

Birmingham City Council

Report to Leader and Cabinet Member Finance and Resources

18th February 2022



Subject: **Sale of Freehold – Kyotts Lake Industrial Estate, Kyotts Lake Road, Birmingham B11 1JT**

Report of: Strategic Director for Place, Prosperity and Sustainability – Paul Kitson
Director of Council Management – Rebecca Hellard
City Solicitor and Monitoring Officer – Satinder Sahota

Relevant O & S Chairs: Councillor Mohammed Aikhlaq – Resources
Councillor Saima Suleman – Economy & Skills

Report author: Warren Bird
Strategic Investment Property Manager - Property Services
Contact: 07980 672 893 / warren.bird@birmingham.gov.uk

Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Sparkbrook & Balsall Heath		
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 Industrial Premises at Kyotts Lake Industrial Estate, Kyotts Lake Road, Birmingham B11 1JT
- 1.2 The subject site has an area of approximately 1.53 acres (industrial Estate and parking area) 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) up to a limit of £25m in any one transaction.
- 1.4 The recommendations contained in this 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 accordance 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 owned Kyotts Lake Industrial Estate, Kyotts Lake Road, Birmingham B11 1JT as shown edged bold on attached plan at Appendix 1 and extending to 1.53 acres approximately, to Omer Properties Limited (CN: 13669269) at a premium as detailed in Exempt Appendix 2.
- 2.2 The purchaser will also pay a contribution towards the Council's surveyor's and legal costs, as detailed in Exempt Appendix 2.
- 2.3 Note that to demonstrate their commitment, the purchaser has agreed to provide a "cash payment" deposit as detailed in Exempt Appendix 2 (which would be deductible in the event of sale completion).
- 2.4 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 and commercial uses close to the city centre. The estate units are traditionally constructed for industrial uses, utilising a steel frame with part brick and block with steel truss roofs with eave heights of between 6.3m to 8.3m. The estate consists of 8 units with a communal yard area and a separate nearby car park. The estate amounts to a total area of 55,427 sq ft of gross internal space.
- 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.
- 3.3 The premises have been analysed by our appointed external agents (Avison Young) in line with both the Property Strategy (approved by Cabinet in 2018) and the Investment Strategy

(approved by Cabinet in 2019) and the Estate has been identified as an asset the City Council should consider disposing of due to the risk of future degeneration requiring increased Estate Management input and anticipated significant capital outlay, thus reducing net income. In addition, the current state of the market is strong and providing positive returns. The property has a current gross rental income of £0.100m per annum.

- 3.4 The property was marketed by Avison Young in September/October 2021 on an open market formal tender basis. A summary of the offers received are attached in Exempt Appendices 3 and 3b 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.
- 3.6 Under the terms of an unconditional sale the purchaser will be required to proceed to an exchange and completion of contracts within 10 working days of receipt of the legal pack.
- 3.7 The proposed sale represents best consideration and has been validated as such 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. The offer represents the least risk to the Council in terms of deliverability and overall conditionality.
- 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 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 subject to a number of occupational tenancies and is therefore not an immediate development opportunity. The property does not have an obvious alternative use which would benefit the 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 and level of rental providing a barrier for growth. Large scale capital expenditure is likely to be needed in the future to maintain the integrity and energy performance which would significantly reduce the net income from the estate and would not be realized by proportionate increases in rental levels.
- 4.3 **Option 3 – Property retained for reuse and / or development by the Council.** In accordance with the Council's 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 but has been disregarded due to the high costs associated with being able to provide vacant possession.

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 and risk.

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 appointed external agent Avison Young – see Recommendation Report at Exempt Appendix 4.

5.3 Sparkbrook and Balsall Heath ward members have been notified of the proposed sale of this property.

5.4 No external consultation is necessary for this commercial transaction.

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. Adherence to these milestones will ensure a sale receipt being realised during Financial Year 2021/2022.

6.2 The 'risk' of not proceeding could only be seen in terms of a lost opportunity to generate a capital receipt via the sale income and a missed opportunity to ensure the redevelopment of this site. It would leave the City Council open to an increased risk to net income due to the need for future maintenance investment making the estate more resource intensive (in both financial and time aspects) going forward.

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 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, 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 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 £0.100m per annum which will be lost to the City Council. This income forms part of the existing Property Services income budget and 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 estate are currently let on periodic tenancies/short leases with internal repairing obligations. If the City Council is to retain the estates, 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 Council officer time incurred in managing the estates as part of the wider city centre portfolio of properties, but these costs are 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.
- 7.3.5 To 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, VAT is not 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 EQUA782 dated 25th November 2021 and is attached at Appendix 5. 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 & 1b – Site Plans
 - Appendix 2 - (Exempt) – Cover Sheet Summary
 - Appendix 3 & 3b (Exempt) – Summary of Offers
 - Appendix 4 - (Exempt) – Recommendation Report and Heads of Terms
 - Appendix 5 – Equality Assessment EQUA782

9 Background Documents

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