

Birmingham City Council

Report to Leader and Cabinet Member Finance and Resources

18th May 2021



Subject: **Sale of Premises - Units A, B & C St Clements Road, Nechells, Birmingham, B7 5AE**

Report of: Acting Director; Inclusive Growth – Ian MacLeod
Director of Council Management (Interim) – Rebecca Hellard
City Solicitor and Monitoring Officer – Suzanne Dodd

Relevant O & S Chairs: Councillor Sir Albert Bore – Resources
Councillor Shabrana Hussain – 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
Nechells		
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 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 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 - Units A, B & C St Clements Road, Nechells, Birmingham, B7 5AE to the current lessee, Kam Wang Law of Law Design & Print Ltd.
- 1.2 The subject property has a site area of 2,978 sqm approximately and is shown edged bold on the attached plan at Appendix 1.
- 1.3 The report seeks authority under the delegation approved in the Property Investment Strategy Report in July 2019, 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) up to a limit of £25m in any one transaction.

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, Kam Wang Law of Law Design & Print Ltd.
- 2.2 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 an industrial warehouse currently held within the Council's Investment Portfolio. The property is located within a locality of established industrial / commercial uses within Nechells and close to 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 27th November 1978, at a ground rent of £22,000 per annum (subject to 7 yearly rent reviews). The lease is currently held by Kam Wang Law of Law Design & Print Ltd.
- 3.4 Following a comprehensive review of the Council's Investment Portfolio, 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 analysis.

- 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 City Council's transformation programme and there would be no guarantee of a future opportunity.
- 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. There is currently no Council WOC with the required legal agreements or funding mechanisms in place to facilitate a transaction of this nature and nor are there any existing City Council approvals in place.
- 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.

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.

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 and its solicitors 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: 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 is considered to be in the public interest 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 property is currently subject to an annual rental of £22,0000 per annum which will be lost to the 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 Council's 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.

7.4 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 EQUA667 dated 31st March 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 EQUA667

9 Background Documents

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