

	<b>ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER</b>
<b>Title</b>	<b>Barnet House Lease Surrender Agreement</b>
<b>Report of</b>	Deputy Chief Executive
<b>Wards</b>	Totteridge
<b>Status</b>	Public
<b>Enclosures</b>	None
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## Summary

This report approves the final Agreement to Surrender relating to the Lease of Barnet House, 1255 High Road, Whetstone, London N20 0EJ. This Agreement will formalise early surrender of the lease, effective 31 March 2021.

On 2 October 2020 Urgency Committee approved the lease surrender, including an associated repairs and maintenance liabilities settlement. Finalisation of the deal with the landlord was delegated to the Deputy Chief Executive, having taken appropriate legal advice.

An Agreement to Surrender has now been drafted and agreed with the landlord, Barnet House Limited. This report approves the exchange of this Agreement.

## Decision

**To approve the exchange of the Agreement for Surrender relating to the Lease of Barnet House, 1255 High Road, Whetstone, London N20 0EJ.**

## **1. WHY THIS REPORT IS NEEDED**

- 1.1 On 2 October 2020 Urgency Committee approved the early surrender of the Barnet House lease, including an associated repairs and maintenance liabilities settlement. Finalisation of the deal with the landlord was delegated to the Deputy Chief Executive, having taken appropriate legal advice.
- 1.2 The approved deal presents a good opportunity for the council as the net cost of surrendering the lease and relocating the services currently occupying Barnet House is a significantly better financial option than remaining in the lease until 2032. There would also be a further rent review before 2032, meaning the rent could increase. Exiting the lease will contribute gross c.£1.2m towards the 2021/22 MTFS requirements onwards and a net impact of £0.973m due to additional borrowing costs from using capital receipts to fund the settlement figure and the impact on the existing capital programme.
- 1.3 An Agreement to Surrender has now been drafted and agreed with the landlord, Barnet House Limited. This report approves the exchange of the Agreement to Surrender, finalising the agreed deal.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 The council has a budget gap in the region of £60m over the Medium Term Financial Strategy period and efficient use of our estate is imperative in order to support closing this gap.
- 2.2 The council holds an underlease of Barnet House (1255 High Road Whetstone, N20 0EJ) which is set to expire in September 2032. Until Spring 2019 Barnet House was occupied by multiple council services and partners as part of the civic estate.
- 2.3 As part of The Way We Work (TW3) Programme, the council relocated most services to the new Colindale Office in 2019. Negotiations took place in the same year with the landlord, Barnet House Limited, to discuss an early surrender of the lease as there was a plan to fully vacate the building. At the time, no mutually agreeable deal could be reached and so the lease remained in place.
- 2.4 Recent lease surrender negotiations led to a deal being reached with Barnet House Limited. This deal, including a settlement payment in partial compensation of rent and repairs and maintenance liabilities, was approved by Urgency Committee on 2 October 2020.
- 2.5 The approved deal presents a good opportunity for the council as the net cost of surrendering the lease and relocating the services currently occupying Barnet House is a significantly better financial option than remaining in the lease until 2032. There would also be a further rent review before 2032, meaning the rent could increase. Exiting the lease will contribute net c.£0.973m towards the 2021/22 MTFS requirements onwards.
- 2.6 Urgency Committee delegated finalisation of the deal to the Deputy Chief Executive. An Agreement to Surrender has now been drafted and agreed with the landlord, Barnet

House Limited, setting out the terms of the surrender. This report approves the exchange of this Agreement.

### **3. POST DECISION IMPLEMENTATION**

3.1 Once this decision is taken, the Agreement to Surrender will be exchanged. The principal terms of the Agreement to Surrender are:

3.1.1 the Council (as tenant) agrees to pay a deposit of £5,000,000 plus VAT to the landlord on Monday 2 November 2020;

3.1.2 the Council must continue to pay annual rent and all other sums due until formal completion of the surrender (on 31 March 2021) and must keep the property in no worse a state of repair and condition than it is on the date that the Agreement to Surrender is exchanged;

3.1.3 the Council may not make any further alterations (unless in consequence of our repair obligations) nor may it remove any fixtures and fittings save as agreed in the Agreement to Surrender;

3.1.4 one month before completion of the surrender, the Council must meet the landlord and endeavour to agree whether the Council's repair obligations have been complied with. If they have then, up to that time, the Council will be given a full release of our obligations on surrender. If not, the Council must undertake any requisite remedial works before completion of the surrender in order to obtain a full release. If the property is in a worse state of repair and condition than it is on the date that the Agreement to Surrender is exchanged then the Council will receive a partial release from its obligations and will then need to agree with the landlord a further sum of monies for such additional disrepair;

3.1.5 the landlord will be entitled to access the property in order to carry out and complete the first phase of its car park works but will not seek to charge the Council, as tenant, for these repairs;

3.1.6 the Council must deliver the property to the landlord with vacant possession on 31 March 2021 (having terminated any service contracts is required to do so by the landlord) having removed all moveable chattels and any communications equipment (including CCTV broadcast equipment) and making good any damage caused by such removal;

3.1.7 the Council (as tenant) must pay the balance of the surrender premium of £5,500,000 plus VAT to the landlord on 31 March 2021;

3.1.8 on completion the Council must also hand over to the landlord all asbestos registers, fire risk assessments, water testing certificates, the health and safety file.

3.2 A decommissioning schedule will be drafted by officers and implemented to ensure vacant possession is successfully delivered by 31 March 2021.

- 3.3 The council's Estates team will work with council services and partners currently occupying Barnet House to identify alternative locations for these services and to plan relocations and any required fit out. Intentions are as follows:
- 3.3.1 The Barnet Group and CSG Revenues & Benefits staff to move to the Colindale office – including public Housing Options reception
  - 3.3.2 Family Services public facing provision to move to an alternative location in the East of the borough, identified through the council's existing Voids and Vacant Assets programme
  - 3.3.3 Secure Collections to move to an alternative secure location within the council's corporate estate
  - 3.3.4 Union offices to be re-located to suitable assets within the existing LBB asset stock, if at all possible
  - 3.3.5 To find a suitable alternative location for the CCTV installation currently sited on the roof of the building.

#### **4. IMPLICATIONS OF DECISION**

##### **4.1 Corporate Priorities and Performance**

- 4.1.1 The Barnet 2024 Corporate Plan outlines the council's priorities and intended outcomes for residents. An efficient and effective council that provides value for money is crucial to achieving this. Surrendering the Barnet House lease in March 2021 will contribute towards the MTFS target.
- 4.1.2 The council's Strategic Asset Management Plan seeks to rationalise the corporate office accommodation wherever possible and beneficial.

##### **4.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

- 4.2.1 The deal approved by Urgency Committee includes a £10,500,000 (plus VAT) premium to surrender the lease early and to resolve any potential claim for disrepair and maintenance liabilities.
- 4.2.2 The council will make use of capital receipts to fund the early surrender settlement. Full Council approved this funding mechanism on 20 October 2020. The impact of using capital receipts results in additional borrowing costs of £0.227m per annum based on funding the existing shortfall in the programme.
- 4.2.3 Surrendering this lease early will save the council gross c.£1.2m per year in rent, rates and utilities, which will contribute towards the council's 2021/22 MTFS requirements, as well as £1m one-off car park repair and maintenance costs which would have otherwise been levied by the landlord. Overall the Net Present Cost (NPC) of this option is £11.6m which was some £4.3m to £5.9m less than other options considered.
- 4.2.4 One-off costs required to provide vacant possession by 31 March 2021 are estimated to

be in the region of £1m. This includes the refurbishment of space within the Colindale office to accommodate the Housing Options reception; removal costs for all services; and expected fit out requirements for Secure Collections and Family Services. These costs are built into the options review undertaken by the council. This will be part funded from underspent TW3 and Localities capital budgets and a capital bid will be submitted for the remainder.

4.2.5 The settlement figure will be payable as follows: £5m to be paid on 2 November 2020 and the remainder (£5.5m) to be paid on the completion date of 31 March 2021. Payments will be made via Pinsent Masons LLP.

4.2.6 New HMRC guidance relating to termination payments means that it is possible VAT may be payable on the financial settlement. The council is currently exploring the VAT treatment but at present VAT is expected to be payable on the settlement and recovered as part of the standard VAT process. The impact on the council's partial exemption calculation is expected to be minimal but further due diligence is taking place with our tax advisors.

### 4.3 Legal and Constitutional References

4.3.1 On 2 October 2020 Urgency Committee agreed to delegate finalisation of the deal with the landlord to the Deputy Chief Executive.

4.3.2 On 20 October 2020 Council approved the flexible use of capital receipts to fund the early settlement figure.

### 4.4 Risk Management

4.4.1 All risks and issues will be managed in accordance with the Council's Risk Management Framework and Project Management Methodology and Toolkits.

4.4.2 The deal approved by Urgency Committee and detailed in the Agreement to Surrender commits the council to paying a proportion of the repairs and maintenance liabilities settlement (£5m) on 2 November 2020, with the remainder (£5.5m) due on the completion date of 31 March 2021. There is a risk that should the landlord or their parent company, Meadow Partners LLP, become insolvent between 2 November 2020 and 31 March 2021, the council may lose the deposit paid. However, having taken legal advice this risk is viewed as low because should the company become insolvent, it is likely that the administrators would proceed with the deal.

4.4.3 Company Watch reports have also been sought for Barnet House Limited and their parent company, Meadow Partners LLP. The report for Meadow Partners LLP shows that the company are operating outside of the 'warning area' and are therefore viewed as low risk for financial distress. The report does not show any turnover or profit for the last three years as it is a holding company solely, however total assets have grown over that period. A report for Barnet House Limited was unavailable as the company is registered in Jersey.

4.4.4 There is a risk that after the final inspection, there is further disrepair for which the landlord is entitled to claim compensation. The Agreement to Surrender has been drafted to protect the council as far as possible from this and requires the parties to use

reasonable endeavours to agree the cost of remedying any further disrepair or, if there is a dispute, it will be determined by an independent expert. In order for the council to be able to benchmark the current state of repair and condition of the property, the council will undertake a photographic survey of the building to support any dispute. The Agreement to Surrender requires any dispute as regards ongoing repair obligations to be referred for expert determination. Once any final dispute is resolved, a deed of release will be completed to ensure no further claims can be subsequently made.

- 4.4.5 The council will engage with existing tenants and assist them to find suitable alternative accommodation to mitigate the risk of them being unable to move out of Barnet House. No tenants have tenancy rights past 31 March 2021.
- 4.4.6 The fit out of locations to house council services vacating Barnet House may extend past the handover date, especially in the context of local or national COVID-19 lockdowns. Temporary provision will be identified if required.

#### **4.5 Equalities and Diversity**

- 4.5.1 An assessment was carried out on the impact of the proposed Colindale Office relocation on both staff and service users within the Equality Impact Assessments contained within appendices to the original Full Business Case approved by Assets, Regeneration and Growth Committee in July 2016. These demonstrated that the proposals set out in the FBC were designed to ensure fair and equitable treatment of all Barnet's communities and its staff in relation to their access to The Civic Estate. The Employee Equality Impact Assessment as appended to the Full Business Case approved by Assets, Regeneration and Growth Committee in July 2016 was revised in 2018 to reflect updates to the programme as it has progressed.
- 4.5.2 Both EIAs will be revisited and updated to reflect new proposals and to confirm if any mitigating actions are required. Members of the public currently access Barnet House to meet with staff from Family Services and The Barnet Group. The equalities impact on residents will be considered as new locations for these services are considered.

#### **4.6 Corporate Parenting**

- 4.6.1 In line with the Children and Social Work Act 2017, the council has a duty to consider Corporate Parenting Principles in decision-making across the council. There are no implications for Corporate Parenting in relation to this report.

#### **4.7 Consultation and Engagement**

- 4.7.1 The council will engage with impacted staff in services to be relocated, to address any concerns and ensure the service's requirements are met in the new locations.
- 4.7.2 Engagement will take place with subtenants to assist with identifying alternative accommodation within the borough.
- 4.7.3 Consultation as to the proposed new locations with service users and residents impacted by service relocations will take place as required when potential locations are considered.

## 5. BACKGROUND PAPERS

- 5.1 Report of the Director of Finance & Section 151 Officers – Flexible Use of Capital Receipts – submitted to Council 20 October 2020 - <https://barnet.moderngov.co.uk/documents/s60730/Council%20October%202020%20-%20Flexible%20Use%20of%20Capital%20Receipts.pdf>
- 5.2 Lease Surrender submitted to Urgency Committee 2 October 2020 - <https://barnet.moderngov.co.uk/documents/b35528/Lease%20Surrender%202nd-Oct-2020%2010.00%20Urgency%20Committee.pdf?T=9>
- 5.3 Colindale Office Move – Update submitted to FPC Committee 28 October 2019 - <https://barnet.moderngov.co.uk/documents/s55889/Colindale%20Update%20Report.pdf>
- 5.4 Colindale Office Move – Update submitted to FPC Committee 19 June 2019 – <http://barnet.moderngov.co.uk/documents/s53049/Colindale%20Update%20Report%20-%20Public.pdf> (and exempt attachment)
- 5.5 Accommodations Options Review Final Business Case (FBC) submitted to ARG Committee in July 2016 – <https://barnet.moderngov.co.uk/documents/s33264/ARG%20committee%20report%20-%20Colindale%20FBC%20v0.3.pdf>
- 5.6 Locality Strategy submitted to ARG Committee in July 2016 – <https://barnet.moderngov.co.uk/documents/s33204/ARG%20committee%20report%20-%20Locality%20Strategy.pdf>

## 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. The decision is compliant with the principles of decision making in Article 10 of the constitution.*

**Chief Officer:** Cath Shaw, Deputy Chief Executive

**Signed:**



**Dated:** 23/10/2020