

# Birmingham City Council

## Report to Cabinet Committee - Property

8<sup>th</sup> August 2024



<b>Title:</b>	<b>Disposal of 10 Gough Street Lease &amp; Freehold Sale</b>
<b>Lead Cabinet Portfolio:</b>	Councillor Sharon Thompson the Deputy Leader and Cabinet Member for Economy & Skills
<b>Relevant Overview and Scrutiny Committee:</b>	Councillor Katherine Iroh - Economy, Skills and Culture
<b>Report Author:</b>	Andrew Cox - Principal Surveyor Development Team  Investment & Valuation Division Place Prosperity & Sustainability Directorate Contact: <a href="mailto:andrew.cox@birmingham.gov.uk">andrew.cox@birmingham.gov.uk</a>
<b>Authorised by:</b>	Philip Nell, Strategic Director Place Prosperity & Sustainability Directorate
<b>Is this a Key Decision?</b>	Yes
<b>If this is a Key Decision, is this decision listed on the Forward Plan?</b>	Yes – 013255/2024
<b>Reason(s) why not included on the Forward Plan:</b>	Not Applicable.
<b>Is this a Late Report?</b>	No
<b>Reason(s) why Late:</b>	Not Applicable.
<b>Is this decision eligible for ‘call in?’</b>	Yes
<b>If not eligible, please provide reason(s):</b>	Not Applicable.
<b>Wards:</b>	Ladywood

**Does this report contain exempt or confidential information?**

Yes

**Exempt Information**

Appendices 2, 3 & 4 are exempt from disclosure by virtue of the following paragraphs of schedule 12A to the Local Government Act, 1972 as amended: 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 disposal of its property interests by firstly the regearing (renegotiating and amending the terms) of the Council's leasehold interest in 10 Gough Street, Birmingham B1 1HN to the developer tenant.
- 1.2 Then secondly to seek authority to make a subsequent sale of the Council's freehold interest upon the practical completion of a student housing scheme.
- 1.3 The property has a site area of approximately 1,113 square meters and is shown edged bold black on the attached site plan at Appendix 1.
- 1.4 The recommendations contained in this report and the Exempt Appendix 2 are fully in line with the Council's Financial Recovery Plan.
- 1.5 Other options for this property interest have been considered and the recommended sale route provides the best outcomes for the City as detailed in this report.

## **2 COMMISSIONERS' REVIEW**

- 2.1 Commissioners support the recommendations.

## **3 RECOMMENDATIONS**

### **That Cabinet Committee Property**

- 3.1 Authorise the Assistant Director of Investment and Valuation to firstly; conclude the terms for a lease regearing for an initial premium, to the current developer as tenant of the Council owned land at 10 Gough Street, Birmingham. B1 1HN ("the Property") as shown edged bold black on the attached site plan at Appendix 1 and extending to 1,113 sqm by the grant of a new 250-year lease to the Developer Tenant as detailed in Exempt Appendix 2,3 & 4.
- 3.2 Then secondly, authorise the Assistant Director of Investment and Valuation to conclude the conditional sale of the Council's freehold interest for an additional premium upon the practical completion of a student housing scheme, also detailed in Exempt Appendix 2,3 & 4.
- 3.3 Note that the purchaser will pay a contribution towards the Council's surveyor and legal costs, as detailed in Exempt Appendix 2.
- 3.4 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 10 Gough Street Birmingham B1 1HN was previously the former Birmingham United Services Club and a Car Park. In 2017, the leasehold interest was acquired by the current tenant under a tightly constrained permitted planning use for a modest residential development scheme, which was attained under a planning approval in 2015 for 73 residential apartments.
- 4.2 The leasehold interest created in 2017 generated a premium, against the modest development planning approval described in 4.1 above.
- 4.3 In March 2023, a planning approval was subsequently granted to the tenant developer for a larger development project for 540 student apartment units on the same subject site of 10 Gough Street, in conjunction with an adjoining site also co-owned by the same developer at 126 Suffolk Street Queensway.
- 4.4 The site is shown edged bold black on the site plan at Appendix 1 of this report.
- 4.5 The property is owned freehold by the City Council and currently held under a Lease agreement from 2017 for a term of 125 years. The current permitted use is in accordance with the planning approval obtained in 2015 for a private residential apartment scheme not exceeding 73 units and the current lease is subject to an annual ground rent.
- 4.6 The developer tenant secured the revised planning consent for a student scheme in March 2023 and is currently onsite and has commenced construction of the development. Given the current ground lease restricts the site for use as a residential apartment scheme, on completion, the development will not be fully compliant with the lease terms in the current ground lease.
- 4.7 In order to address this non – compliance, negotiations with the tenant developer were commenced on a proposed lease regear and the agreed terms are set out in Exempt Appendix 2, 3 & 4.
- 4.8 This also includes the deferred sale of the Council's freehold interest for a further premium which is detailed in the Exempt Appendix 2, 3 & 4.
- 4.9 The proposed sale represents best consideration and has been validated as such by the Assistant Director of Investment & Valuation and the Council's external agent Avison Young based upon an analysis of the financial terms of the recommended sale. The lease regear terms and the proposed deferred sale of the Council's freehold interest are in line with the Council's Property Strategy, and the proposed transaction and generation of a capital receipt supports the Financial Recovery Plan by generating resources and thus helping to achieve a balanced budget.
- 4.10 Avison Young, the Council's external advisor have recommended that the Council proceeds with the transaction and their recommendation report is in Exempt Appendix 3

#### 4.11 **Proposal and Reasons for Recommendations**

4.12 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, to deliver an additional and unplanned capital receipt to fund the Council's Financial Recovery Plan.

#### 4.13 **Other Options Considered**

4.14 **Option 1 - Do Nothing.** The Council is under no obligation to proceed with this proposal and would suffer no reputational consequences if it did not proceed. The developer, however, is in breach of its current lease arrangements and are keen to remedy the position. It would, however, be in line with the aims of the Council's Financial Recovery Plan or the Council's investment strategy to reduce the number of small investment assets held. The property is not allocated for inclusion in any existing strategic planning proposals. The developer tenant has planning consent for both the previously approved use (now expired) as a private residential scheme and an alternative student accommodation scheme use but do not have an obvious alternative use which would benefit the Council.

4.15 **Option 2 – Property Retained for Reuse and / or Development by the Council.** The property is subject to an existing long lease to the developer tenant. The property therefore cannot be used for an alternative use unless this was agreed with the developer tenant. Given the significant level of investment already made by the developer tenant to secure planning, is in contract with a third party and given the current development scheme is also under construction and on site it is unlikely that the developer tenant would entertain any alternative options.

4.16 **Option 3 – 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, to deliver an unplanned capital receipt to fund the Council's transformation programme and assist in removing the Council current management obligation.

### **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 well protected under the terms of the existing lease.

5.2 The risk is entirely in the hands of the developer tenant who have a highly valuable commercial scheme presently at risk, due to making external funding

and contractual commitments with limited permitted uses under present lease structure.

- 5.3 The 'risk' of not proceeding could only be seen in terms of a lost opportunity to generate a capital receipt for potential reinvestment via a regearing and sale of the Council's interest.

## **6 CONSULTATION**

- 6.1 The Ladywood ward members have been notified of the proposed sale of this property.

## **7 MEMBER ENGAGEMENT**

### **Ward Councillor(s)**

- 7.1 The Ladywood ward members have been notified of the proposed sale of this property and their responses are recorded in Appendix 6.

### **Overview and Scrutiny**

- 7.2 The report has been notified to the chair of the Overview and Scrutiny Committee.

## **8 IMPACT AND IMPLICATIONS**

### **Finance**

- 8.1 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.
- 8.2 The purchaser will pay a contribution towards the Council's professional costs related to the disposal as detailed in exempt appendix 2.
- 8.3 Upon exchange of contracts the purchaser will pay a premium as set out in exempt appendix 2 and a further premium on practical completion of the project.
- 8.4 The purchase price, including any contribution to the Council's costs, is exclusive of VAT.

### **Legal**

- 8.5 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 Investment & Valuations has confirmed that the recommended sale, as detailed in Exempt Appendix 2, 3 & 4 represents best consideration and satisfies the Council's obligations under Section 123 of the Local Government Act 1972.
- 8.6 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 and the expenditure of money.

8.7 The Local Government Act 2003 and guidance issued under it authorises the Council's investment management functions.

8.8 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 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.

8.9 The Council's in-house legal team will complete all legal matters associated with the transaction.

### **Equalities**

8.10 An Equality Assessment has been carried out. EQUA EIA000371 dated 19/02/2024 and is attached at Appendix 5. This identifies no adverse impacts on any groups protected under the Equality Act 2010.

### **Procurement**

8.10 N/A

### **People Services**

8.11 N/A

### **Climate Change, Nature and Net Zero**

8.12 N/A as confirmed by the net zero team.

### **Corporate Parenting**

8.13 N/A

Other

8.14 N/A

## **9 APPENDICES**

9.1 Appendix 1 – Gough St – Site Plan

9.2 Exempt Appendix 2 – Gough St Report

9.3 Exempt Appendix 3 – Gough St Recommendation Report by Avison Young

9.4 Exempt Appendix 4 – Gough St Heads of Terms

9.5 Appendix 5 – Equality Impact Assessment EQUA000764

9.6 Appendix 6 – Ward Councillor Consultations

**10 BACKGROUND PAPERS**

10.1 Sale of Land at 10 Gough Street (approved by Cabinet Members July 2021)