	ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER 19/6/2014
Title	An option to purchase the freehold interest in Barnet House, 1255 High Road, Whetstone, N20
Report of	John Hooton – Deputy Chief Operating Officer
Wards	Totteridge
Status	Public and accompanying Exempt report
Enclosures	None
Officer Contact Details	Judith Ellis - Valuation Manager Judith.ellis@barnet.gov.uk Michael Sudlow - Property Director, CAPITA Michael.sudlow@capita.co.uk

Summary

The Council holds an underlease with 18 years unexpired in Barnet House, which is currently partially occupied as part of the civic estate. The property is also subject to a headlease with 69 years unexpired. The freehold interest was recently marketed inviting offers on a number of bases, which were considered and resulted in an offer for an option agreement being submitted. The freeholders have accepted the Council's offer and authority is now sought to complete the option agreement.

The Council's office accommodation is currently under review to ensure an appropriate and financially efficient estate is achieved. Barnet House forms part of the current estate and ownership of the freehold would give greater control over the long term opportunities available to the Council, whether continuing in occupation or vacating the building. Completion of the option agreement is the first step towards potentially acquiring the freehold.

Should, the Council decide to acquire the freehold during the two year option a further report will be submitted. If the Council does not acquire the freehold during the two year period the option agreement will expire with no further financial liability on the Council.

Decisions

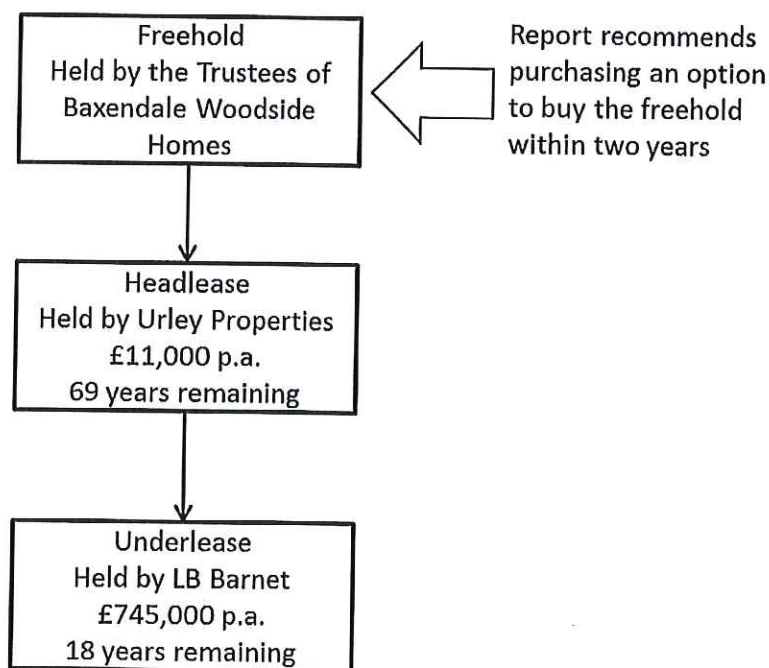
1. That the council complete an option agreement to purchase the freehold interest in Barnet House on the terms detailed in this and the accompanying exempt report.

1. WHY THIS REPORT IS NEEDED.

1.1 Barnet House has three principal property interests as follows:

- Freehold Interest: Held by the trustees of Baxendale Woodside Homes.
- Subsidiary Head leasehold interest; held by Urley Properties for 120 years expiring in 2083 at a passing rent of £11,000 per annum. Subject to increases at 2% of the rack rent.
- Sublease held by London Borough of Barnet for a term of 35 years, expiring in September 2032, without break clauses, and subject to 5 yearly rent reviews at a passing rent of £745,000 per annum

Barnet House ownership structure



- 1.2 The freeholder, a charitable trust has offered the freehold interest for sale by informal tender through their retained agents Maunder Taylor. Offers were invited on three alternative bases as follows:

1. An outright purchase of the freehold
2. A conditional purchase of the freehold
3. An option to purchase

- 1.3 Given that the Council's occupational lease has 18 years un-expired the potential future liabilities up to lease expiry can be broadly summarised as follows:

1. Rental £12.6 million assuming no uplifts on review.
2. Current running costs £1.2 million per annum.
3. Current repairing liability £5.4 million estimated with the potential for a similar sum before lease expiry.
4. Holding costs if vacant circa £660,000 per annum (plus rental).

- 1.4 While the Council is considering its future operational requirements, the potential to either vacate Barnet House or relocate and fully utilise the building are options being considered. In the light of the onerous holding costs set out above, it is considered that the authority should consider taking steps to secure ownership / control of the freehold interest in order to protect the authority from future increases in holding costs

- 1.5 The freehold contains an absolute bar against any change of use by the subsidiary interests, and therefore limits the head lessee to let/occupy Barnet House for B1(office) uses. Under current market conditions B1 is unlikely to be sustainable, and as a result, whoever holds the freehold will control future use of the site in the long term, and benefit from the change of user.

- 1.6 As a result it is considered that the Council should take any reasonable proactive steps to improve its position in relation to the long term liability and that the possible ownership of the freehold interest would, in the long term, be advantageous. The options considered and rejected are detailed in paragraph 3 of this report and the preferred route detailed below was pursued;

- 1.7 A conditional purchase / option to purchase - Following discussions with the freeholder, this was considered the optimum way forward and would enable the Council to submit a proposal to the charitable trustees without having to commit to an immediate capital payment, and would provide a window of opportunity to conclude the accommodation strategy and to open discussions with the Head Lessee to determine whether a development opportunity is available to all parties, should this be considered as the preferred option.

- 1.8 An option was submitted to the freeholder on 7th March 2014, the closing date for offers, on the terms detailed below and in the accompanying exempt report.
- a) An option for a period of 24 months with an initial payment of £25,000 for the first 12 month period with a further payment of £25,000 if the Council chooses not to exercise its right of termination at expiry of the first year.
 - b) A payment towards the trustee's legal costs in the sum of £12,500 plus VAT at the applicable rate, on signature of a binding option agreement.
- 1.9 The Council's offer was accepted by the freeholder and HB Public Law have been instructed to complete the option agreement on the terms detailed in this report, and accompanying exempt report.

2. REASONS FOR DECISIONS

- 2.1 To ensure the Council proactively seeks to protect its interests and optimise the opportunities available for the building which it currently occupies.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 3.1 Do nothing. If the freehold is acquired by a third party control over the future opportunities would be lost, and the Council could be required to pay to release its obligations if it wished to vacate the building.
- 3.2 Submit an unconditional bid (ie An outright bid for the freehold). This was not considered to be a viable or realistic alternative given that there is no guarantee that conversations with the head lessee will be productive.

4. POST DECISION IMPLEMENTATION

- 4.1 The option agreement will be completed, and the opportunities for the building will be examined as part of the accommodation strategy. Officers will also engage with the head lessee. A further report will be submitted to Assets, Regeneration and Growth Committee if it is recommended that the option to buy the freehold should be exercised.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Corporate Plan 2013-16 has a strategic objective to "promote responsible growth, development and success across the Borough "

- 5.1.2 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.

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

- 5.2.1 Following the acceptance of the Council's proposed option by the freeholder, there is a financial commitment of £25,000 in year 1 plus £12,500 fees, and a further £25,000 in year 2 if the Council chooses not to exercise its right of termination at expiry of the first year. Should the council not secure a satisfactory outcome in terms of the future opportunities for the building, the option will expire, without any financial benefit to the Council, or further liability.
- 5.2.2 Details of the proposals to implement the option are set out in the exempt report.

Legal and Constitutional References

- 5.3.1 The Council has the power to acquire land interests under s120 of the local Government Act 1972.
- 5.3.2 Due diligence will be carried out on the legal title prior to conclusion of a binding option agreement.
- 5.3.3 Council Constitution, Management of Assets, Property and Land Rules Appendix B Table 2 states that acquisition £25,001 to £100,000 can be authorised by delegated powers by Director or Deputy Chief Operating Officer summary DPR in consultation with the Chairman of the appropriate Committee.
- 5.3.4 This is not an outright acquisition of a property or land asset but an option to acquire at a later stage. The option will not be exercised unless there is a strong business case which has been approved by the Asset, Regeneration and Growth Committee (ARG). It was therefore felt prudent to inform ARG of potential future decision. However the timing of the Next ARG meeting does not meet the deadline of 27th June 2014 required to secure the option. We are therefore requesting approval using a full DPR signed by the CEO in consultation with the Chair of the Asset, Regeneration and Growth Committee.
- 5.3.5 The Chairman of ARG has been consulted.

5.4 Risk Management

- 5.4.1 The Council's option imposes a financial commitment of £25,000 in year 1, plus £12,500 fees and a further £25,000 in year 2 if the Council does not exercise its right of termination at expiry of the first year. Should the Council not secure a satisfactory outcome the option will expire, without any financial benefit to the Council.
- 5.4.2 Failure to complete the option to secure the freehold interest, will limit opportunities to control the future of the site, share in any potential development value should this be available, and limit the Council's ability to negotiate suitable terms to vacate the building before expiry of the under lease should this be the preferred option.

5.3 Equalities and Diversity

- 5.3.1 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.
- 5.3.2 At this stage the proposal does not raise any issues under the Council's Equalities Policy and does not have a bearing on the Council's ability to demonstrate that it has paid due regard to equalities as required by the legislation. No immediate equality impacts are anticipated as a result of this proposal. There may be a future equalities impact for example, on staff, community partners or customers should the council decide to vacate the building. This impact will be assessed and considered in decision making at the appropriate time as proposals take shape to allow members to take account of this in decision making.

5.4 Consultation and Engagement None

6. BACKGROUND PAPERS

7. DECISION TAKER'S STATEMENT

- 7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which*

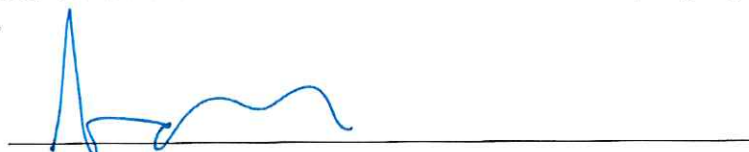
includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations.

8. OFFICER'S DECISION

I authorise the following action

- 8.1 That the option agreement to acquire the freehold interest in Barnet House is completed on the terms detailed in this and the accompanying Exempt Report.

Signed



Date

25-6-14

REPORT CLEARANCE CHECKLIST

(Removed prior to publication and retained by Governance Service)

Report authors should engage with their Governance Champion early in the report writing process and record the date below. If the decision/report has been reviewed at an internal board please record the date and name of the meeting (e.g. SCB). Otherwise enter N/A. All reports must be cleared by the appropriate Director/AD, Legal, Finance and Governance as a minimum. **Legal, Finance and Governance require a minimum of 5 working days to provide report clearance. Clearance cannot be guaranteed for reports submitted outside of this time.**

AUTHOR TO COMPLETE TABLE BELOW:

Who	Clearance Date	Name
Governance Champion		
Director / AD / Lead Commissioner	19 June 14	C. Shaw
Enabling Board / Delivery Board	4 June 14	Asset & Capital
Commissioning and Policy		
Equalities & Diversity		
HR Business Partner		
Strategic Procurement		
HB Public Law	19 June 14	Linda Cohen

Finance	20 June 14	R. Hodson
Governance	19 June 14	N. Andrews