
Meeting	Cabinet Resources Committee
Date	25 February 2014
Subject	Agreement for Lease – Gateway House
Report of	Deputy Leader and Cabinet Member for Resources & Performance & Cabinet Member for Customer Access & Partnership
Summary	This report seeks approval to enter into an Agreement for Lease with Maverick Estates Limited, a local developer and the owner of Gateway House 318-330 Regents Park Road NW3 2LN to deliver a new library facility in Finchley Church End, within a mixed development scheme proposed for Gateway House.

Officer Contributors	Hannah Richens (Libraries Manager) Richard Malinowski (Property Services)
Status (public or exempt)	Public (with separate Exempt report)
Wards Affected	Finchley Church End Ward
Key Decision	No
Reason for urgency/ Exemption from call-in	Not applicable
Function of	Executive
Enclosures	Appendix 1 – Draft Heads of Terms Appendix 2 – Draft plans

Contact for Further
Information:

Hannah Richens, Libraries Manager
hannah.richens@barnet.gov.uk
020 8359 7779

1. RECOMMENDATIONS

- 1.1 That Cabinet Resources Committee note the contents of this report and the opportunity presented by the proposed redevelopment of Gateway House for a new library in Finchley Church End.
- 1.2 That Cabinet Resources Committee approve the proposed Heads of Terms as detailed in Appendix 1 and the Exempt report as the basis for entering into an agreement for lease with Maverick Estates Limited.
- 1.3 That Cabinet Resources Committee approve the Council entering into an agreement for lease of Gateway House for the accommodation of a new library in accordance with the approved Heads of Terms.
- 1.4 That Cabinet Resources Committee delegate authority to the Chief Operating Officer to agree any variations or additional terms as are required to conclude the agreement for lease acting in consultation with the Deputy Leader and Cabinet Member for Resources and Performance.
- 1.5 That once the Deputy Leader and Cabinet Member for Resources and Performance has approved the final heads of terms then officers may instruct HB Public Law to complete the Agreement for lease.

2. RELEVANT PREVIOUS DECISIONS

- 2.1 The Strategic Libraries Review (SLR) was approved by Cabinet on 26 July 2011. This review outlined a number of proposed changes to the libraries estate including the development of 'a new fit-for-purpose, accessible library in Church End.' The SLR states that:

'It is anticipated that the new Church End facility will be fully accessible (unlike at present); [with] a bookable community space; and further study spaces'

- 2.2 The review was informed by comprehensive public consultation and an Equalities Impact Assessment (EIA). Consultation commissioned by Alpha Research reported that:

'All participants who gave a view supported the plans for Church End'

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 A capital strategy was developed to support changes to the libraries estate and was approved on 15 May 2013. This strategy set out the following three key objectives:
 1. To create more financially sustainable library buildings
 2. To improve the library service to communities
 3. To future-proof investments in the libraries estate

The relocation of Church End library addresses all three of these key objectives.

- 3.2 Library strategy research in 2010 indicated dissatisfaction with the current Church End library site. In particular the current library is dated and requires extensive repairs. It is not compliant with the Disability Discrimination Act (DDA) and those customers with restricted mobility are at present unable to access the first floor. The proposed move to Gateway House offers the library service an opportunity to deliver a modern facility with a fully accessible service to residents in Finchley Church End.
- 3.3 The current library site operates as an outreach venue for community activities delivered by Newstead Children's Centre and as such is a key element of the borough's approach to Early Intervention and Prevention (EIP). However, the number and range of activities that can be delivered is constrained by the physical limitations of the site, in particular the lack of dedicated appropriate activity space. The proposed redevelopment of Gateway House will be significantly larger and will include dedicated community rooms suitable for the delivery of high quality Early Years and other activities.

4. RISK MANAGEMENT ISSUES

- 4.1 The main Heads of Terms of an Agreement for Lease have been determined, albeit some minor provisions are still to be settled. As currently drafted the terms will allow the developer to terminate the Agreement if any of the Planning Conditions prove to be onerous. The Onerous Conditions are defined as having to be material and the draft Agreement allows the developer to refer the matter to an independent expert. If onerous conditions are confirmed then Maverick can terminate the Agreement. Maverick could then submit a proposal for another scheme perhaps with a smaller library or in an inferior location such as the lower ground floor or even for a scheme without a library. Adequate safeguards will be incorporated into the Agreement restricting the potential of such action by Maverick to material conditions that significantly affect the viability of the scheme. Nevertheless there is a risk which is considered to be relatively small as any onerous condition claim has to be justified by referral to a third party and only then the Agreement terminated.
- 4.2 There is also a risk that planning permission may not be granted for Maverick's proposals and that the library will not be delivered.
- 4.3 There is a risk that residents within the Church End area may object to the proposed move of the library to Gateway House. However, Barnet-wide consultation was undertaken in 2010 as part of the Libraries Strategic Review and indicated general support for the principle of a new library. Detailed consultation and engagement will be undertaken with Church End residents and library users following formal agreement of the Heads of Terms.
- 4.4 Colleagues in Property Services can continue to identify alternative appropriate accommodation should the current proposals fail to gain planning permission or in the instance of failure to reach agreement on the terms.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 Pursuant to section 149 of the Equality Act, 2010, the Council has a public sector duty to have due regard to eliminating unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act. It must advance equality of opportunity between those with a protected characteristic and those without and promote good relations between those with a protected characteristic and those without. The relevant 'protected characteristics' are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. The act also covers marriage and civil partnership with regard to the elimination of discrimination.
- 5.2 The Council is committed to improving the quality of life and wider participation for all in the economic, educational, cultural, social and community life of the borough. This proposal will create improved, more accessible library spaces within the Finchley Church End area and offer significantly upgraded facilities for the local community including provision of community meeting spaces.
- 5.3 The current library is not compliant with the Disability Discrimination Act (DDA), is not fit for purpose and does not currently meet service requirements. Failure to comply with the DDA could expose the Council to significant risk of legal challenge. A detailed equalities analysis will be delivered as part of the full business case for the project. The project will also deliver an accessibility audit of the proposed development putting forward accessible design requirements for all areas of the facility.
- 5.4 The agreement to deliver the build will include requirements fully covering the Council's duties under equalities legislation.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

Finance

- 6.1 Maverick Estates Limited (Maverick) is prepared to commit to providing a turn-key library at no cost to the Council, at a fixed low rent and for a lease term of 125 years. However Library Services will have to contribute towards insuring the building and for service charge contributions for external and common parts, repairs and maintenance, the costs for which have not as yet been established. These will be met from the existing libraries revenue budget.
- 6.2 Provision of floor space currently stipulated is for a Library comprising 842m² located on the ground and lower ground floors of the redeveloped Gateway House. The current Church End library is 595m² in size. Plans of the proposed facility are attached in Appendix 2.
- 6.3 Main Heads of Terms for an Agreement for Lease have been provisionally agreed and a draft legal agreement is currently being considered by legal colleagues. If planning consent is granted then the Agreement for Lease will oblige Maverick to complete the development as approved incorporating a library by June 2017. In addition the consent will be subject to an obligation to provide a library in a Section 106 Agreement and furthermore the Agreement for Lease will be registered at the Land Registry which ensures any successors in title will be obliged to complete the development in accordance with the planning consent. If planning consent is not achieved by 31 March 2015, the Agreement for Lease can be extinguished and it will

be open to Maverick to consider other options including pursuing Permitted Development Rights for change of use from offices to residential for which a prior approval application has also been submitted.

- 6.4 Whilst the developer is prepared to provide a turn-key library, some project management costs will be incurred by the Council. This is required for the preparation of an appropriate Specification and to ensure compliance by monitoring the fit-out of the library during construction. This will provide the Council with sufficient project assurance. Project management and professional fees are estimated at around £30,000 and will be supported via the Libraries Capital Programme.
- 6.5 Investment in a new library at Church End is required to ensure the long-standing requirements of the Library Service are met. Whilst Children's Centre investment in the current Church End library in 2010 provided a moderately refurbished children's library, the condition survey undertaken by Asset Management in the same year indicated a general maintenance backlog of approximately £98,800. This includes required building related, electrical and mechanical maintenance work. A further sum estimated at £105,000 would be required to make the site DDA compliant.
- 6.6 Moreover, the current site has little capacity to generate additional revenue with no community space for hire. The proposed new library will have 3 rooms for hire with an anticipated annual income comparable to that received at larger libraries such as Chipping Barnet Library.
- 6.7 Co-location and a commercial partnership mean the Library can be built at a lower cost than a stand-alone facility. Sharing the building also offers an opportunity to reduce on-going revenue costs. Negotiations regarding service charge costs are on-going. Costs will depend upon the nature of the services to be provided which is still to be ascertained. One potentially expensive service item that requires further investigation involves air conditioning and a decision will have to be made whether to rely on the Landlord's system or on internal comfort cooling.
- 6.8 **IT** - Workstations and all associated network cabling for the new facilities will be included as part of the turn-key library provided by the developer.
- 6.9 **Property** - The very nature of this project involves a change in occupation arrangements for Church End Library in that it will be relocated to a new purpose built facility. Proposed Heads of Terms are detailed in Appendix 1. If as a result of the new development the existing Church End Library becomes surplus to requirements it could be considered for disposal with the potential to realise a capital sum in excess of £1 million. A number of parties have already expressed an interest and have submitted offers.
- 6.10 **HR and strategic HR issues** - There are no HR issues associated with the project that affect staff contractual terms or conditions, or any staff decisions that need to be made. No consultation with trade unions is believed to be required. The project has no strategic HR issues.

7. LEGAL ISSUES

- 7.1 The Council has the power to acquire property by agreement, including leasehold interests, pursuant to section 120 of the Local Government Act 1972.
- 7.2 The agreement for lease will be conditional upon planning permission being

granted to Maverick for their scheme which includes a library on the ground and lower ground floors. Either party will be able to terminate the agreement if planning consent is not granted by March 2015.

- 7.3 The Council in entering into an agreement for lease with Maverick will do so in its capacity as landowner. The Council's decision-making as local planning authority cannot be influenced by CRC's decision in respect of the subject matter of this report. A decision to grant or refuse planning permission in respect of Maverick's submitted application will be taken by the Council's Planning Committee in due course.

8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)

- 8.1 The Council's constitution in Part 4, Responsibility for Functions, paragraph 4.6 states the functions delegated to the Cabinet Resources Committee including all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council. Cabinet Resources Committee approval will be required to authorise the rental of the ground and lower ground floors of Gateway House. A subsequent decision will be sought on the disposal of the existing library should the project proceed. Disposal will take place once the new library is ready to open. Approval is now being sought to conclude the negotiations regarding Heads of Terms as detailed in this report.

9. BACKGROUND INFORMATION

- 9.1 The current Church End library is located on Hendon Lane, N3 and has around 3,342 weekly visits, 14,517 registered borrowers and annual issues of around 111,129.
- 9.2 Development of the current site is constrained as it is surrounded by church land. The library operates over two floors with reference, study and computer facilities located on the first floor. However, the current building has only a very small lift that is not DDA compliant and is not suitable for general public use without supervision.
- 9.3 The Strategic Library Review approved by Cabinet in July 2011 endorsed re-provision of the library, emphasizing the need for 'a new fit-for-purpose, accessible library in Church End.'
- 9.4 The search for a new library has been intermittently going on for a number of years. Property Services were initially asked to investigate the possibility of relocating the library when they were requested to find a suitable building for the Customer Services Centre in the East of the Borough in 2008. Gateway House was one of a number of buildings investigated throughout 2009 and 2010 and thus there was an awareness that the owners eventually wanted to carry out a development or a refurbishment of the building.
- 9.5 Following the receipt of the first offer in January 2012 the Council became more active in their search for an alternative site for the Church End Library. The Council investigated the marketing of the offices by Mavericks' agents that related to a potential change of use to residential. A short report was prepared advising that the quoted rentals were unrealistically high and there was little chance the building could

be let at such levels. In any event the office accommodation would have required extensive and expensive refurbishment to stand any chance of a successful letting and consequently was not viable. There followed discussions that lead to meetings with Maverick's representatives and with Metropolis, Maverick's architects, and the concept of a library being accommodated in their scheme was raised. The Council's library requirements were conveyed to Metropolis and a number of concept drawings were provided which led to negotiations for a lease.

- 9.6 Initially the terms involved a deal at a market rent but this was revised when Maverick concluded that any future application for a change of use might stand a greater chance of success if a library was to be accommodated. Thus the basis of the deal proposed changed significantly and the terms currently being discussed have been set out in the attached exempt part of this Report.
- 9.7 Approval is now being sought to conclude the negotiations regarding Heads of Terms as detailed in this report and to instruct HB Public Law once these have been finalised to enter into an agreement for lease.
- 9.8 Agreement on Heads of Terms is timely. A planning application for redevelopment of Gateway House including provision of a new library facility was registered in October 2013.

10. LIST OF BACKGROUND PAPERS

10.1 Proposed Heads of Terms

10.2 Draft plans

Cleared by Finance (Officer's initials)	JH 13.02.14
Cleared by Legal (Officer's initials)	IDG 14.02.14

Appendix 1

Summary of the Heads of terms of the Agreement for Lease as currently drafted

- 1 Demise – The Library property as proposed within the pre-application scheme submitted to the Barnet Planning department for approximately 840 square metres net area, located on the ground and lower ground floors. Areas shown on the plans submitted with the planning application show 509.7 sq metres on the ground floor and 332.5 sq metres on lower ground thus totalling 842.2 square metres. Copies of the plans are attached.
- 2 Lease to be for a term of 125 years on an effectively full repairing and insuring basis from completion of the development (Completion is defined below). The annual rent to be paid is detailed in the Exempt part of the report.
- 3 Barnet Council will contribute a fair and reasonable proportion of buildings insurance premium and service charge in relation to repair and maintenance to common areas which would include for the structure above the Library, the service road, car park, common conduits etc. The Council still need to examine which service charge elements are to be re-chargeable (to exclude anything relating to the upper parts), whether fees and commissions are included and so the insurance premium and service charge contribution costs have yet to be established. Provisional estimates are £4k for insurance and £24k for the service charge (without air conditioning)
- 4 The terms will be documented by an Agreement for lease. An Agreement for Lease will include an obligation on Maverick Estates to obtain planning permission for the mixed development including a library with 2 retail units, residential and offices above and will have a long stop date for obtaining permission to include for any appeal and JR process.
- 5 The long stop date proposed for March 2015 terminates the agreement. Maverick were not prepared to negotiate on the date, stating that they have a limited timeframe to take advantage of their Permitted Development Rights, that will have to be exercised by May 2016.
- 6 The long stop date enables the Developer to terminate the Agreement if an acceptable planning consent is not obtained. Planning is not formally granted until a section 106 agreement has been completed. Property Services believe the time frame gives the developer too much scope to terminate and resubmit a new scheme, either without a library, or with a significant reduced area or even attempt to re-negotiate the terms of the lease. Ways of overcoming the time limit problem have been proposed, involving planners confirming there is an acceptable scheme and agreeing heads of terms for any section 106 Agreement prior to the Planning Committee and the eventual failure to sign the Section 106 would be a material default leading to a claim for compensation.
- 7 In addition the agreement will include mechanics for dealing with the detail of the fit out/construction design/specification/timescale and provision of furniture and equipment for the new Library. The Council will be given a 4 month period after signing the Agreement for Lease to draw up an interior design for the Library which will be subject to landlord approval not to be unreasonably withheld. The Landlord is offering a “turn key” finish (ready for immediate use and occupation) but Maverick are limiting their contribution to a maximum of £800,000 for fitting out and £250,000 for the furniture and equipment of the library. The figure is based on their QS estimate of a library having a gross area of 907 sq metres at a rate of £1180 per sq metre. Thus it is essential that Library Services firm up their costs as soon as possible so we can agree the budget level. Also a decision is still to be made on the

provision of air conditioning or comfort cooling and whether it should be stand alone or using the landlord's common system

- 8 Completion of Long Leasehold to be within 14 days of receiving written notice from the Landlord with copy of the Practical Completion certificate for the Library development. To be extendable in case of excessive snagging.
- 9 The Council will have the right to sublet either the whole or part of the property by way of whole or part floors, and notice of any such arrangement will need to be provided to the Landlord at the grant of any sublease. Barnet will be permitted to assign their lease, subject to Landlord consent and the landlord would require the right of first refusal to purchase the lease, exercisable within 2 months of the notice informing them of marketing intention or an offer received. Sub-lettings and assignments will only be permitted to other D1 uses for the first 20 years and then extended to A1, A3, B1 and D1 uses.
- 10 Car Parking rights to use 2 parking spaces
- 11 Costs, each party to bear their own Legal costs for dealing with documentation

Appendix 2 (Plan of Gateway House development showing Barnet Library on Ground and Lower Ground Floors)

