transport
Councillor Mohammed Aikhlaq – Resources

Report author: Phil Edwards – Assistant Director Transport and Connectivity
Tel: 07557 203167
Email: philip.edwards@birmingham.gov.uk

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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

1 Executive Summary

- 1.1 To seek approval to the revised Financial Appraisal for the Snow Hill Public Realm programme (specifically to Project 1.1 Colmore Row (East), Project 2.1 Cornwall St), including an increase to the total project budget of the two schemes combined from £4.977m to £5.991m, to be funded from Transport and Highways Capital Grant Unapplied Reserves, which enables completion of the project. Reasons for

the increase in project costs are provided in Section 3.4, 3.5 and Section 3.10 of this report.

- 1.2 Subsequent to approval of Project 2.1, a 3rd party contributor funding withdrew leaving the scheme with a reduction of £100k from the FBC approved budget.

2 Recommendations

- 2.1 That the Cabinet Member for Transport and Environment, and Cabinet Member for Finance and Resources:

- 2.1.1 Approves this revised Financial Appraisal for the Snow Hill Public Realm programme including the increase in the total Project budget of Project 1.1 (Colmore Row (East) and Livery Street), from £3.268m to £3.893m. The increased budget is to be funded from Transport and Highways Capital Grant Unapplied Reserves.
- 2.1.2 Approves this revised Financial Appraisal for the Snow Hill Public Realm programme including the increase in the total Project budget of Project 2.1 (Cornwall Street), from £1.709m to £2.098m. The increased budget is to be funded from Transport and Highways Capital Grant Unapplied Reserves.
- 2.1.3 Approves this revised Financial Appraisal for the Snow Hill Public Realm programme, including the increase in the total revenue budget from £1,348 in maintenance costs a year to £7,530 in maintenance costs a year funded from the provision for Highways Maintenance held within Corporate Policy Contingency.
- 2.1.4 Approves the formalisation of the modification to the increase in the value of the contract for the works for Project 1.1 (Colmore Row and Livery Street) with McPhillips (Wellington) Ltd from £2.173m to £3.161m.
- 2.1.5 Approves to formalisation of the modification to the increase in the value of the contract for the works for Project 2.1 (Cornwall Street) with Fitzgerald Contractors Ltd from £0.999m to £1.629m

3 Background

Project 1.1 (Colmore Row (East) and Livery Street)

- 3.1 The FBC and Contract Award report for Snow Hill Public Realm - Project 1.1 Colmore Row (East) and Livery Street was approved by the Cabinet Member for Transport and Environment and Cabinet Member for Finance and Resources on 1st October 2019.
- 3.2 The main construction works for Project 1.1 (Colmore Row (East) and Livery Street) started in June 2020 with a programmed duration of 11 months to complete

in May 2021. Due to delays incurred, as detailed in paragraph 3.4, the scheme was completed in mid-December 2021, barring some minor rectification works.

3.3 While construction works are now complete for Project 1.1 (Colmore Row (East) and Livery Street), the final project cost is £0.625m higher than the approved total £3.268m budget.

3.4 The FBC approved works up to a value of £2.701m including contingency but the accompanying contract award report was for the value of £2.173m. The final works costs are £3.161m, subject to closing out the final account, which is an increase of £0.988m above the approved contract award value, and £0.460m over the agreed FBC for works approval. The main reasons for the contract price increase from tendered amount for Project 1.1 include:

3.4.1 Covid 19 Implications - The Covid-19 pandemic contributed significantly to the increase in the construction period of Project 1.1, mainly as a result of the contractor reducing working gang numbers to ensure social distancing requirements were met and to meet changes in legislation around social distancing. The contractor also had to increase pedestrian traffic management widths, in turn decreasing working areas in this very busy part of the city centre.

3.4.2 Replacement of existing trees on southern footway – During the design process the status of the existing trees was assessed against the design and no issues were identified. However, during the construction period uncharted services were found in the vicinity of the trees on the Southern Footway. Advice was sought from the City Council's Principal Arboriculturist, who concluded that the existing trees would not survive the required construction in the area. They recommended removing the trees and replacing them with other suitable species in the vicinity of the works, which added cost to the scheme.

3.4.3 Contractual Obligations – there were delays with the award of contract as well as time required to resolve design and buildability issues identified during the tender process. This resulted in a substantial delay in time from tender submission to start on site that was not anticipated. The terms of the contract permit an indexed increase in prices to account for delays such as this.

3.4.4 Hostile Vehicle Mitigation (HVM) – Initial surveys indicated that foundations for the HVMs could fit between the train tunnels and the finished surface. However, during construction additional uncharted and shallow services were identified which meant that a re-design is now required to accommodate the HVM installation. The HVMs have been ordered as part of this contract and are currently in storage awaiting the conclusion of the additional design works. Installation of the HVMs will be let under a future contract.

3.4.5 Other key issues encountered – Throughout the project there were other instances where the scope of works was required to change from the

approved design. The main reasons for these changes generally arose because of a difference in conditions on site from those anticipated during the design stage and this required further time to find a suitable solution. In summary these key scope changes were:

- Lighting to Livery Street – The scope for this element of work was required as an addition to the contract price.
- Lionel Street works – Additional planning and traffic management was required to facilitate ongoing bus manoeuvres following the closure of the right-hand turn from Livery Street onto Colmore Row.
- Areas of uncharted concrete –The contractor encountered large amounts of concrete below the surface which were not accounted for in the original design stages.
- Working around shallow services –The contractor encountered additional ducts and pipes at a shallow depth which required a different solution as they were unable to be diverted and lowered.
- Road Surfacing – For technical reasons, the original road surfacing product was replaced with a different product by the manufacturer which incurred a longer time to become roadworthy and work was switched to night-time working to allow for this.

3.5 As a consequence of the above, the approved fees for delivery support in the FBC have increased substantially along with other key issues as highlighted below:

- 3.5.1 The original FBC approved construction fees of £0.237m. As a result of changes described above, the complexity of working in a high-profile location, senior staff engagement and the challenges involved with working during the pandemic, fees for delivery support have increased substantially.
- 3.5.2 As the scheme progressed, it was established that the specification for the contract for the design and associated professional services did not sufficiently reflect the requirements of working in such a busy city centre location. This resulted in a lot of reactive design being required while the scheme was being constructed adding both to additional construction and design fees. This learning is being used to ensure that the design services undertaken for the rest of the Snow Hill programme, and other similar schemes, is carefully considered to avoid these issues occurring again.
- 3.5.3 As outlined in section 3.4.4, the design for the HVMs was not buildable as the foundations would not fit between the train tunnels and the finished surface. As a result, the HVMs could not be delivered as part of the

original contract and now require a re-design so they can be delivered under a separate contract. To achieve this, further support from the designer is required to determine a suitable solution which will enable delivery of the HVMS at a later date.

3.5.4 Other Key Increases to Fees - Throughout the project there were a significant number of instances where engagement from high levels of management, designers and other stakeholders was required to address issues effectively and efficiently to find a solution. In each instance a co-ordinated approach with significant input from Council staff and designers was required to address the issues raised and find a mutually agreeable solution. In most cases this required a series of regular online and on-site meetings to work through the issues collectively. Solving these issues was very fee intensive and was not budgeted for originally. These include the following where additional support was required:

- Taxi Co-ordination - As an integral stakeholder to the delivery of the scheme, additional support was required to liaise with the taxi representatives to address concerns and resistance to the proposals.
- Bus Operator Liaison – A strong co-ordinated approach with Bus Operators and other key stakeholders to address issues including Lionel Street works, Right Hand Turn Closure and Colmore Row Bus Bay.
- Cycle Refuge – To address serious safety concerns with the cycle refuge which had recently been constructed in that area required significant work to review and then report changes for approval to enable these changes to take place.
- Local Businesses - To maintain communications with local businesses to answer their concerns surrounding the presence of traffic management at a point in time where only outside seating was allowed due to COVID-19 restrictions that were in place.
- Loading Bay Issues - Work required to address an issue which involved people suffering injury whilst crossing the loading bay outside Tesco.
- Contractual Issues – A high level of input was required to review associated numerous compensation Events due to the extended contract.,

3.5.5 The FBC for Project 1.1 (Colmore Row (East) and Livery Street) approved revenue costs of £776 Per Annum __. As a result of the changes listed above a revised revenue figure of £7,530 per annum in maintenance costs has been determined. Further details can be found in section 7.3.3 of this report.

Project 2.1 (Cornwall Street)

- 3.6 The FBC report for the Snow Hill Public Realm – Project 2.1 Cornwall Street was approved by the Cabinet Member for Transport and Environment and Cabinet Member for Finance and Resources on 28th September 2020. The original approved funding was £1.709m which included a contribution of £0.100m from a developer.
- 3.7 The main construction works for Project 2.1 started in February 2021 with a programmed duration of 7 months. However due to unforeseen issues detailed below, completion was completed in mid-December 2021, a delay of 3 months with a final cost is £2.098m, an increase of 0.489m against the approved FBC.
- 3.8 The approved FBC budget for Cornwall Street of £1.709m included a contribution of £100k from a 3rd Party which had been agreed in the early stages of the project. However, prior to commencement of works on site, the 3rd Party invoked a clause to withdraw the contribution due delays in commencing construction. This reduced the total of available funding to £1.609m with the shortfall having to be sought from an alternative funding source.
- 3.9 The main reasons for the contract price increase for Project 2.1 include:
 - 3.9.1 Drainage re-design – Surveys before construction identified the likely locations of underground services within the area of works. Upon excavating the area, the presence of uncharted shallow services required a complete redesign of the drainage system despite having already purchased the original drainage units. Additional equipment was therefore required to be installed to complete the drainage solution with original equipment becoming surplus to requirements. These units will be made available for use on future projects.
 - 3.9.2 Covid 19 Implications - The Covid-19 pandemic contributed significantly to the increase in the construction period of Project 2.1, mainly because of the contractor reducing working gang numbers to ensure social distancing requirements were met. The contractor also had to increase pedestrian traffic management widths, in turn decreasing working areas in this very busy part of the city centre.,
 - 3.9.3 Other key issues encountered – Throughout the project there were other instances where the scope of works was required to change from the design. The main reasons for these changes generally arose as a result of a difference in conditions on site from those anticipated through the design work undertaken and this required further time to address the matter to find a suitable solution. In summary these key scope changes were:

- Working around shallow services - During works, the contractor encountered additional ducts and pipes which required a different solution as they were unable to be diverted and lowered.
- Hazardous material – A licensed carrier was required at additional cost to remove unchartered hazardous waste from site.
- Granite Shipments – As a result of Covid-19 there was a shipping container shortage from China into Europe which affected the supply of granite. This resulted in an increase in rates which were passed the cost onto the City Council to mitigate the risk of delays to the total project.
- Design of street furniture – Additional design work required to the design and foundations as undertaken to allow the street furniture to be installed.
- Unchartered main supply – A specialist was required to be engaged to investigate an unidentified main so the appropriate action could be taken.

4 Options Considered and Recommendation

- 4.1 Option 1 – Abandon Scheme – This was not considered to be a viable option as it would have left the areas in this important part of the city centre in a bad state. It would also mean that the benefits set out in the Snow Hill Masterplan would have not been realised, making the area less attractive for businesses and tourists alike. A lot of the Commonwealth Games events will take place in this vicinity of the City Centre (Marathon, Social Events, Games Hotel) so it was imperative that this scheme was completed to ensure the area is visually attractive.
- 4.2 Option 2 – Complete the scheme and identify suitable funding to bridge the shortfall for both ‘Project 1.1 Colmore Row (East) and Livery St’ and ‘Project 2.1 Cornwall St, allowing the area around Snow Hill to be regenerated as intended and pave the way for future investment in the area and make the area ready for the Commonwealth Games.
- 4.3 It is recommended that the Cabinet Members endorse the decision taken to continue delivery of the scheme at an additional cost of £1.114m to deliver the benefits set out in the Snow Hill Masterplan and to make the area visually attractive in readiness for the Commonwealth Games allow the completion of works of Project 1.1 (Colmore Row (East) and Livery Street) and Project 2.1 (Cornwall Street) and deliver the benefits set out in the Snow Hill Master Plan.

5 Consultation

- 5.1 No further consultees are required over and above the original requirements for this scheme.

6 Risk Management

- 6.1 Ongoing risk workshops were undertaken throughout the duration of the project, a risk management assessment has been undertaken and is included in Appendix A.

7 Compliance Issues:

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

- 7.1.1 The Snow Hill Public Realm programme contributes towards achieving the City Council's key policies and priorities as set out in the City Council Plan 2018-2022 (2019 update) and Budget 2021-25, Birmingham Development Plan, Strategic Economic Plan, the Movement for Growth 2026 Delivery Plan for Transport, Birmingham Connected Transport Strategy and the draft Birmingham Transport Plan 2031. The Snow Hill Public Realm programme also supports the Additional Climate Change Commitments agreed by Cabinet on 30th July 2019 following the motion on Climate Emergency passed at the full City Council meeting of 11th June 2019, including the aspiration for the City Council to be net zero-carbon by 2030
- 7.1.2 The project also aligns with the Greater Birmingham and Solihull Local Enterprise Partnership (GBSLEP) Strategy for Growth, Strategic Economic Plan.
- 7.1.3 Birmingham Business Charter for Social Responsibility (BBC4SR)
McPhillips (Wellington) Ltd and Fitzgerald Construction Limited are certified signatory to the BBC4SR and have committed to additional actions with their action plan proportionate to the value of the additional cost.

7.2 Legal Implications

- 7.2.1 The City Council in carrying out transportation, highway and infrastructure related work will do so under the relevant primary legislation comprising the Town and Country Planning Act 1990, Highways Act 1980, Road Traffic Act 1974, Road Traffic Regulation Act 1984, Traffic Management Act 2004, Traffic Act 2000, and other related regulations, instructions, directives, and general guidance.
- 7.2.2 Section 1 of the Localism Act 2011 contains the City Council's general power of competence 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.

7.3 Financial Implications

Capital Costs

- 7.3.1 The original approved total cost for Project 1.1 and Project 2.1 (including works, contingencies, SU's diversions and fees) was £4.977m. The revised cost as detailed within this report is £5.991, an increase of £1.014m covering additional costs as detailed in the table below. When the loss of the £100k developer contribution is factored in, this makes the actual amount required £1.114m. This additional cost will be funded from Transport and Highways Capital Grant Unapplied Reserves.

Scheme	Costs & Funding	FBC Approvals	Current Estimate	Variance	Reasons
		£m	£m	£m	
Project 1.1	Works	2.701	3.161	0.460	Various – Please see Section 3.4.1 to 3.4.5
	Stats	0.330	0.082	-0.248	Saving due to C4 searches coming in significantly less than forecast.
	Fees	0.237	0.650	0.413	Various – see paragraphs 3.5.1 to 3.5.4
	Total	3.268	3.893	0.625	
Project 2.1	Works	0.970	1.629	0.659	Various – Please see Section 3.10.1 to 3.10.3
	Stats	0.615	0.309	-0.306	Saving made due to C4 estimate for Virgin Media coming in significantly lower than forecast.
	Fees	0.124	0.160	0.036	Additional time incurred by staff fees to resolve design issues and additional time due to extension of contract duration.
	Total	1.709	2.098	0.389	
	Total (1.1 and 2.1)	4.977	5.991	1.014	Total variance does not account for additional loss of £0.100m funding.

7.3.2 Full details of the revised Financial Appraisal are shown in the following table:

Capital Costs & Funding	Current Cost Proposal					Previous FBC Approvals	Variance
	Prev Yrs	2020 / 2021	2021 / 2022	2022 / 2023	Totals		
Implementation Costs:							
Project 1.1							
Works		1.277	1.784	0.100	3.161	2.701	0.460
Stats		0.082			0.082	0.330	-0.248
Fees		0.394	0.226	0.030	0.650	0.237	0.413
Total Project 1.1	0	1.753	2.010	0.130	3.893	3.268	0.625
Project 2.1							
Works		0.078	1.521	0.030	1.629	0.970	0.659
Stats		0.309			0.309	0.615	-0.306
Fees		0.060	0.100		0.160	0.124	0.036
Total Project 2.1	0	0.447	1.621	0.030	2.098	1.709	0.389
Total Cost Projects 1.1 and 2.1	0	2.200	3.631	0.160	5.991	4.977	1.014
Funding							
LGF					3.084	3.084	0
BID					0.942	0.942	0
ITB					0.500	0.500	0
3 rd Party Contribution					0.351	0.451	-0.100
Capital Grants					1.114	0	1.114
Unapplied Reserves							
Total Funding					5.991	4.977	1.014

Revenue Implications

7.3.3 The revised revenue implications for Project 1.1 (Colmore Row and Livery Street) are detailed below:

				Maintenance review December 2021	
				FBC Approval	Later Years Annually
				2021/22 £000	£000
Project 1.1 Colmore Row (East) & Livery St					
Highways Maintenance:					
	Basic Highway Assets		-0.394	0.664	2.655
	Energy Costs		1.241	-0.023	-0.091
	Enhanced Highway Assets		-0.071	1.242	4.966
Project 1.1 Total				0.776	7.530

Maintenance

Project 1.1 Colmore Row (East) and Livery St

- After a review of the HCNF form in November 2021, the revised revenue implications for Project 1.1 – Colmore Row (East) and Livery Street and measures for Project A1 on Lionel St is £7,530 in maintenance costs. The main reason for this uplift is due to the addition of High Friction Surfacing on Colmore Row. This has been agreed with the Highways Change team and will be funded by the provision for Highways Maintenance held within Corporate Policy Contingency.
- The Hostile Vehicle Mitigation (HVM's) are not being installed within the current programme for Project 1.1 Colmore Row (East) and Livery St. The HVM's will be installed once there is a suitable design and will be maintained once they are installed. This maintenance implication has been included on the updated HCNF form as they are still to be installed.

Project 2.1 Cornwall St

- No Change to Original FBC approval.

7.4 Procurement Implications

- 7.4.1 The procurement strategy for the Snow Hill Public Realm programme was approved by Cabinet on 27th March 2018 with a procurement route of a further competition exercise using the Council's Highways and Infrastructure Works Framework. The contract awards were approved under delegated authority by the Assistant Director Transport and Connectivity dated 4th October 2019 for Project 1.1 (Colmore Row and Livery Street) and dated 23rd October 2020 for Project 2.1 (Cornwall Street).
- 7.4.2 The works to Project 1.1 (Colmore Row and Livery Street) and Project 2.1 (Cornwall Street) are the same scope as those being carried out in the further competition exercise.
- 7.4.3 Regulation 72(1)(c), Modification of Contracts During their Term, of the Public Procurement Regulations (PCR) 2015, allows provision for contracts to be modified without the need for a new procurement procedure where all of the following conditions are fulfilled:
- i. the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
 - ii. the modification does not alter the overall nature of the contract;
 - iii. any increase in price does not exceed 50% of the value of the original contract.

The contract modification for Project 1.1 (Colmore Row and Livery Street) is compliant with PCR 2015, Regulation 72(1)(c) on the basis that the additional works as detailed in paragraphs 3.4 were unforeseen. The modification is within the scope of the original contract award and the increase in price does not exceed 50% of the value of the original contract.

Since the award of the contract, McPhillips (Wellington) Ltd has provided a satisfactory service in accordance with contractual requirements despite the requirement for the increase in the estimated spend. On this basis, it is recommended that the value of the contract is modified.

The contract modification for Project 2.1 (Cornwall Street) is not fully compliant with PCR 2015, Regulation 72(1)(c). The condition of unforeseen is fulfilled as detailed in paragraph 3.9 and the scope of works does not alter the overall nature of the contract. However, the increase in value exceeds the contract value by 61.32% (i.e. 11.32% in excess of point iii above). The non-compliance is acknowledged and is noted the additional value was paramount for the successful completion of the scheme in a high profile area of the city. The risk of challenge is considered to be low on the basis that another contractor is unlikely to have taken on a partially completed scheme of this nature.

Since the award of the contract, Fitzgerald Contractors Ltd has provided a satisfactory service in accordance with contractual requirements despite the requirement for the increase in the estimated spend. On this basis, it is recommended that the value of the contract is modified.

7.5 Human Resource Implications

- 7.5.1 The project is being resourced by existing internal staff supported by external advisors through existing approved contractual arrangements.

7.6 Public Sector Equality Duty

- 7.6.1 Project 1.1 specific Equality Impact Assessment (EQUA308) was carried out in May 2019. Project 1.1 realised a variety of actions to upgrade and improve infrastructure and It is broadly felt that the impact of the Project 1.1 on those with protected characteristics, in particular Disability, will be positive.
- 7.6.2 A specific Equality Impact Assessment (EQUA463) for Project 2.1 was carried out in Jan 2020. Project 2.1 realised a variety of actions to upgrade and improve infrastructure and It is broadly felt that the impact of the Project 1.1 on those with protected characteristics, in particular Disability, will be positive.

8 Appendices

- 8.1 List of Appendices accompanying this report:

- Appendix A – Risk Assessment

9 Background Documents

- Snow Hill Public Realm – Project 1.1 (Colmore Row (East) and Livery Street) Full Business Case and Contract Award 1st October 2019 Snow Hill Public Realm
- Project 2.1 (Cornwall Street) Full Business Case 28th September 2020

Appendix A – Snow Hill Public Realm Risk Assessment

Snow Hill Public Realm Programme

No	Item of Risk	Potential Impact	Inherent Risk		Control Measures	Control Measure Managed by	Residual Risk	
			Impact	Likelihood			Impact	Likelihood
1	Further Covid-19 impact on the remaining works	Extended works programme and cost overruns.	Medium	Low	<p>Only minor paving works on the Northern footway of Colmore Row and Construct uncontrolled crossing build-out outside Halifax to complete.</p> <p>Co-ordination meetings have been held to review the programme. The Contractor is planning, managing and co-ordinating works in accordance with Government's latest instruction.</p> <p>Contingency in revised budget to accommodate the additional cost if necessary.</p>	Project Manager, Contractor	Low	Low
2	Additional works may be required as a result of Road Safety Audit outcome	Additional work costs.	Medium	Medium	<p>Road Safety Audit Stage 3 to be arranged as soon as the Completion date is agreed with the Contractor, to confirm if any additional works are required.</p> <p>An interim RSA3 was carried out during the construction of Project 1.1 in July 2021 and some actions have been tentatively agreed.</p> <p>Contingency in revised budget to accommodate the additional cost if necessary.</p>	Project Manager, Contractor	Low	Low
3	Additional Works may be required to install the HVM's on the Northern Footway of Colmore Row once a suitable design has been completed.	Additional work costs.	High	Medium	Contingency in revised budget to accommodate the additional cost if necessary.	Project Manager, Contractor	Medium	Medium
4	Risk that McPhilips compensation event regarding Right Hand turn could be ruled out through adjudication	Additional Costs	High	Medium	BCC have rejected McPhilips claim regarding R/H turn closure. The situation is being monitored in the event that McPhilips challenge this decision.	Project Manager, Contractor	Medium	Medium

