

	<h2 style="margin: 0;">Urgency Committee</h2> <h3 style="margin: 0;">17 October 2016</h3>
<p style="text-align: right;">Title</p>	<p>Barnet House Freehold Purchase and Early Release from the Occupational Lease at Barnet House</p>
<p style="text-align: right;">Report of</p>	<p>Director of Resources</p>
<p style="text-align: right;">Wards</p>	<p>Totteridge</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Urgent</p>	<p>Yes</p>
<p style="text-align: right;">Key</p>	<p>Yes</p>
<p style="text-align: right;">Enclosures</p>	<p>Public (with separate exempt report)</p>
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<h2 style="margin: 0;">Summary</h2>
<p>Barnet House is in need of significant repair and refurbishment, should the Council remain in the building until the end of its lease which expires in 2032. Consequently, the Colindale business case identified the preferred option to divest of Barnet House by early surrender of the lease and relocate staff to the new Council Offices, with a target date of Dec 2018.</p>
<p>In order to achieve this, this report seeks committee approval for officers to exercise the option to purchase the Barnet House freehold and to contract with the parties in accordance with the commercial approach presented in the exempt paper.</p>
<p>Achieving a negotiated settlement for an early exit from Barnet House reduce the Council's exposure to significant future costs and liabilities.</p>
<p>Assuming the recommendations in this paper are approved, the option to purchase the freehold will be exercised enabling a commercial transaction that meets with the Council's statutory obligations and provides significant benefits to the Council in the longer term.</p>
<h2 style="margin: 0;">Recommendations</h2>

- 1. That the Committee approve the exercise of the option to purchase the Barnet House freehold by exercising the option notice by the 24th October 2016, on the terms set out in the associated exempt report.**
- 2. That the Committee approve the disposal of the underlease of Barnet House by way of a surrender subject to agreement of terms.**
- 3. That the Committee delegate authority to the Director of Resources in consultation with the Chairman of ARG, to conclude negotiations and purchase the freehold on behalf of the London Borough of Barnet and to authorise its subsequent disposal on the terms set out in the associated exempt report and to include considering the Council's tax position upon the exercise of the Option**
- 4. That the Committee delegate authority to Director of Resources in consultation with the Chairman of ARG, to negotiate a settlement for early surrender of the Barnet House underlease on behalf of the London Borough of Barnet.**
- 5. That the Committee delegates authority to the Director of Resources in consultation with the Chairman of ARG, to exercise the option to purchase the freehold of the Barnet House and subsequently dispose of the freehold on the terms set out in the associated exempt report and conclude the final early surrender settlement agreement.**

1. WHY THIS REPORT IS NEEDED

- 1.1 Barnet House is a leased-in office building for Barnet Council housing council staff and staff from other partner organisations. The building comprises circa 76,000 sq.ft. of office accommodation spread over 11 floors in total, with two additional floors on an adjacent annex. The building has surface level and under-croft car parking which can accommodate around 280 cars mainly for staff parking during the week days and members of the public at weekends. Members of the public regularly use the building to interact with Council services including planning, housing and adult services.
- 1.2 Barnet House is a 1960's reinforced concrete building providing very basic and sub-standard office accommodation. The building is in need of significant refurbishment to modernise and update, should the Council wish to remain in the building until the end of its lease which expires in 2032. If the Council were to retain the lease to Barnet House significant refurbishment costs would be incurred as a result of needing to comply with the requirement to bring the Energy Performance Certificate rating for the building up from Grade F to a minimum of Grade E to enable the Council to Sub Let or Assign our interest. This could include replacing all the windows with double glazing, upgrading all heating systems & controls, and installing comfort cooling. Furthermore, it is likely that electrical wiring of the whole building would be necessary.

- 1.3 This report seeks Council approval to exercise an Option Agreement to purchase the freehold of Barnet House. It also seeks authorisation of delegated powers to the Chief Operating Officer to negotiate the final the lease within defined financial commercial details of the purchase and settlement to allow early surrender of parameters set out in the exempt committee paper.
- 1.4 The recommendations in this report will address the need to mitigate, the requirement of incurring significant costs in bringing the property back into a state of repair; and mitigate the ongoing rental and associated cost resulting in a surrender value of the lease which are substantial.
- 1.5 The reason for the urgency of this report is due to the time taken to bring forward a commercial settlement between the parties and the expiry of the Option Agreement on 24th October 2016.

2. REASONS FOR RECOMMENDATIONS

- 2.1 Achieving a negotiated settlement for an early exit from Barnet House would significantly reduce the Council's exposure to future costs and liabilities.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 Four options were considered with the three discarded options presented below.
- 3.2 **Option 1** - Retain Barnet House to lease expiry with 100% of space paid by Council (or Partners). This option was discounted because of the deteriorating state of the building together with the refurbishment costs required to off-set that deterioration for low levels of staff occupation.
- 3.3 **Option 2** - Retain Barnet House to lease expiry with 50% of space occupied by Council (or Partners) and the remaining 50% commercially sub-let. Not recommended because of the increased refurbishment costs and additional capital investment required to make the building fit for new external tenants.
- 3.4 **Option 3** - Retain Barnet House to lease expiry with 0% (Nil) space occupied by Council (or Partners) and the remaining 100% commercially sub-let. Discounted as an option because of the extremely high investment required to bring the whole building to a lettable standard fit for new external tenants.

4. POST DECISION IMPLEMENTATION

- 4.1 The Chief Operating Officer will negotiate the final settlement considerations for an early exit from the lease with the Council's Landlord and will exercise the option to purchase the Barnet House freehold once legal agreements are secured and in place. It is at this point that the Director of Resources in consultation with the Chairman of ARG will conclude the disposal of the Barnet House freehold and the early surrender settlement. The intention is to complete all agreements to implement the transaction outlined simultaneously.
- 4.2 For clarity, the Council will only exercise the option providing there is legal agreement to ensure the Council can surrender the lease and vacate Barnet House by a target date of 24th December 2018 but with a long-stop date of 1 March 2019.

5. IMPLICATIONS OF DECISION

- 5.1 **Corporate Priorities and Performance.** This programme supports the council's priorities to:
 - 5.1.1 Promote responsible growth, development and success across the Borough.
 - 5.1.2 Improve the satisfaction of residents and businesses within the London Borough of Barnet as a place to live, work and study.
- 5.2 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**
 - 5.2.1 All the value for money considerations are detailed in the exempt reports.
- 5.3 **Legal and Constitutional References**

- 5.3.1 Council Constitution, Responsibility for Functions, Annex A, Terms of Reference of Committees, Sub-Committees and Partnership Boards – the terms of reference of the Assets, Regeneration & Growth Committee include responsibility for “Asset Management – all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council. The Management of Assets, Property and Land Rules require decisions to make acquisitions over £100,001 to be taken by the Assets, Regeneration & Growth Committee. By virtue of the urgent nature of this matter, the decision is proposed to be taken by the Urgency Committee. Members of the Assets Regeneration & Growth Committee will be notified of the decision.
- 5.3.2 Council Constitution, Responsibility for Functions, Section 7 – Urgency Provisions – section 7.1 states “If a decision on an issue is required as a matter of urgency, and if time allows under the provisions of the Access to Information Rules, then a Committee comprising of the Leader, the Deputy Leader, and the Leader of the Opposition will be called. The decision may be within the terms of reference of another committee, but this will not invalidate the decision as the arrangements to discharge the function in cases of urgency is through a committee comprising the three specified members. The Committee must consult with the Chairman of the relevant Committee.”
- 5.3.3 Local authorities are given powers under Section 123(1) of the Local Government Act 1972 (as amended) to dispose of land held by them in any manner they wish but the disposition must be for not less than best consideration that can be reasonably obtained assessed by a valuer. Any disposal less than best consideration that can be reasonably obtained requires the express consent of the Secretary of State. In determining best consideration the Local Authority must have regard to commercial and/or monetary value to the Local Authority.
- 5.3.4 The Council Constitution, The Management of Asset, Property and Land Rules, Appendix 1, Table A sets out the authorisation thresholds which provides authority for the action proposed to be taken. 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. Market testing is not appropriate in this case as the opportunity is time driven.
- 5.3.5 The exempt report, which will be supported by an independent valuation, confirms that disposal and acquisitions proposed are considered to be at best consideration that can be reasonably obtained and demonstrates compliance with the requirements of section 123 (1) of the Local Government Act 1972.
- 5.3.6 The structure of the proposed purchase and surrender will involve separate agreements with the freeholder, developer and the head landlord and there is a potential risk for the Council in the event the developer or the head landlord do not complete all or one of its agreements and the Council should only proceed if this risk can be ameliorated by effecting a simultaneous exchange and completion of all associated agreement on 24 October 2016.
- 5.3.7 The public procurement regime provides for a general exclusion for contracts

for the acquisition of land and rights over land; the sale or lease of land is also generally excluded. However, where such land transactions are accompanied by or subject to a condition to undertake works required or specified by a contracting authority, collateral contracts, enforceable obligation, and/or there is some pecuniary interest for example, then it may be caught by the public procurement rules. The applicability or otherwise of the public procurement rules depends on the particular facts of each case and therefore universal guidance is not always possible. In this matter we are advised that any potential acquisition/disposal of rights over the property is subject to ongoing commercial negotiations, accordingly, HB Public Law where instructed will advise officers as to the potential application of the public procurement regime or otherwise as those discussions progress.

- 5.3.8 Where a public body sells or leases land or buildings to an economic undertaking at less than full market value it will have provided an economic advantage to the purchaser/tenant which is likely to amount to the grant of unlawful State Aid. Accordingly in addition to the potential impact of the public procurement regime, the Council should have regard to State Aid rules and consider and address State Aid compliance before proceeding to complete on any property transaction. HB Public Law where instructed will advise and assist officer as to the potential application of State Aid rules or otherwise as the Council's commercial discussions progress.

5.4 Risk Management

- 5.4.1 The final commercial settlement has not been finalised with the parties and therefore there is a risk that should the settlement not be concluded prior to the option expiry date of the 24 October 2016 then the opportunity to exit Barnet House might not be achieved on this occasion. Should this occur then officers will review alternative proposals in pursuing an early surrender from the Barnet House lease and report back.

5.5 Equalities and Diversity

- 5.5.1 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 characteristics 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.
- 5.5.2 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.

5.6 **Consultation and Engagement**
Not applicable

6. BACKGROUND PAPERS

6.1 None
