



APTHORP CARE HOME LEASE SURRENDER 17th January 2023

Title	Apthorp Care Home, Nurseryman's Road, N11 1EQ
Report of	Chair of the Housing and Growth Committee
Wards	Brunswick Park
Status	Public with accompanying Exempt Report. Exempt from publication in accordance with paragraph 3 of Schedule 12A of the Local Government Act 1972 on account that it contains information relating to the financial or business affairs of any particular person (including the authority holding the information).
Urgent	Yes
Key	Key
Enclosures	
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Summary

A break notice was served to terminate the council's lease of Apthorp Care Home, Nurseryman's Road, N11 1EQ to take effect on 28th March 2023. To ensure compliance with the terms of the break clause, a Deed of Surrender is required to formally document the lease termination and to conclude all council liabilities.

Officers Recommendations

1. That the Committee approves the surrender payment costs, and;
2. That authority be delegated to the Deputy Chief Executive, in consultation with the Chair, to enter into a Deed of Surrender with Catalyst Housing Ltd to terminate the Council's lease (dated 28 March 2013) as soon as possible;



1. Why this report is needed

- 1.1 The council is the Tenant at Apthorp Care Home on a 21 year lease from 28th March 2013. The landlord is Catalyst Housing Ltd;
- 1.2 In Autumn 2021, Adult Social Care made the decision to decant the home and consequently a break notice was served to terminate the lease on 28th March 2023, giving the required 18 months notice;
- 1.3 The break clause includes various conditions that the council has to meet in order for the break to be valid and the lease to terminate. The key ones are Vacant Possession and Reinstatement (dilapidations/repair liability). As these conditions can be disputed, there is a risk to the council that the Landlord argues that the lease has not terminated. The next opportunity for the council to end the lease would then be at the break date on 28th March 2028.
- 1.4 Thus, terms have been agreed between the parties to enter into a Deed of Surrender to formally document the termination of the lease and all liabilities of each party to one another;
- 1.5 The terms of the surrender are:
 - Deed of surrender to complete as soon as possible (target 27th January 2023);
 - Council to pay rent up to 28th March 2023 (i.e. the break date);
 - Reinstatement/Dilapidations payment (see exempt report);
 - All loose fixtures and fittings i.e. furniture to be removed;
 - Full and final settlement of all obligations in the lease;
 - Council to pay Landlord legal fees for surrender.
- 1.6 There are costs to clear the property of furniture etc of approx. £25-30,000 and landlord fees are estimated to be no more than £6,000, both of which will be funded from Estates Managed Budgets.

2. Reasons for recommendations

- 2.1 As the property is no longer in use, the council needs to end all of its liabilities under the lease i.e. rent and repair.
- 2.2 To de-risk the council's position, completing the Deed of Surrender will conclude this matter and all council liabilities.

- 2.3 Rent is to be paid up until the contractual break date, but the Landlord is willing to accept an earlier surrender. This will save the council approx. £13,000 per month in security costs, and additional council tax costs. Therefore, a surrender date earlier than the break date is advantageous to the Council and will be negotiated, if at all possible.
- 2.4 Capita were appointed to report on the council's reinstatement obligations and potential liability. A payment has been agreed with the Landlord in lieu of this liability and is set-out in the exempt version of this report.

3. Alternative options considered and not recommended

3.1 Do nothing

The break conditions included that the council had to leave the premises with "vacant possession" and in "good and substantial repair and condition". If this is not carried out then the liabilities under the lease would continue until at least the next break date in March 2028. As the home is not in use, this is not an acceptable outcome.

3.2 Satisfying Break Conditions

The Vacant Possession condition requires the property to be empty of people and tenant's fixtures and fittings etc. Case law has shown that leaving minimal items is still acceptable, but substantial amounts of rubbish amounted to a breach. So, this should be capable of being satisfied.

The reinstatement/repair condition is far more challenging as a landlord could easily find a single item in disrepair and claim the condition has not been met. The council could carry out a complete refurbishment but with no guarantee that the condition would be met by the break date if there were outstanding issues or delays to works. So, this is an expensive option which doesn't remove the risk of the lease continuing beyond the break date.

To mitigate this risk, the internal Care Home Board agreed a recommendation in September to not carry out the works and to instead seek a negotiated settlement, in order to get certainty on the lease termination at a reduced cost.

3.3 Purchase Freehold

The lease, and its liabilities, would be terminated if the council purchased the freehold. The asking price was £17m, which is substantially above the land value and without a business case for using the property, there is no justification for this option.

3.4 Refurbish and re-occupy the home

The landlord has a break in March 2028 (and rolling thereafter), so there is no certainty that the council could continue to occupy and derive value for money from the refurbishment, which would have cost a substantial sum. A purchase or new lease would have needed to be negotiated to spread the cost/benefit over a much longer period.

4. Post decision implementation

- 4.1 Ensure property is cleared of furniture, fixings and rubbish;
- 4.2 Terminate security contract;
- 4.3 Transfer dilapidations payment i.e. surrender premium to the landlord's solicitor;
- 4.4 Complete the Deed of Surrender with a target date of 27th January 2023.

5. Implications of decision

5.1 Corporate Priorities and Performance

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

The current rent on the property is £255,543 which is reviewed annually at a 3.5% fixed increase. If the lease is not terminated (over the next 5 years to the next tenant break) the rent will increase to £303,505 pa, with a total rent liability of approx. £1.42m. Council tax (not business rates), insurance and security costs would also be incurred if the surrender does not complete. Building maintenance and repair would add further costs to the council, with a dilapidations payment (or works) still required. This recommendation therefore reduces the council's liabilities.

5.2.1 Source of Funding

This will be a capital payment, so a bid has been tabled at Capital Strategy Board in January to be ready for inclusion at the P&R in February. Due to timings, the payment will be made from the Care Homes Capital Budget which will then be reimbursed once approval at P&R has been given.

5.3 Legal and Constitutional References

- 5.3.1 Under Article 7 of the council's constitution, Housing & Growth Committee's remit includes Housing (including: housing strategy; homelessness; social housing and housing grants; private sector housing and leasing and enforcement; HRA Revenue Account and Capital Programme); and Asset Management.
- 5.3.2 Under Table A of Article 10 – Decision Making – of the council's constitution, settlements on a property for a cost in excess of £500,000 are a 'Key Decision' and are to be approved by the Housing and Growth Committee. [Barnet Council Constitution, Article 10 – Decision making.](#)

5.4 Insight

- 5.4.1 Not applicable

5.5 Social Value

- 5.5.1 There has been a consideration of social value activities within the surrender process,

and a local charity have been invited to clear the building of furniture that would be of use to them, in order to assist in presenting the building to Catalyst in vacant possession.

5.6 Risk Management

5.6.1 As set out above, entering into a Deed of Surrender provides the council with certainty that all other options do not provide.

Option	Activity required and risk	Risk to the organisation (low, medium, high)
Do nothing	Lease continues until March 2028 if council serves the required break notice, or beyond.	High – this scenario would be unacceptable to LBB as the organisation would be subject to a significant rental liability for an unoccupied building.
Meet break conditions within lease	Principally to carry out works that would leave the building in “substantial repair and condition”.	High – The decision was made in September not to pursue this strategy as there was not enough time to complete works, or guarantee the Landlord would agree that the obligations had been met.
Enter into Deed of Surrender including financial settlement for dilapidations liability	Negotiate with Landlord to agree a sum in lieu of council’s dilapidations liability.	Lowest risk – if successful then lease terminates at an agreed cost in advance of the break date reducing uncertainty (financial and legal) and significant additional management time to resolve.

5.7 Equalities and Diversity

5.7.1 Pursuant to the Equality Act 2010, the council and all other organisations exercising public functions on its behalf must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advance equality of opportunity between those with a protected

characteristic and those without; 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. It also covers marriage and civil partnership with regard to eliminating discrimination.

5.7.2 We have considered whether these proposals will give rise to any issues under the Council's Equalities or Diversity policies and do not consider that there are any such concerns or impacts

5.8 Corporate Parenting

5.9 Not applicable

5.10 Consultation and Engagement

5.10.1 Not applicable

5.11 Environmental Impact

5.11.1 Not applicable

6. Background papers

6.1 Apthorp Care Home Delegated Powers Report for transferring residents to alternative homes:

6.2 Link to paper - <https://barnet.moderngov.co.uk/documents/s66380/Apthorp%20Care%20Home%20DPR.pdf>