

Birmingham City Council

Report to Cabinet

14th December 2021



Subject: Sale of 1 Lancaster Circus Queensway City Centre B4 7DJ

Report of: Director Planning, Transport and Sustainability – Ian MacLeod

Relevant Cabinet Member: Councillor Ian Ward – Leader of the Council

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 this a key decision?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 008971/2021		
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 Appendices 2, and 3 contain sensitive commercial information on the purchase price and valuation. 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)		

1 Executive Summary

- 1.1 This report seeks authority for the sale of the surplus Council owned property 1 Lancaster Circus, Queensway, City Centre, B4 7DJ by the grant of a new lease, at a premium, to Sama Investment Group.
- 1.2 The subject property has a site area of 5,916 sqm approximately and is shown edged bold on the attached plan at Appendix 1.

2 Recommendations:

- 2.1 Authorises the Assistant Director of Property to conclude a sale conditional on planning of the surplus Council owned property, 1 Lancaster Circus, Queensway City Centre, B4 7DJ ("the Property") as shown edged bold on attached plan at Appendix 1, and extending to 5,916 sqm, by the grant of a new 250 year lease at a premium to Sama Investment Group ("the Purchaser") as detailed in Exempt Appendix 2.
- 2.2 Delegates authority to the Assistant Director of Property jointly with the Leader of the Council, should they determine through assessment and approval of the business case that it would be of financial benefit to the Council, to agree final terms for and the disposal of the Property, by way of either a transfer of the freehold or the grant of a long lease of a suitable term, to Birmingham City Propco Limited, a wholly owned Council subsidiary, subject to the benefit and the burden of any, then, existing contract for any disposal of the Property to the Purchaser.
- 2.3 Notes that the Purchaser will also pay a contribution towards the Council's surveyor and legal costs, as detailed in Exempt Appendix 2.
- 2.4 Notes the delegation approved by Cabinet on 27 July 2021 to the (now) Director of Council Management, in consultation with the Leader of the Council, the authority to buy shares in and approve loans to, Propco Ltd up to an aggregate limit of £100m, on commercial terms and in compliance with HMRC rules on 'thin capitalisation', subject to a full business case for each investment being approved.
- 2.5 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 Property is situated within a locality of residential and commercial uses close to the city centre. The property is currently utilised as operational office accommodation.
- 3.2 Office based operations will cease on the ground to fourth floors by 31st March 2022 whilst specialist functions (CCTV Control Centre, Urban Traffic Control Centre) continuing to operate from the basement until their relocation, potentially up until 31st March 2023. These operational needs will be protected and embedded in the final sale terms.
- 3.3 The Property was declared surplus by Cabinet on 20th April 2021, under a report entitled "New Ways of Working". This authorised the sale of the Property on a long leasehold basis. The intention now is to offer greater flexibility in terms of onward sale to Birmingham City Propco Limited by inclusion of an option to sell on a freehold basis.

- 3.4 Following the appointment of marketing agents Jones Lang Lasalle, the Property has been offered for sale to the open unrestricted market by informal tender with a closing date of 5th August 2021.
- 3.5 Tenders were invited on either an unconditional or conditional (subject to planning only) basis, and detailed planning guidance was produced to support and inform the process.
- 3.6 Under the terms of a conditional sale the Purchaser will be required to proceed to an exchange of contracts within six weeks of the acceptance of their offer with completion to take place upon the obtaining of satisfactory planning consent, within 24 months of exchange.
- 3.7 The outcome of the tender process, tenders received and recommendations for sale are detailed at Exempt Appendix 2 and in Jones Lang Lasalle's Marketing Report at Exempt Appendix 3, which also includes an estimate of value of the Property pre-sale.
- 3.8 The proposed sale represents best consideration and has been validated by Jones Lang Lasalle and the Assistant Director of Property based upon analysis of the bidders' proposals. The offer represents the least risk to the Council in terms of deliverability and overall conditionality.
- 3.9 The City Council Financial Plan 2020-2024 and Financial Plan 2021-2025 agreed 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.
- 3.10 Should it be of financial benefit to the Council, the option to dispose of the Property to Birmingham City Propco Limited, a wholly owned company of Birmingham City Council, subject to the benefit and the burden of the proposed conditional exchange of contracts with the Purchaser, to Birmingham City Prop Co Limited, a wholly owned company of Birmingham City Council is reserved.

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).** As detailed in the recommendations, the property is recognised as a significant development opportunity where there may be future financial benefit to the Council to retain overall control of the asset through transfer into a WOC.
- 4.3 **Option 3 – Property Retained for Reuse and / or Development by the Council.** In accordance with the Council's surplus property procedures, the property prior to being offered for sale on the open market, has been considered for potential internal reuse, and / or development by the Council to support its business priorities, with no interest expressed or identified.

4.4 Option 4 – 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 transaction is recommended by appointed external agent Jones Lang Lasalle as detailed in the Marketing Report at Exempt Appendix 3.

5.2 The Newtown ward member has been notified of the proposed sale of this property.

6. Risk Management

6.1 To meet the expectations of the prevailing property market, the Council has committed to deliver this sale in accordance with delivery milestones set out in the particulars of sale. Failure to meet these milestones would result in a potential loss of the capital receipt.

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 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 Whilst the property is not specifically identified in the approved Birmingham Property Strategy 2018-2023, the recommendations of this report fully support the Strategy's aims.

7.2 Legal Implications

7.2.1 Sections 120 - 123 of the Local Government Act 1972 authorises 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 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 Appendices 2, 3 and 5 are considered to 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 and in the public interest to keep exempt.

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 Purchaser will pay a 10% non-refundable deposit upon exchange.

7.3.3 The Purchaser will pay a contribution towards the Council's professional costs related to the disposal as detailed in Exempt Appendix 2.

7.3.4 The purchase price, including any contribution to the Council's costs, is exclusive of VAT.

7.3.5 Should the business case determine that either the sale of the freehold or granting of a long lease of the property to PropCo is in the financial interests of the Council then negotiation of a commercial loan and equity investment into that company aligned with the individual transactions and in accordance with the approvals made by Cabinet in the report "Property Strategy: Asset Review - Birmingham City Propco Limited (Propco)" on 27 July 2021 will be made. There is a risk that should the ultimate sale to Sama Investment Group not proceed for whatever reason, then this will compromise the ability of PropCo Ltd to pay the associated capital and interest of the loan, the asset together with any value enhancements made through the planning process would be retained.

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 and sale recommendation.

7.6 Public Sector Equality Duty

7.6.1 An Equality Assessment has been carried out EQUA765 dated 2nd November 2021 and is attached at Appendix 4. 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 – Recommendations for Sale
- Exempt Appendix 3 – Tender Evaluation Report by Jones Lang Lasalle
- Appendix 4 – Equality Assessment EQUA765

9 Background Documents

- Property Strategy (Approved by Cabinet – November 2018)
- New Ways of Working (Approved by Cabinet – April 2021)
- Property Strategy: Asset Review - Birmingham City Propco Limited (Propco) (Approved by Cabinet – July 2021)