

# Birmingham City Council

## Report to Leader and Cabinet Member

### Finance and Resources

9th July 2020



**Subject:** Surrender and Regrant of Lease for 50 Severn Street together with Appropriation of Land for Planning Purposes.

**Report of:** Acting Director; Inclusive Growth – Ian MacLeod  
Interim Chief Finance Officer – Rebecca Hellard  
Interim City Solicitor – Suzanne Dodd

**Relevant Cabinet Member:** Leader – Councillor Ian Ward  
Cabinet Member Finance and Resources - Councillor Tristan Chatfield

**Relevant O & S Chairs:** Councillor Sir Albert Bore – Resources  
Councillor Lou Robson – 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
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference: N/A		
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 Appendices 2a and 2b contain sensitive commercial information on the purchase price, valuation and property lease rents.		

## **1 Executive Summary**

- 1.1 This report seeks authorisation to surrender an existing long lease for Land and Buildings at 50 Severn Street and grant a new longer lease in exchange for a premium paid to the Council.
- 1.2 The new lease will be granted to a derivative of the same tenant on the terms set out in Exempt Appendix 2b. Primarily the fundamental change will be an extension of its remaining length of approximately 60 years to a term of 250 years remaining.
- 1.3 To also seek authorisation to the appropriation, for planning purposes, of the land shown edged red on the attached plan (Appendix 1) The appropriation will apply to the Council's freehold reversion, in order to avoid potential action by adjacent occupiers via a court injunction, which may stop/delay further development thereby impacting on further development of the site.

## **2 Recommendations**

- 2.1 Approves a surrender and regrant of the lease for 50 Severn Street to Prosperity Severn House Limited, on the terms set out in Exempt Appendix 2b.
- 2.2 Approves the appropriation of the site shown edged red on the attached plan for planning purposes from its previous mixed use as local services, general purposes and economic development under S122 Local Government Act 1972, to planning purposes including commercial and residential uses under the Town & Country Planning Act 1990 subject to indemnities to be provided to the City Solicitor's satisfaction as set out in 7.1.5 of this report.
- 2.3 Authorises the City Solicitor to negotiate, execute and complete all necessary legal documents to give effect to the transaction.

## **3 Background**

- 3.1 The site is situated in Severn Street next to the Queensgate office building, facing the side/southern aspect of the Mailbox development and consists of an area of unmade ground, currently used for car parking in connection with the business and a single storey industrial/office structure constructed of brick. The location is shown on the plan in Appendix 1.
- 3.2 The site is owned freehold by the City Council and leased to Michael J Posnette Photography Limited (a subsidiary of Prosperity Severn House Limited) on a 99 year lease granted in 1981.
- 3.3 The tenant requires an extension of the lease term beyond the 60 years unexpired.
- 3.4 The transaction will take the form of a surrender of the existing lease and grant of a new lease for a 250-year term to enable redevelopment of the site.

3.5 Details of the proposed lease terms are set out in Exempt Appendix 2b.

- 3.5.1 In order to bring forward further development in the city centre, Prosperity Severn House Limited have requested the Council as freeholder, to appropriate the land edged red on the attached plan at Appendix 1 for planning purposes.
- 3.5.2 The Council holds land for various statutory purposes in order to provide its functions. Such land is used only for the purpose of the function for which it was originally acquired until such time as the land is disposed of or “appropriated” for another purpose.
- 3.5.3 Appropriation is the statutory procedure to change the purpose for which land is held from one statutory purpose to another provided that the land is no longer required for the purpose for which it was held immediately before the appropriation. In this instance the land has been held for economic development previously housing a Small/Medium Enterprise Industrial unit with unmade ground for ancillary car parking.
- 3.5.4 The scheme proposals and the fact the land has lain undeveloped for in excess of 20 years gives rise to the possibility for claims to rights to light. These claims could include court injunctions to stop development taking place and demands for ransom payments under the threat of such action. By appropriating the land for planning purposes under Section 122 of the Local Government Act 1972, compensation for loss of such rights is still payable but limited to that allowed by statutory codes without prejudice to the scheme.
- 3.5.5 Prosperity Severn House Limited will be undertaking the redevelopment of the site (as the long leasehold owner of the site) and it is they who will interfere with any easements/rights and therefore will be primarily liable for any statutory compensation payments. The Council will only become liable if the developer fails to make the payments, as set out in 7.2.5 of the report. Prosperity Severn House Limited have agreed to indemnify the Council for any associated costs.
- 3.5.6 Prosperity Severn House Limited considers it essential to appropriate the land now in case of prejudicial claims against the scheme at an early stage.

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 financial or reputational consequences if it did not proceed. The negotiated capital receipt would be lost with no guarantee of a future opportunity.
- 4.2 **Option 2 – Reject the Deal and Attempt to Negotiate a Higher Premium Figure.** This would involve considerable risk of the deal falling through as the terms

set out in Exempt Appendix 2b are recommended by an independent firm of Chartered Surveyors and existing negotiation has already yielded the highest possible return for the Council in the opinion of the Assistant Director of Property and report author. Not to appropriate the site for planning purposes would potentially allow claimants of rights of light to stop development by way of a court injunction or to claim a ransom payment under the threat of such action making all future schemes unviable.

- 4.3 **Option 3 - Proceed with the Agreed Deal:** It is recommended to proceed with the surrender and regrant and the appropriation outlined in this report in order to secure redevelopment of the site and a capital receipt for the Council.

## **5. Consultation**

- 5.1 The Property Investment Board comprising officers from Property Services, Finance and Legal recommends proceeding with the transaction.
- 5.2 The transaction is also recommended by independent external valuer Avison Young.
- 5.3 No 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 in terms of a lost opportunity to generate a capital receipt via the lease premium and a missed opportunity to ensure redevelopment of this site. Appropriating the land for planning purposes would avoid the risk of the proposed future development at 50 Severn Street being frustrated by third party rights, which in turn could delay the site being brought forward for development or render development unviable.
- 6.2 Potential costs incurred (if any) under Section 204 Housing and Planning Act 2016 are mitigated and indemnified by the completion of an Indemnity Agreement with the developer.

## **7 Compliance Issues:**

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

- 7.1.1 The proposed lease surrender and renewal for a capital receipt supports the Financial Plan 2019-2023 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 priorities as the additional income helps the Council to meet its aspirations to be a great city to grow up, live, work and invest in.
- 7.1.3 It supports the aims set out in both the Birmingham Property Strategy 2018-2023 which seeks to grow income and the Property Investment Strategy 2019 which sets out more detailed guidelines for investment decisions.
- 7.1.4 As a result of the existing and future potential development of the site it has been identified that there is a significant likelihood of claims for rights to light. Under the current designated use owners of adjacent properties could stop or delay development proceeding by Court injunction on these grounds or demand a ransom payment to withdraw or forbear from taking such action (as expanded upon in 3.5.4). This could impact on the Council's ability to generate future capital receipts and revenue streams and also result in associated revenue pressures.
- 7.1.5 By appropriating the land for planning purposes under Section 122 of the Local Government Act 1972, compensation for loss of such rights is still payable but limited to that allowed by statutory codes without prejudice to the scheme, with the Council being the ultimate responsible body to which such claims would be made in the event the developer who has primary responsibility for payment of the statutory compensation does not pay. Whilst this appropriation will enable the development to progress and the Council's ability to generate future capital receipts is protected, any action that is taken may potentially still result in revenue pressures for the Council. The developer has therefore agreed to indemnify the Council for all costs associated with such loss of rights claims, including statutory compensation. This indemnity will be extended through any subsequent long leasehold interest.

## **7.2 Legal Implications**

- 7.2.1 Sections 120 - 123 of the Local Government Act 1972 authorises the City 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 which is discharged in relation to this report as set out in the Recommendation Report of Lambert Smith Hampton at Exempt Appendix 2a
- 7.2.2 Section 1 of the Localism Act 2011 contains the 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 including the disposal and acquisition of property.
- 7.2.3 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 2a and 2b are 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.

- 7.2.4 The power to appropriate land for planning purposes from its previous uses is contained in Section 122, Local Government Act 1972. Subject to the land being vested or acquired by the Council or appropriated for planning purposes the power to override easements and third party rights is contained in Section 203 of the Housing and Planning Act 2016. Under Section 204 Housing and Planning Act 2016 (H&P Act 2016) a person is liable to compensation for interference with their rights pursuant to Section 203 H&P Act 2016.
- 7.2.5 The Council recognises the potential rights of third parties and will, in the event the due compensation under Section 204 (H&P Act 2016) is not paid where a legal basis for such payments is established, be liable to pay the compensation via the developers Indemnity Agreement.
- 7.2.6 Prosperity Severn House Limited have confirmation from their solicitors, the appropriation can take place at this stage and the City Solicitor has informed the solicitors acting on behalf of Prosperity Severn House Limited the Council will not be providing any warranty to Prosperity Severn House Limited that it can rely on Section 203, which will be reflected in the deed of Indemnity.
- 7.2.7 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. As the property falls within the Inclusive Growth Investment Portfolio, the receipt generated will be ringfenced for reinvestment in assets within the Investment Portfolio in line with the stated aims of the Property Strategy and Property Investment Strategy and subject to Capital Board Approval. To this end Cabinet approved the Property Investment Strategy Report on 30th July 2019.
- 7.3.3 The site is currently subject to an annual rental of £2,000 per annum which will be lost to the City Council. This income forms part of the existing Birmingham Property Services budget allocation. The loss of income will be mitigated by the additional income generated following the reinvestment of the capital receipt into the investment portfolio.
- 7.3.4 The Assistant Director of Property has confirmed that the existing negotiation has yielded the highest possible return for the Council.
- 7.3.5 The purchaser will pay some/all of the Council's professional costs related to the disposal up to the maximum sum detailed in Exempt Appendix 2.

## 7.4 Procurement Implications

7.4.1 N/A

## 7.5 Human Resources Implications

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

## 7.6 Public Sector Equality Duty

7.6.1 An Equality Assessment has been carried out in connection with Property Investment Strategy transactions (EQUA495) 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 (if any):

Appendix 1 – Site Plan

Exempt Appendix 2

Appendix 2a – Recommendation Report by Avison Young

Exempt Appendix 2b – Financial information

Appendix 3 – Equality Assessment EQUA495

## 9 Background Documents

9.1 Property Strategy (Approved by Full Cabinet – November 2018)

9.2 Property Investment Strategy (Approved by Full Cabinet – July 2019)