

Birmingham City Council

Report to Leader and Cabinet Member Finance and Resources

1st December 2021



Subject: **Sale of Freehold – Retail Parade at 217 to 232 New John Street West, Birmingham B19 3AU**

Report of: Director of Planning, Transport and 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
Newtown		
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 Appendices 2, 3, 4 and 5 contain sensitive commercial information on the purchase price and valuation and terms.		

1 Executive Summary

- 1.1 This report seeks authority for the sale of the Council owned Freehold Reversionary Interests in the site known as Retail Parade at 217-232 New John Street West, Hockley, Birmingham B19 3AU to NJSW Limited (CRN: 13546264).
- 1.2 The subject site has an area of 0.597 acres approximately and is shown edged bold on the attached plan at Appendix 1.
- 1.3 The report seeks authority under the delegation in 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 Director – Inclusive Growth, City Finance Officer and the City Solicitor (or their delegates, now Acting Director, Inclusive Growth, Director of Council Management and City Solicitor and Monitoring Officer) up to a limit of £25m in any one transaction.
- 1.4 The recommendations contained in this report and the Exempt Appendices 2 and 4 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 site have been fully considered and the sale of the site provides the best outcomes for the city as detailed in the Exempt Appendices 2 and 4.

2 Recommendations:

- 2.1 Authorise the Assistant Director of Property to conclude an unconditional sale of the Council's freehold reversionary interest to NJSW Limited (Company Number 13546264).
- 2.2 Note that the purchaser will pay the Council's reasonable legal costs, as detailed in Exempt Appendix 2.
- 2.3 Authorise 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 site is currently held within the Council's Commercial Portfolio and located within a locality of Industrial, commercial and residential uses. The parade units consist of a single storey height terraced property of traditional brick construction with a mix of uPVC/timber windows with a 'flat' asphalt roof. Consisting of thirteen units of similar configuration ranging in size between single (approx. 307sq ft) and double units (approx. 892 sq ft) with a paved area to the front and a gated service yard/road to the rear. The parade amounts to a total area of 6,513 sq. ft. of net internal space and an overall site area of 26,005 sq. ft.
- 3.2 The site is owned freehold by the City Council with the various units currently let under a mixture of periodic and short term agreements. The property has a current gross rental income of £0.080m per annum
- 3.3 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.

- 3.4 The property was marketed by Avison Young in May 2021 on an open market formal tender basis. A summary of the offers received are attached in Exempt Appendix 3 together with a supporting Recommendation Report at Exempt Appendix 4.
- 3.5 Tenders were invited on either an unconditional or conditional (subject to planning only) basis. Under the terms of an unconditional sale the purchaser will be required to proceed to an exchange of contracts within 28 days of the issue of legal documentation with completion within 28 days thereafter.
- 3.6 The proposed sale represents best value to the City Council and has been validated by the Assistant Director of Property based upon analysis of the bidder's proposals and taking into consideration the Council's Property Strategy and wider aspirations and ambitions for the city.
- 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 for 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 therefore would not be made available to help fund the City Council's transformation programme and there would be no guarantee of a future opportunity. The site is not allocated, nor does it have planning consent for an alternative use and is therefore not an immediate development opportunity. The properties do not have an obvious alternative use that would benefit the City Council.
- 4.2 **Option 2 – Dispose of the Property to Council Wholly Owned Company (WOC).** The site 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, the income is considered a high risk factor due to the short nature of the agreements, potential for further degeneration of the retail market and level of rental providing a barrier for income growth. Significant capital expenditure is expected to be required in the short to medium term to maintain/improve the integrity and energy performance which would significantly reduce the net income from the parade and would not be realized by proportionate increases in rental levels.
- 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 and risk. The purchaser intends to secure the future of the businesses in the parade to protect the retail and service offering for the community.

5. Consultation

- 5.1 The Property Investment Board comprising officers from Property Services, Finance and Legal Services recommends proceeding with the transaction.
- 5.3 The Newtown ward member has been notified of the proposed sale of this property.
- 5.4 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 by the existing agreements in place. The 'risk' of not proceeding could only be seen in terms of a lost opportunity to generate a potential capital receipt and the potential risk to net income due to the need for short term and future maintenance investment making the estate more resource intensive (in both financial and time aspects) going forward.
- 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 properties.

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 Birmingham Property Strategy 2018-2023 decisions.

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) 3. Information relating to the financial or business affairs of any particular person (including the Council). Exempt Appendices 2, 3, 4 and 5 are considered to be in the public interest to treat as exempt information as they contain 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 site currently generates a rental income of £0.080m per annum which will be lost to the City Council. This income forms part of the existing Property Services income 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 The individual units on the parade are currently let on periodic tenancies or short term leases with internal repairing obligations. If the City Council is to retain the parade, significant expense will be incurred in respect of both the immediately necessary and future repair and maintenance work. There are additional holding costs related to this asset for the cost of City Council officer time incurred in managing the parade as part of the wider city centre portfolio of properties not specifically recorded or measured.

7.3.4 The purchaser will pay the Council's reasonable legal costs related to the disposal as detailed in Exempt Appendix 2.

7.3.5 The purchase price 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, no VAT is chargeable on the purchase price.

7.4 Human Resources Implications

7.4.1 Internal resources are used to evaluate and execute the transaction and external consultants have been used to provide an independent assessment of value and sale recommendation.

7.5 Public Sector Equality Duty

7.5.1 An Equality Assessment has been carried out EQUA725 dated 19th July 2021 and is attached at Appendix 6. This identifies no adverse impacts on any groups protected under the Equality Act 2010.

8. Appendices

- 8.1 List of Appendices accompanying this Report (if any):
- Appendix 1 – Site Plan
 - Appendix 2 - (Exempt) – Cover Sheet Summary
 - Appendix 3 - (Exempt) – Summary of Offers
 - Appendix 4 - (Exempt) – Tender Evaluation and Recommendation Report
 - Appendix 5 – (Exempt) – Heads of Terms
 - Appendix 6 – Equality Assessment EQUA725

9 Background Documents

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