

	<p style="text-align: center;">Assets Regeneration and Growth Committee</p> <p style="text-align: center;">12 December 2016</p>
<p style="text-align: center;">Title</p>	<p style="text-align: center;">Transfer of 80 Daws Lane, NW7</p>
<p style="text-align: center;">Report of</p>	<p>Director of Resources</p>
<p style="text-align: center;">Wards</p>	<p>Mill Hill</p>
<p style="text-align: center;">Status</p>	<p>Public</p>
<p style="text-align: center;">Urgent</p>	<p>No</p>
<p style="text-align: center;">Key</p>	<p>No</p>
<p style="text-align: center;">Enclosures</p>	<p>Appendix A: Concept Design work Appendix B: Draft Heads Of Terms Appendix C: Partnership Libraries Physical Specification Appendix D: Indicative timeline Appendix E: Existing Site Plan</p>
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<h2>Summary</h2>
<p>An in-principle decision is sought to agree the letting of circa 0.173 Hectares (0.43 Acres) of land at 80 Daws Lane adjacent to the public park and car park (Shown approximately on the attached plan, the boundaries of which are shown in red in Appendix E), to the NW7 Hub Charitable Interest Company</p>

Any agreement shall be subject to, and conditional upon, the NW7 Hub obtaining planning consent for their proposals in accordance with the attached Heads of Terms (**Appendix B**) for a new community hub, as well as being conditional upon any other necessary statutory consent's that may be required.

Further details of their proposals are contained in the main body of this report.

The subject site falls under the Community Asset Strategy (CAS) in line with other Community orientated sites, within the Borough. The situation in respect of this site, is that the property is to be transferred across to the NW7 Hub, by way of an asset transfer

In principle, the NW7 Hub plan is to create a new community Hub, comprising of 185 Sq.M of Library and ancillary community orientated space on the ground and first floor's. All of these proposals will involve the NW7 Hub being able to raise significant external capital investment to redevelop the site; this is to be reflected in the agreed rental contained within the lease.

All discussions at this stage have been conducted and will remain on a '*without prejudice*' and '*Subject to Contract and any other necessary Statutory Consent's*' basis.

Recommendations

- 1. That, subject to the NW7 Hub obtaining all relevant planning consents, and other statutory consents being granted, the Committee approve in-principle that the Council shall exchange an agreement for lease and development agreement ("development agreement") and grant a lease to the NW7 Hub on the following basis:**
 - a. A term of 125 years at market rent subject to a CBAT subsidy**
 - b. The lease granted shall fall outside the protection provisions of section 24 to 28 of the Landlord & Tenant Act 1954 part 2 and in accordance with the draft Heads of Terms as detailed in Appendix B.**
 - c. That in the event NW7 Hub fail to undertake a meaningful start (defined as a material operation as per the Town and Country Planning Act) on site within a three year time frame, from the date of receipt the formal notice to dispose of the property, the site will revert to the Council's control.**
 - d. That, in the event that works are not completed by the 1st January 2022, the site will revert to the Council's control.**
 - e. NW7 Hub are formally constituted into a Charitable Company Limited by Guarantee and are a registered charity.**
 - f. That a separate management agreement between NW7 Hub and LBB must be agreed if a partnership library element is included in the proposals.**

<p>2. That authority to settle final detailed Heads of Terms, and development agreement and lease shall be delegated to the London Borough of Barnet, Head of Estates.</p> <p>3. That authority be delegated to [the Head of Estates] to consider any responses received to the advertising of the proposal to let the property and the terms of any consent given by the Secretary of State, and to decide whether to progress the development agreement and lease in the light of the same.</p> <p>4. That authority be delegated to [the Head of Estates] to evaluate any bids received from community interest groups for the property and to decide whether to refer them to the Assets Growth and Regeneration Committee or whether to proceed with the proposed lease to NW7 Hub.</p>
<p>5. That, subject to agreeing the Heads of Terms, as detailed herein, the development agreement and lease will be authorised in accordance with the Management of Assets, Property and Land Rules.</p>
<p>6. The Council will fund the capital works (if required for) provision of a Partnership Library at 80 Daws Lane up to a total of £1 million (index linked) dependant on final design</p>

WHY THIS REPORT IS NEEDED

- 1.1 This report is needed to seek in-principle approval to grant a 125 year lease on circa 0.173 Hectares of land, at 80 Daws Lane NW7, to the NW7 Hub. Final terms and extent of the area required, is to be agreed, pending the NW7 Hub obtaining Planning Consent for their development proposals and all other statutory consents being granted. The planning and subsequent development proposals shall all be at NW7 Hub's cost.
- 1.2 In November 2015, the Council's Assets Regeneration and Growth Committee approved the Strategic Outline Business Case for the provision of a Community Hub at 80 Daws Lane. This enabled utilisation of Council resources to assist with the development of architectural designs and undertake survey work in partnership with the NW7 Hub group. This was in preparation for Heads of Terms coming back to committee for approval.
- 1.3 Details of the latest plans developed during that work can be found in **Appendix A**
- 1.4 The Daws Lane site and buildings located on the south side of Daws Lane, near its junction with Wise Lane / Hammers Lane and consists of a World War II built Civil Defence building with an observation tower located at second floor level.

- 1.5 In the past, the main part of the building has been occupied by a variety of users including: LBB Family Services and local Sea Cadets. Both of these users now have alternative accommodation elsewhere.
- 1.6 The premises has a drive, which is located on the northern elevation of the building and is accessed at its eastern end, off Daws Lane and at its western end from the Council's Daws Lane car park. This serves the Council owned Mill Hill Park which adjoins both the car park and the subject premises to the south.
- 1.7 To the rear of the subject premises there is a large tarmac surfaced yard.
- 1.8 The building has an area of 901 Sq M (9,694 SqFt) and was constructed circa 1942.
- 1.9 The NW7 Hub plan is to either demolish the existing building or possibly refurbish the building to create a new community hub which could house a Partnership Library. The site is enveloped by Mill Hill Park to the South and the Daws Lane Car Park to the west. The site and building sit within an area that is identified as being in Green Belt (Current Planning Policies), as well as being adjacent to an area of Public Open Space.
- 1.10 As such, and given the likely constraints advised by the Local Planning Authority as well as covenants pertaining to the demise, the site and premises' have limited use.
- 1.11 The recommendation set out in this report will ensure that the asset is brought into use to the wider community, in line with the Council's Community Asset Strategy.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The property and the site have been left vacant for some considerable length of time. However, the investment that the NW7 Hub is proposing to bring to the development will provide a range of community benefits. These are outlined more comprehensively in the "Strategic Outline Case" and are currently as summarised below:
 - 2.1.1 A partnership library of at least 185 Sq. M and associated functions (e.g., office, and staff room). This is in line with the partnership library specification (see **Appendix C**)
 - 2.1.2 Community facilities for provision of community benefit (recognised by the Council's Community Benefit Assessment methodology). This includes:
 - 2.1.2.1 Activities for children and young people
 - 2.1.2.2 A Café
 - 2.1.2.3 Activities for socially isolated older adults and vulnerable individuals
 - 2.1.2.4 Community retail facilities
 - 2.1.2.5 Support for local small businesses and self-employed individuals.

- 2.2 A Community hub as proposed by the NW7 Hub enables the delivery of activities that will result in community benefit, in the wider context and presents opportunities to for the local community to take the lead in the design, development and delivery of the Hub.
- 2.3 This is alongside being more likely to enable to deliver additional resources, both in terms of external funding and volunteer time.
- 2.4 Further to the above, the recommendation to dispose of the land is driven by the requirements of the NW7 Hub fundraising strategy. A agreement to lease in advance of a build programme will enable the NW7 Hub to raise finance against the asset, to facilitate the build, which is a common feature of a ground lease.
- 2.5 The longstop date for delivery of the scheme is based on the indicative timescale provided in **Appendix D**. The indicative plan is based on a scenario where a number of project risks that affect timescales are realised (e.g. Asset of Community Value moratorium and Secretary of State approval). This demonstrates the project can be delivered within 3 and a half years. To mitigate against further risk affecting timescales the longstop date contains a further 18 months. This is to ensure sufficient time for completion of the scheme in the event a judicial review is required or there are delays with project phasing.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The Strategic Outline Case discussed a number of options which were discounted by ARG Committee in November 2015. These are summarised below – more information is available in the project SOC.
- 3.2 **Do nothing** – To do nothing would leave the premises underutilised for a further period of time. The results of which, would not only mean that the benefits of the new proposals would not be realised but further costs in maintenance security etc. associated with the exiting building would be incurred.
- 3.3 **Refurbish** - would offer a way fulfilling the Community Asset Strategy and enabling use by a community group for community based activities. The increased operating costs of taking this approach would mean that the local groups providing community activities would be unlikely to be able to support themselves without a significant subsidy. In addition to this, the building once refurbished, would present significant challenges in terms of its layout and needs for adaption before becoming a fully-fledged community hub. As such, this option was discounted.
- 3.4 **Mixed use redevelopment** - There is potential for the site to be redeveloped for mixed community and residential use. This would present a challenge in planning terms due to current policies. However it would allow the Council to

deliver a scheme for four 4-bed homes alongside limited community space and opportunity for rationalisation of Council services, such as a partnership library. This option presents risks in terms of acceptability to the Local Planning Authority due to the site's location in Green Belt, alongside offering limited opportunities for community usage and management.

3.5 Other delivery options considered but discounted, for provision of a Community Hub:

3.5.1 LBB Delivered with LBB Capital - Funding the provision of a new Community Hub on 80 Daws Lane entirely through Council budgets has also been ruled out, as the site is not in an area of high need and therefore the project is not viable based on a cost benefit analysis. Pursuing a solely Council funded option would also not take advantage of the opportunities for increased value presented by securing external funding through a community partner such as NW7 Hub.

3.5.2 LBB delivery with external funding – The Council had previously planned to deliver the project on behalf of the NW7 Hub in line with the project's SOC. This approach however limited the amount of external funding available due to the requirement to secure loans against the proposed scheme, which was too great a risk for the council. This meant that disposal of the land to the NW7 Hub became the preferred choice, in order to ensure maximum external funding is available. Further to this, additional procurement opportunities are offered to the NW7 Hub team by a direct land disposal and therefore the Council delivering the scheme with external funding is no longer a recommended option.

4. POST DECISION IMPLEMENTATION

4.1 The site currently falls under the Community Asset Strategy (CAS) within the Borough. Due to the proposal to provide new community facilities on the site with significant external investment, the ground lease would be transferred at a rent assessed by the Community Benefit Assessment Tool, in line with the recommendation sought.

4.2 80 Daws Lane is listed as an Asset of Community Value (ACV) on the Council's register of ACVs. Accordingly, the Council can only dispose of the property (a disposition meaning either a freehold sale, or the grant or assignment of a lease granted for a term of over 25 years), in either case with vacant possession, subject to exceptions) in accordance with the provisions of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.

4.3 The Council is obliged to 'notify' itself that it intends to grant the lease. Such notice will trigger a six week initial moratorium, designed to allow community interest groups to submit requests to be treated as potential bidders. If no request by a community interest group is made within the initial six week

period, no further moratorium will apply for the duration of the 18 month protected period. If such a community interest group makes a request during this interim period, then the full six month moratorium will come into operation. The legislation is clear in that the Council may sell to a community interest group, at any time during the full moratorium period but otherwise, may not dispose of the property until after the full moratorium period has expired and then only within the protected period of 18 months from when notice of intention to let was given.

- 4.4 If an expression of interest from a community interest group (other than NW7 Hub) is received during the timeframe outlined above, bids would be evaluated against the viability of the proposals, the level of community benefit provided, alongside meeting the requirements outlined in this report (see section 2.1).
- 4.5 An external valuation of the site will be undertaken, in accordance with the process and procedures as laid out, and to ensure compliance with, Section 123 of the Local Government Act 1972.
- 4.6 Following ACV determination, consideration of any public objections to the disposal of the land and subject to the external valuation of the land, any necessary report to the Secretary of State requesting permission for a less than best transaction would be submitted for determination if required.
- 4.7 Subject to the outcome of the ACV process and the less than best determination, a Development Agreement will be drafted.
- 4.8 A development agreement will contain the details of the proposed development and be a contract between the Council and the NW7 Hub's development contractor. It is required to enable works on the Council's land by a 3rd party prior to delivery of the scheme at which stage the lease will commence and NW7 are envisaged to take legal title over the demise
- 4.9 The Heads of Terms and extent of the property and land to be leased will be agreed and form the basis of the final Lease Agreement. This lease will contain a number of pre-conditions such as:
 - 4.9.1 The NW7 Hub maintaining its charitable status
 - 4.9.2 Not to assign the building to any organisation but only to the successors of the NW7 Hub or trust etc. and such consent should not be unreasonably withheld or delayed.
- 4.10 The Development Agreement and Lease shall be drafted by HB Law and signed off in accordance with the Management of Asset, Property and Land Rules.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The Council's Corporate Plan 2015-20 states that the Council, working with local, regional and national partners, will strive to ensure that Barnet is a place:

- of opportunity, where people can further their quality of life.
- where people are helped to help themselves, recognising that prevention is better than cure.
- where responsibility is shared, fairly.
- where services are delivered efficiently to get value for money for the taxpayer.

5.1.2 The grant of this lease will support the corporate plan by bring an asset online and assist the prospective tenant's long term business plan.

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

5.2.1 All costs related to planning permission and the sites subsequent development will be borne by the NW7 Hub.

5.2.2 Historical design and survey work to assist in formulating the current proposals will be borne by the Council but have been handed to the NW7 Hub for reference.

5.2.3 The Council will provide up to a £1m (index linked) contribution for the provision of a partnership library site in line with the Strategic Outline Case approved in November 2015 and subsequently by Policy and Resources committee.

5.3 Social Value

5.3.1 The NW7 Hub's aims and objectives for this site are documented in the SOC.

5.4 Legal and Constitutional References

5.4.1 Local authorities are given powers under Section 123(2) of the Local Government Act 1972 (as amended) to dispose of land held by them in any manner they wish. Except with the consent of the Secretary of State for Communities and Local Government, a council cannot dispose of land, other than for the grant of a term not exceeding seven years, for a consideration less than best that can reasonably be obtained. A general consent dated 2003 has been issued by the DCLG, this can be used where the value foregone is less than £2 Million and the proposed lease would be for the social, environmental or economic well-being of the residents of the Borough.

- 5.4.2 Section 123 of the Local Government Act 1972 requires the Council to advertise the disposal of Public Open Space in a local newspaper for two consecutive weeks and to consider any objections received.
- 5.4.3 Should this process be required in relation to this site, any objections will need to be considered before the Council decides whether or not to proceed. This can be dealt with by a member or an officer provided that the appropriate authority has been delegated to them.
- 5.4.4 The Council Constitution, The Management of Asset, Property and Land Rules, Appendix 1, Table A sets out the acceptance thresholds which provides authority for the action. Financial arrangements up to £100,000 can be approved by a Director or Deputy Chief Operating Officer as per the Authorised Delegated Powers provisions, unless the matter is for less than best consideration, in which case it must be considered by ARG. ARG can authorise procurement activity within the remit delegated to it, in accordance with the responsibilities and thresholds set out in the Council's Contract procurement rules.
- 5.4.5 Under the Green Belt (London & Home Counties) Act 1938, green belt land can be used only for recreation or agriculture and the lease shall reflect this. The lease may need the consent of the Secretary of State for Health under the 1938 Act, should this be the case advertising of the site will be required and any responses will need to be conveyed to the Secretary of State. The consent of the Secretary of State is also needed for the construction of buildings on green belt land and this will need to be reflected in the lease.
- 5.4.6 80 Daws Lane is listed as an Asset of Community Value (ACV) on the Council's register of ACVs. Accordingly, the Council can only dispose of the property (a disposition meaning either a freehold sale, or the grant or assignment of a lease granted for a term of over 25 years in either case with vacant possession) in accordance with the provisions of the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.

5.5 Risk Management

- 5.5.1 The proposals have been considered as to whether the issues involved give rise to significant levels of public concern or policy considerations. As the site is designated as Greenbelt and Public Open Space, there may be objections however LBB are thus far satisfied that there are no such concerns. However, when a planning application is submitted it is possible that it may meet with local objections due to loss of green belt and or public space. Responsibility for mitigating this risk sits with the NW7 Hub, who are envisaged to undertake all necessary pre-application engagement with the Local Planning Authority and other statutory planning consultees.
- 5.5.2 It has been identified that there is a risk that traffic flow and parking may be affected in respect of the site however, this matter will be dealt with as part of the planning application by NW7 Hub

- 5.5.3 In order to mitigate the low risk of the project not progressing within agreed timescales, a clause shall be inserted within the legal agreements that, in the event that the NW7 Hub fail to undertake a meaningful start on site, within a three year time frame from the date of completion of legal formalities, the site will revert to the Councils control. This is also echoed in the longstop date for practical completion of the scheme
- 5.5.4 A “meaningful start on site” is to be defined as a “material operation” as per the Town and County Planning Act. This is defined as the following:
- 5.5.4.1 any work of construction in the course of the erection of a building;
 - 5.5.4.2 any work of demolition of a building
 - 5.5.4.3 the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
 - 5.5.4.4 the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph(5.5.4.3)
- 5.5.5 In order to mitigate the risk of the project not being completed and the land lying partially completed, a clause shall be inserted within legal agreements that, in the event that works are not complete by 1st January 2022 the site will revert to the council’s control.
- 5.5.6 Part of the NW7 Hub funding strategy to finance their build programme is to raise funding from a Charitable/ Social Bank. If the repayment terms of the loan were not met by the NW7 Hub, the lender would have recourse to take possession of the land and sell the lease. This presents a risk to the Council that the new tenant might not carry out the business case objectives, as agreed by Committee and the perceived community benefit offered, from the site could be limited. This is mitigated by the likely planning constraints placed against the land limiting it to community (D1) usage by the Council’s control of use via the use clause in the lease.
- 5.5.7 Further to this, the principles of the lease would require the landlord to have 1st refusal should the lease be transferred to a 3rd party. This is envisaged to be required in the advent of NW7 Hub defaulting on any loan repayments secured against the land and the lender seeing to take control of the lease.
- 5.5.8 It should be noted however, such charging is common place on commercial ground leases where a premium is being paid for a site. In such a case the tenant derives sole benefit from such charging, in return for the premium paid. In this situation the Council and the community at large, are seeking to gain a wider benefit and are “in effect” joint venture partners.
- 5.5.9 The current proposals are based on the NW7 Hub business case which has been appraised by the Council’s Business Coach. This demonstrates delivery

of community benefit activities in line with the approved SOC however there are sections that will need development prior to displaying the high level of confidence required for approval of the CBAT subsidy.

5.5.10 This will be mitigated by further work between the Council's Business Coach and an agreed action plan outlining the development of the additional information required.

5.6 Equalities and Diversity

5.6.1 Under the 2010 Equality Act, 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) foster 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 and belief; sex; sexual orientation. It also covers marriage and civil partnership with regards to eliminating discrimination.

5.6.2 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.

5.7 Consultation and Engagement

5.7.1 Engagement has taken place via a Working Group including the NW7 Hub and Ward Members. This has enabled design ideas to be circulated and a schedule of community benefit activities drawn up.

5.7.2 Community consultation undertaken directly by the NW7 Hub team and as such, have engaged with many local residents. The feedback on the proposals have been shown to be positive.

6. BACKGROUND PAPERS

6.1 The Community Asset Strategy and Implementation Plan's

6.1.1 <https://barnet.moderngov.co.uk/documents/s25649/Appendix%201%20-%20Community%20Asset%20Implementation%20Plan.pdf>

6.1.2 <https://barnet.moderngov.co.uk/documents/s25574/Appendix%202%20-%20Community%20Asset%20Strategy.pdf>

6.2 The Community Benefit Assessment Tool

6.3 <https://barnet.moderngov.co.uk/documents/s32739/Community%20Benefit%20Assessment%20Tool.pdf>

6.4 Daws Lane – Strategic Outline Case

6.4.1 <https://barnet.moderngov.co.uk/documents/s27742/Daws%20Lane%20Community%20Hub%20-%20Strategic%20Outline%20Case.pdf>