

Birmingham City Council

Report to Cabinet Committee Property



24 October 2024

Title:	SALE OF PLOT 1, SMALL HEATH BUSINESS PARK, COVENTRY ROAD, BIRMINGHAM, B10 0HJ
Lead Cabinet Portfolio:	Councillor Sharon Thompson, Deputy Leader and Cabinet Member for Economy & Skills
Relevant Overview and Scrutiny Committee:	Economy, Skills and Culture
Report Author:	Ian Chaplin Head of Investment Property Management – Investment & Valuation Division Contact: ian.chaplin@birmingham.gov.uk Place Prosperity & Sustainability Directorate Phone Number: +44 7980 673040 Email: ian.chaplin@birmingham.gov.uk
Authorised by:	David Harris, Assistant Director of Corporate Landlord Place, Prosperity & Sustainability Directorate
Is this a Key Decision?	No
If this is a Key Decision, is this decision listed on the Forward Plan?	No
Reason(s) why not included on the Forward Plan:	Not Applicable
Is this a Late Report?	No
Reason(s) why Late:	Not Applicable

Is this decision eligible for 'call in?' No

If not eligible, please provide reason(s): Not Applicable

Wards: Small Heath

Does this report contain exempt or confidential information? Yes

Exempt Information

Exempt Appendices 2, 3 and 4 are exempt from disclosure by virtue of the following Paragraphs of schedule 12A to the Local Government Act, 1972 as amended:

Paragraph 3: Information relating to the financial or business affairs of a particular person (including the authority holding that information).

Has this decision been included on the Notification of Intention to consider Matters in Private? Yes

Reasons why not included on the Notification: Not Applicable

1 EXECUTIVE SUMMARY

- 1.1 This report seeks authority for the sale of the Council's freehold reversionary interest in the Plot 1, Small Heath Business Park, Coventry Road to the long leaseholder.
- 1.2 The property has a site area of approximately 3.37 acres and is shown edged red on the attached plan at Appendix 1.
- 1.3 The recommendations contained in this report and the Exempt Appendices 2, 3 and 4 will generate a capital receipt supporting the Council's Financial Recovery Plan by generating resources and thus helping to achieve a balanced budget.
- 1.4 Options for this land have been fully considered and the sale of the site provides the best outcomes for the city as detailed in the Exempt Appendix 2.

2 COMMISSIONERS' REVIEW

- 2.1 The recommendations contained in this report are supported by Commissioners.

3 RECOMMENDATIONS

That the Committee:

- 3.1 Authorises the Assistant Director of Investment & Valuation to conclude an unconditional sale of the Council's freehold interest, to the current tenants on the recommended terms as set out in Exempt Appendix 4.
- 3.2 Note the purchasing tenant will meet payment of the Council's legal and surveyor's costs, as detailed in Exempt Appendix 4.
- 3.3 Authorises the City Solicitor to prepare, negotiate, execute and complete all relevant legal documentation to give effect to the above.

4 KEY INFORMATION

Context

- 4.1 The property comprises two storey industrial premises used as a datacentre and fronts onto Coventry Road with access via Talbot Way.
- 4.2 The overall site is shown edged red on the plan at Appendix 1 of this report.
- 4.3 The land is owned freehold by the City Council and is occupied on a 125 year lease from 16th May 1989 on a peppercorn rent with no provisions for the rent to be reviewed; A premium equivalent to the freehold value was derived at the granting of the long lease in 1989 when the present building was not developed. The asset is held within the Council's commercial property portfolio.

- 4.4 The property is under-let on an occupational lease until 2032 and the building is bespoke in nature as a datacentre.
- 4.5 Following a comprehensive review of the Council's commercial property portfolio, supported by appointed advisors Avison Young in 2020, the Council's interest in this property was identified as an asset which the Council should consider for sale.
- 4.6 In accordance with agreed process, the Council's currently appointed agent Lambert Smith Hampton has negotiated and agreed terms with the occupying tenants for the sale of the Council's freehold interest in the property.
- 4.7 The outcome of the negotiations and recommendations for sale are detailed in Exempt Appendix 3. The Heads of Terms are attached in Exempt Appendix 4.
- 4.8 The proposed sale represents best consideration and has been validated as such by the Assistant Director of Investment & Valuation 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.
- 4.9 The capital receipt will directly contribute to the City Council's current Financial Recovery Plan.

Proposal and Reasons for Recommendations

- 4.10 It is recommended to proceed with the transaction outlined in this report, in line with the aims of the Property Investment Strategy, supported by external advice from the Council's retained agent Lambert Smith Hampton. The capital receipt generated will assist with delivery of the Council's Financial Recovery Plan, and the sale to the existing tenants will enable investment in the site and secure/create local jobs.

Other Options Considered

- 4.11 **Option 2 - 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 Investment 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 assist with delivery of the Council's Financial Recovery Plan, with there being 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. Holding the freehold interest for the remainder of the term will not generate any income as there is no passing rent.
- 4.12 **Option 3 – 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 no income from the property, as mentioned above, to support and fund a sale of this nature.

5 RISK MANAGEMENT

- 5.1 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.
- 5.2 The 'risk' of not proceeding could only be seen in terms of a lost opportunity to generate a capital receipt to support the Council's Financial Recovery Plan.

6 CONSULTATION

- 6.1 The Property Investment Board comprising officers from Investment & Valuation, Finance and Legal recommends proceeding with the transaction.

7 MEMBER ENGAGEMENT

Ward Councillor(s)

- 7.1 The Ward Councillor was notified on 13th March 2024.

Overview and Scrutiny

- 7.2 The Chair of Overview & Scrutiny Committee (Economy & Skills) was notified on 10th September 2024.

8 IMPACT AND IMPLICATIONS

Finance

- 8.1 The transaction will generate a capital receipt for the Council, as set out in Exempt Appendix 2.
- 8.2 Lambert Smith Hampton advise that an overage or clawback provision is unnecessary in this instance, as the under tenant occupies the building until 2032. However, there is a restriction not to use or permit the demised premises other than for industrial use within the definitions of Class B2 and B8, without the consent in writing of the Council, such consent not to be unreasonably withheld or delayed. The under tenant has invested significant capital into the property and it is highly unlikely that they will vacate the property at the expiry of the lease and will continue to occupy the building under security of tenure. An Asda supermarket does lie adjacent and there is also residential in the vicinity, but Lambert Smith Hampton advise that the current use will be more valuable than these uses.

- 8.3 The Assistant Director of Investment & Valuations and external advisors consider this proposed sale represents best consideration based upon analysis of the bidders' proposals as per exempt appendix 2, 3 and 4.
- 8.4 The purchaser will pay the City Council's legal and surveyor's costs related to the disposal, as detailed in Exempt Appendix 4.
- 8.5 The purchase price, including any contribution towards the City Council's professional costs relating to the disposal, is exclusive of VAT.

Legal

- 8.6 Sections 120 - 123 of the Local Government Act 1972 authorise the Council to acquire, 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 Investment & Valuation has confirmed that the recommended sale, as detailed in Exempt Appendix 3 represents best consideration and satisfies the Council's obligations, under Section 123 of the Local Government Act 1972.
- 8.7 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.
- 8.8 The Local Government Act 2003 and guidance issued under it authorises the Council's investment management functions.
- 8.9 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 and 4 are exempt 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.

Equalities

- 8.10 An Equality Impact Assessment has been carried out (EIA000515) on 4th September 2024 and is attached in Appendix 5. This identifies no adverse impacts on any groups protected under the Equality Act 2010.

9 APPENDICES

- 9.1 Appendix 1 – Site Plan
- 9.2 Exempt Appendix 2 – Recommendation
- 9.3 Exempt Appendix 3 – Recommendation Report
- 9.4 Exempt Appendix 4 – Heads of Terms
- 9.5 Appendix 5 - Equality Impact Assessment EIA000515

10 BACKGROUND PAPERS

- 10.1 Nil