



Subject: **Purchase of Freehold – 69-73 The Parade, Sutton Coldfield, B72 1PA, and**

Purchase of Leasehold 75-101 The Parade & Newall Retail Park, Sutton Coldfield, B72 1RX

Report of: Director; Planning, Transport and Sustainability – Ian MacLeod
Director of Council Management – Rebecca Hellard
City Solicitor and Monitoring Officer – Suzanne Dodd

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
Sutton Trinity		
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 4, 5 and 6 contain sensitive commercial information on the purchase price and valuation and terms.		

1. Executive Summary

- 1.1 This report seeks authority for the purchase of the freehold interest at 69-73 The Parade, Sutton Coldfield, B72 1PA and the purchase of the leasehold interest in 75-101 The Parade & Newall Retail Park, Sutton Coldfield, B71 1RX.
- 1.2 The subject site has an area of approximately 5.44 acres and is shown edged red on the attached plan at Appendix 1. The freehold and leasehold interests are shaded blue and green respectively.
- 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 This strategic purchase gives Birmingham City Council the opportunity to protect and promote the implementation of the adopted Royal Sutton Coldfield Town Masterplan which may be frustrated if the interests are sold on the open market.
- 1.5 The recommendations contained in this Report and the Exempt Appendix 4 are fully in line with the Council's wider ambitions and plans for inclusive growth and financial stability. The recommendations comply with the Birmingham City Council Plan and Budget 2018-2022, the Property Strategy 2018-2023 and the 2019 Property Investment Strategy.

2 Recommendations

- 2.1 Authorise the Assistant Director of Property to agree terms for the purchase of the freehold interest at 69-73 The Parade, Sutton Coldfield, B72 1PA and the purchase of the leasehold interest in 75-101 The Parade & Newall Retail Park, Sutton Coldfield, B71 1RX as shown edged red on attached plan at Appendix 1, and extending to 5.44 acres, from RPMI Railpen Limited.
- 2.2 Approve the purchase of the interests as a strategic purchase for the amount set out in the attached Exempt Appendix 4. A 10% deposit will be payable of exchange of contracts.
- 2.3 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 situated within Sutton Coldfield town centre and is a late 1990s purpose-built retail development. The buildings are of steel frame construction, with concrete floors and exterior facades comprising a mixture of facing brick, glazing and metal cladding. The net lettable area is approximately 126,000 sq ft.
- 3.2 The freehold interest benefits from 2 leases while the leasehold interest benefits from 16 sub-leases, an electricity sub-station sub-lease and a car parking management agreement. All retail units are currently occupied and trading.

- 3.3 RPMI Railpen is seeking to rebalance its property portfolio and had intended to market the property for sale early in 2022. Birmingham City Council have been given the opportunity to complete this transaction in an off-market deal.
- 3.4 External advice obtained to support the delivery of the Property Investment Strategy recommends pivoting the re-investment towards assets with strategic relevance such as regeneration. The subject site meets this aim.
- 3.5 The Report & Valuation Report produced by external agent Avison Young, attached as Exempt Appendix 4, states that by this purchase “Birmingham City Council has the opportunity to take an active role in helping to implement the adopted Royal Sutton Coldfield Town Masterplan”. The purchase has been identified as a sensible strategic move and a suitable short to medium term investment/addition to the portfolio both internally by Property Services and by external consultant Avison Young.
- 3.6 The Masterplan recognises that the town centre is in decline and that bold proposals are required to re-imagine and revitalise it. The subject site is vital to any comprehensive redevelopment and the proposed off market purchase will ensure that the property will not be developed in isolation, or worse land-banked, which could hold up the regeneration for many years. The site is adjacent to the Birmingham City Council owned Red Rose Shopping Centre. Ownership of these two assets will give the Council, working in tandem with Sutton Coldfield Town Council, an important say in the formation of the town centre redevelopment proposals and, in so doing, give the adopted Masterplan a greater chance of success.
- 3.7 The purchase is in line with the Property Investment Strategy approved by Cabinet in July 2019, which requires investment property purchases and sales to be approved by the Leader of the Council and the Cabinet Member for Resources, on the recommendation of the Director; Inclusive Growth, Chief Financial Officer and City Solicitor. Initial submissions are made to the officer Property Investment Board for assessment.
- 3.8 In July 2021 the Ministry of Housing, Communities & Local Government published a brief policy paper announcing plans to improve the capital finance framework for local authorities in England. This built upon the new Public Works Loan Board (‘PWLB’) lending guidance issued in November 2020 (which prohibited use of PWLB for those who have primarily used it for yield activities).
- 3.9 Notwithstanding this, the purchase of an investment asset is allowed when the primary objective falls within the following categories:
- Service Delivery
 - Housing
 - Regeneration
 - Preventative Action
 - Refinancing/Treasury management
- 3.10 The Constitution includes a delegation for the Members detailed in this report to approve acquisitions to, and disposals from, the Investment Property Portfolio up to a limit of £25m in any one transaction (Part E paragraph, 3.2 (xi)).

4. Options Considered and Recommended Proposal

- 4.1 **Option 1 - Do Nothing.** The Council is under no obligation to proceed with the proposal. However, failure to act is likely to lead to RPMI Railpen selling the property on the open market. There can be no guarantee that the future plans of a third-party purchaser will accord with the adopted Masterplan.

- 4.2 **Option 2 – Proceed with the Agreed Transaction.** It is recommended to proceed with the transaction outlined in this report in order to grow the Council's ownership in Sutton Coldfield town centre and in so doing improve the ability of the Council to influence the much needed regeneration proposals.

The acquisition is in line with the aims of the Property Strategy. Taking on board PWLB guidance external advice obtained to support the delivery of the strategy recommends pivoting re-investment towards assets with strategic relevance such as regeneration. The subject site meets this aim.

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.
- 5.3 Sutton Trinity ward member and Sutton Coldfield Town Council have been notified of the proposed purchase of this property.
- 5.4 No external consultation is necessary for this commercial transaction.

6. Risk Management

- 6.1 The main risk is that one or more of the companies holding the occupational leases experiences financial difficulties and defaults on the rent. This risk is reduced in that most of the sub-leases are with companies with good credit scores (see Exempt Appendix 3). Avison Young are of the opinion that vacancies that arise will be attractive to alternative occupiers at market rental.

7. Compliance Issues

- 7.1 The acquisition complies with statutory guidance 'Statutory Guidance on Local Government Investments 3rd Edition' effective for financial years commencing on or after 1 April 2018, CIPFA Guidance, as well as all current legislation including the Local Government Act 1972 and the Local Government Act 2003.
- 7.2 The proposal is consistent with Birmingham City Council Plan 2018-2022 (updated) priorities such as the acquisition of new investment properties and disposal of under-performing properties will help the Council meet its aspirations to be a great city to grow up in, live in, work and invest in.
- 7.3 The acquisition is consistent with 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. The acquisition follows the guidelines as set out in the Investment Decision Matrix at Appendix 2 which is a scoring methodology introduced by CBRE, who were interim property consultants supporting Property Services with its Property Strategy. The scoring was provided by Avison Young.

8. Legal Implications

- 8.1 Section 120 of the Local Government Act 1972 authorises the Council to acquire land for the purposes of any of their statutory functions.

- 8.2 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.
- 8.3 The Local Government Act 2003 and guidance issued under it authorises the Council's investment management functions
- 8.4 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 4, 5 and 6 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.
- 8.5 The Council's in-house Legal team will complete all legal matters associated with the transaction.

9. Financial Implications

- 9.1 As part of the Cabinet approved Property Strategy it was envisaged that underperforming properties would be sold and replaced by new acquisitions that provided a better strategic fit.
- 9.2 Given the uncertain timing involved in transactions a 'bridging loan' facility of £50m is included in the capital budget, funded by property disposals. Depending on the exact timing of disposals and acquisitions there may be a short-term cost in terms of borrowing and rent loss, but the expectation is this will be reversed through the optimisation of the property portfolio.
- 9.3 The property is elected for VAT and therefore VAT will be payable on the purchase price. However, provided the Council opts to tax on or before the transfer date, the sale can be treated as a transfer of a going concern ('TOGC') such that no VAT will be payable by the Council on the acquisition. The Council's option to tax is in progress. Furthermore, TOGC treatment will generate a saving for the Council in respect of Stamp Duty Land Tax ('SDLT') as SDLT is payable on the total purchase price, including any VAT. Therefore, if VAT is not payable, SDLT is due on a lower value than if VAT were payable.

10. Human Resources Implications

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

11. Public Sector Equality Duty

- 11.1 An Equality Assessment has been carried out and is attached at Appendix 6. This identifies no adverse impacts on any groups protected under the Equality Act 2010.

12. Appendices

- Appendix 1 - Site Plan
- Appendix 2 - Investment Decision Matrix

- Appendix 3 - (Exempt) Sub-tenants - Credit scores and Financial Performance
- Appendix 4 - (Exempt) - Valuation & Recommendation Report
- Appendix 5 - (Exempt) - Financial Information
- Appendix 6 – Equality Assessment EQUA802

13. Background Documents

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