

ACTION TAKEN BY CABINET MEMBER (EXECUTIVE FUNCTION)

Subject Lease of Land Adjacent to 239 West Hendon Broadway NW9 7DJ (including properties 233 and 241)

Cabinet Member Deputy Leader of the Council and Cabinet Member for Resources

Date of Decision 30 October 2013

Summary To approve the grant of a lease of the Land Adjacent to 239 West Hendon Broadway including properties 233 and 241 to a private charity school (West Hendon Estates Ltd) for a term of 10 years, with a break clause with 12 month notice period.

Officer Contributors Suzanna Lewis – Property Services

Status (public or exempt) Public

Wards affected West Hendon

Enclosures Plan No: 2554/3

Reason for exemption from call-in (if appropriate) N/A

Key decision No

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1. RELEVANT PREVIOUS DECISIONS

- 1.1 Delegated Powers Report 28 November 2011 and Variation Delegated Powers Report 24 March 2012 – resolved to accept the surrender by deed of the two leases to the premises granted to Hendon And District Ex Serviceman's Club Limited.

2. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 2.1 The Corporate Plan 2012-13 has a corporate priority of 'Better Services with Less Money'. One of the strategic objectives of this corporate priority is to make the 'best use of our collective resources'
- 2.2 The Council's Estates Strategy 2011-2015 sets out our commitment to continually review the use of council assets so as to reduce the cost of accommodation year on year.

3. RISK MANAGEMENT ISSUES

- 3.1 Not proceeding with the letting will increase the risk of further building dilapidation and continued decline in an unused facility which potentially attracts misuse.
- 3.2 I consider the issues involved are unlikely to raise significant levels of public concern or give rise to policy considerations.

4. EQUALITIES AND DIVERSITY ISSUES

- 4.1 The proposed recommendation has been negotiated in conjunction with West Hendon Estates Ltd whose representatives consider that it would meet the education aspirations of the local community.
- 4.2 Under the Equality Act 2010, the Council must have due regard to the need to: a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; b) advance equality of opportunity between those with a protected characteristic and those without; c) promote good relations between those with a protected characteristic and those without. The 'protected characteristics' referred to are; age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation. It also covers marriage and civil partnership with regards to eliminating discrimination.
- 4.3 The proposal does not compromise any issues under the Council's Equalities Policy and do not compromise the Council in meeting its statutory equalities duties.

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

- 5.1 There are none. The financial and property implications are set out in section 8.

6. LEGAL ISSUES

- 6.1 Local authorities are given powers under Section 123 of the Local Government Act 1972 (as amended) to dispose of land. Moreover under S123 (2), it provides “Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained”
- 6.2 Consideration will need to be given to any existing schools legislation that may impact upon the Council operating the break clause and the Council Officers will need to satisfy themselves of the position in that regard prior to the grant of the Lease

7. CONSTITUTIONAL POWERS

- 7.1 Council Constitution, Responsibility for Functions, Section 4 (Responsibility for Executive Functions) - paragraph 4.2 details the responsibilities of Cabinet Members may discharge any function of the Executive.
- 7.2 Council Constitution, Management of Assets, Property and Land Rules, Appendix 1, Table A sets out the authorisation thresholds for asset acquisition or disposal. Paragraph 8.1 states that “the method by which an Asset is acquired or disposed of should be based upon market testing to ensure that Best Consideration is obtained wherever possible”.

8. BACKGROUND INFORMATION

- 8.1 The existing premises, the land adjacent to 239 West Hendon Broadway which includes a ground floor shop with rear yard know as 233 West Hendon Broadway, and former snooker hall, known as 241 West Hendon Broadway, is located on the west side of West Hendon Broadway part of the site falls within the West Hendon Regeneration Area.
- 8.2 The land is outline in red on the attached plan, having an area of some 0.09Ha/0.25 acres. The freehold is owned by the Council.

- 8.3 The subject properties adjoin 239 West Hendon Broadway. The latter property was sold by the owners in August 2012 to the proposed tenant. The previous owners of 239 West Hendon Broadway surrendered the subject properties back to the Council on 24 March 2013. The configuration of the properties are that they historically were linked and therefore there would need investment to enable independent lettings to operate functionally at this site. The property has been subject to dilapidation and is in a poor condition, and requires investment to get the buildings into condition that can be let.
- 8.4 The tenant as owner of 239 West Hendon Broadway, has been able to obtain a temporary planning permission to be able to operate the site in a school use. The application also includes the land and premises subject of this letting proposal.
- 8.5 The proposed school will provide additional school places. These additional school places will help ensure that there is sufficient provision in Barnet to accommodate the unprecedented demand for school places, currently being experienced at the primary level.

8.6 Results of Market Testing

- 8.7 A marketing exercise was undertaken through the Council Website as well as adverts placed in a local paper. Formal bids were submitted. This was done to establish the market position.
- 8.8 The marketing campaign has resulted in identifying the challenges for this site which, when considered against planning criteria and the Council's objectives in the current economic climate, potentially leave this property vulnerable. The market is constrained as there has to be the ability to break any agreement in the short term to allow for the West Hendon Regeneration works and scheme not to be compromised.
- 8.9 The recent changes, in September 2012, in strengthening of the Squatters legislation in relation to residential property has resulted in squatters seeking out vacant commercial premises to occupy which have not afforded the same level of protection. This has meant that vacant commercial property has to be secured to higher levels of risk. This solution mitigates for this.
- 8.10 Due to the current economic climate, the increased risks for vacant commercial buildings, and the nature of this property a solution is proposed for this property to better protect this building.
- 8.11 It is the view of the Valuation Manager that the disposal in accordance with the recommendation will meet the Council's statutory duty to obtain best value referred to in 6.1 above.

8.12 Head of Terms in principal have been agreed as follows:

THE PROPERTY:	The land adjacent to 239 West Hendon Broadway, as shown edged red on the attached plan.
RENT:	£30,000 per annum.
RENT FREE PERIOD:	12 Months date to be agreed
RENT REVIEW:	5 Yearly
TERM:	10 years from date to be agreed, to be contracted out of the 1954 Landlord and Tenant Act.
USER:	Premises to be used for a school use (subject to further formal legal checks) and kitchen toilets and entrance ways can be also be used by the Tenant for the community hall on adjoining freehold
MAINTENANCE AND REPAIR:	The tenant to keep in a good and substantial repair and condition and keep clean and properly maintained throughout the term. The tenant is to be responsible for internal repairs of the demise including electrical wiring, heating and plumbing and Statutory Obligations.
SERVICES	The tenant is to be responsible directly for the gas, electricity and water services provided to the premises, and rates.
ALTERATIONS:	The Tenant shall not construct any new buildings or structures on the premises or make alterations, additions or improvements to the premises without the previous written consent of the Landlord not to be unreasonably withheld.
ALIENATION:	Not to assign, underlet or part with, or share possession of any part of the premises. Not to assign the whole of the premises without the prior consent of the Landlord not to be unreasonably withheld.
INSURANCE:	The Landlord is to insure the buildings in respect of the usual perils and the tenant is to reimburse the premiums properly paid.

IMPROVEMENTS:	None of the existing facilities are to be treated as tenant's improvements at the commencement of the term
BREAK CLAUSE:	To enable the Landlord to implement if Regeneration Timescales change with a 12 month notice period in writing.
ADVERTISEMENT RIGHTS:	With regard to any regularised advertisement rights, the Landlord grants the tenant the opportunity to secure the control of these rights and to agree a 50% share of any income generated.
AGREEMENT COSTS:	The tenant shall cover the legal fees in relation to the preparation of the new lease. Legal Fee: £2,000 fixed fee.

The lease will include such other terms or possible variations of the above that may be agreed between the parties but the lease will remain substantially in keeping with the above head of terms.

The subject is a special circumstance in light of the historic use of this property and its physical configuration. This sort of proposal if successful may bring a wider opportunity to this location in terms of regeneration, albeit this proposal regulates land.

There is an opportunity for the Council to secure a vulnerable property and create activities which will enable use of the facility.

9. LIST OF BACKGROUND PAPERS

9.1 None.

10. DECISION OF THE CABINET MEMBER(S)

I authorise the following action

10.1 The Council to enter into the Lease with West Hendon Estates Limited, in keeping with the provisions of this Report.

Signed

A handwritten signature in dark ink, appearing to read 'D. Thomas', with a horizontal line extending to the right.

**Councillor Daniel Thomas,
Deputy Leader of the Council and
Cabinet Member for Resources &
Performance**

Date

30 October 2013
