



Cabinet

Title	Burnt Oak Residential and Retail Freehold Sales
Date of meeting	12 th December 2023
Report of	Leader of the Council, Cabinet Member for Resources and Effective Council – Councillor Barry Rawlings
Wards	Burnt Oak
Status	Public
Key	Key
Urgent	No
Appendices	Appendix A – Ownership plan Appendix B – Schedule of Properties
Lead Officer	Chris Smith - Assistant Director of Estates and Decarbonisation Chris.smith@barnet.gov.uk
Officer Contact Details	Andrew Cadge – Asset Manager (Estates) Andrew.cadge@barnet.gov.uk

Summary

The council owns 24 freehold interests on Burnt Oak Broadway and Watling Avenue. These are almost all subject to 99 year long leases at rents of less than £200 pa which expire over the next 6 years. These comprise retail premises at ground floor with residential flats at 1st floor. The long leaseholder either occupies itself or sub-lets all or part to tenants at market rates.

The long leaseholders have rights to renew their leases on new 90 year leases at £0 pa rent, subject to the payment of a capital sum up until lease expiry. They may also have rights to enfranchise (i.e. buy the freehold), also subject to payment of a capital sum.

Selling the freeholds now would accelerate potential capital receipts, up to an estimated value of £5m. Only one unit, on Watling Avenue has potential strategic value. It is therefore proposed to offer 23 freeholds for sale to the Long Leaseholders and then to the 'open market' on proactive basis to bring forward those potential receipts.

Recommendations

- 1. That Cabinet approves the strategy to sell the non-strategic freehold interests on Burnt Oak Broadway and Watling Avenue;**
- 2. That Cabinet approves or delegates authority to the Deputy Chief Executive or relevant Chief Officer to approve (as required) to commence the procurement of a sales agent or auctioneer, and also, approves or delegates authority to the Deputy Chief Executive or relevant Chief Officer to approve (as required) to appoint that sales agent or auctioneer and award the contract to allow them to act on the council's behalf in selling these freeholds;**
- 3. That Cabinet delegate authority to the Deputy Chief Executive and/or relevant Chief Officer to accept offers and enter into sale contracts for these freeholds on an individual, or portfolio, or part-portfolio basis. Acceptable offers must be at or above market value or a reserved price at auction to reflect this to be approved by the same officers.**

1. Reasons for the Recommendations

- 1.1 The council owns 24 freehold interests on Burnt Oak Broadway and Watling Avenue. These are subject to 99 year leases at rents of less than £200 pa which expire over the next 6 years;
- 1.2 There one exception, whereby a long leasehold was renewed until 2118 at £0 pa following payment of a £120,300 capital premium to the council in 2016;
- 1.3 Historically, freeholds have been sold either following enfranchisement requests by long leaseholders or a pro-active sales strategy in the early 2000s;
- 1.4 The long leaseholders have rights to renew their leases on new 90 year leases at £0 pa rent, subject to the payment of a negotiated capital sum. They may also have rights to enfranchise (i.e. buy the freehold), again subject to a negotiated capital payment. These rights can be claimed at any time prior to lease expiry;
- 1.5 A portfolio review has highlighted that these properties have a considerable asset value, but only produce a minimal income (£950 pa in total across the 24 freeholds). Therefore they do not deliver a good income return for the council;
- 1.6 With the exception of 89-91 Watling Avenue, these properties have been deemed to be non-strategic. Therefore, it is recommended to sell the freeholds, to secure capital receipts and remove a management liability;
- 1.7 Council officers are dealing with two enfranchisement request notices at present (shown in green on plan in Appendix A), and two further long leaseholders have expressed an interest in buying their freeholds, therefore it is considered that there is likely to be good interest from the remaining long leaseholders in buying their freeholds, particularly considering the short time remaining on the leases;
- 1.8 A pro-active strategy should result in capital receipts being brought forward by engaging with long leaseholders, or if no interest then the freeholds can be sold in the open market, potentially at auction;
- 1.9 The terms of sale will include title restrictions to ensure the new freeholders and any sub-tenants have to comply with clauses on shopfront appearance and signage, and co-operate with

any council-led initiative on these matters. This should ensure visual improvements to the street scene in the future;

- 1.10 It is estimated that if the 23 non-strategic properties are sold then capital receipts of £5m could be raised. It's possible that some freeholds will not be sold due to offers not meeting valuation levels. These could be sold later but prior to lease expiry or as a combined freehold/long leasehold interest following lease expiry;
- 1.11 **89-91 Watling Avenue** – this is considered to be strategic as it is the council's closest freehold to the underground station and could be demolished/part demolished to enable a cut-through to the proposed development of the Watling Car Park site, behind Watling Avenue. Discussions were held with the long leaseholder to acquire their lease but currently the price being asked makes this non-viable. This long lease will expire in September 2028 in any case. So, this freehold will therefore be retained until that date or the long leaseholder reduces the price to an acceptable level.

2. Alternative Options Considered and Not Recommended

- 2.1 **Do Nothing** – this would result in ad-hoc requests to enfranchise or extend leases from long leaseholders over the next 6 years up to the varying expiry dates. Capital receipts would therefore be received over a number of years with negligible income in the meantime. This would also be an inefficient use of employee resource to manage the process;
- 2.2 **Offer New Long Leasehold and Retain Freeholds** – new long leases of up to 90 years could be offered to the long leaseholders at £0 pa rent, subject to paying a capital sum (i.e. premium). This would produce approx. 90% of the amount of a freehold sale. As freeholds were deemed non-strategic for potential redevelopment then there is little benefit to retaining, raising significantly less capital and receiving no income for a further 90 years.

3. Post Decision Implementation

- 3.1 Long Leaseholders have been invited to register their interest in purchasing the freeholds so they will receive marketing details (when prepared) and be able to enter into negotiations with the council (or appointed sales agent/auctioneer) during the sales process, which may be able to be concluded prior to wider marketing;
- 3.2 Resident tenants of long leaseholds generally have rights of first refusal to enfranchise i.e. purchase freehold. Local Authorities are exempt from this (as an excluded landlord under S.78 of the Landlord and Tenant Act 1987), so legal advice will be sought, to ensure that any correspondence cannot be construed as being a Notice (i.e. offer) on a right of first refusal at any price agreed with another party. The intention is to market the freeholds to all long leaseholders and their sub-tenants anyway, but it will be a simpler process if we use the exemption;
- 3.3 HBPL will be instructed to prepare sales packs for the 23 freeholds and conduct a Land Registry search to check if any there are any additional freeholds to be added to the sale list;
- 3.4 A procurement exercise to appoint a sales agent/auctioneer will take place and a sales strategy determined taking into account feedback from the long leaseholders. The strategy will include

determination of appropriate pricing and market value/reserve level for auctions (if that method is used) so that thresholds for accepting offers are set;

- 3.5 Where offers are received at acceptable levels for one or more freeholds, then the necessary DPRs/Officer Reports will be circulated for approval at the correct level, and HBPL will proceed to a successful sale completion.

4. Corporate Priorities, Performance and Other Considerations

Corporate Plan

Being an Engaged and Effective Council

- 4.1 Financially Responsible – cost pressures will be managed through prudent financial planning and delivery of the Medium-Term Financial Strategy which resources (including financial) have to be used in the best, most effective way.

Corporate Performance / Outcome Measures

- 4.2 None

Sustainability

- 4.3 Not applicable

Corporate Parenting

- 4.4 Not applicable

Risk Management

- 4.5 It is considered that there are no significant risks associated with following the recommended strategy;
- 4.6 Pro-active approaches to long leaseholders and sub-tenants as well as ward councillor engagement should mitigate resident and community concern to avoid reputational risk to the council;
- 4.7 Fees could be incurred on preparing sales details or abortive marketing/sales process on individual properties, however the anticipated capital receipts (even allowing for abortive transactions or unsold properties) is expected to significantly exceed fees and abortive fees incurred;

Insight

- 4.8 The council has previously sold freehold interests in Burnt Oak, either through the enfranchisement process or entering into voluntary sales process;
- 4.9 Requests from long leaseholders to buy their freeholds continue to be received, suggesting that there would be interest if the opportunity to buy is offered to the remaining long leaseholders;

Social Value

- 4.10 The new freeholders will have greater incentive to enhance these properties when they have control of the freehold interest which could lead to increases in capital value over time.

5. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)

- 5.1 The sale of the 23 freeholds recommended for sale would result in a reduction in income of £838 per annum. This makes a negligible difference to the annual HRA revenue budget;
- 5.2 Capital receipts of approx. £5m could be generated. This estimate will be updated once a sales agent/auctioneer/valuer is appointed;
- 5.3 If the estimated capital receipts were used to reduce borrowing then savings of approx. £375,000 per annum could result. This is based on foregoing associated interest costs and MRP (Minimum Revenue Provision) and compares very favourably with £838 pa income currently generated;
- 5.4 Agency/auctioneer/valuation fees will be incurred. A fee estimate will be provided shortly once discussions with potential partners are initiated as part of the procurement process;
- 5.5 Legal fees will also be incurred. HBPL would act on the council's behalf;
- 5.6 These fees will result in a one-off cost pressure to the Housing and Revenue Account (HRA) budget. There is a risk that some properties may not be sold but fees are incurred in preparing them for sale. The capital receipts overall are expected to significantly exceed fees and abortive fees incurred;
- 5.7 Some sales may complete in 2023/24, but it is expected that the majority will complete in 2024/25, with the associated fees being incurred in the same financial year.

6. Legal Implications and Constitution References

- 6.1 The Council's Constitution, Part 4B1 Table A – Land and Property Transactions Authorisation and Delegated Powers sets out the authorisation requirement for capital disposals of more than £1,000,000 (Report to Cabinet required), or less than £1,000,000 (Cabinet Member-Portfolio Holder, or an approved officer if less than £213,477, unless Less Than Best transaction which must be reported to Cabinet).
- 6.2 Part 2D of the Council's Constitution sets out the Terms of Reference and Delegation of Duties to the Cabinet. These include at clause 4.1 **All Key decisions – namely:** 4.1 an executive decision which is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the budget for the service or function to which the decision relates.

A decision is significant for the purposes of the above if it involves expenditure or the making of savings of an amount in excess of £1m for capital expenditure or £500,000 for revenue expenditure or, where expenditure or savings are less than the amounts specified above, they constitute more than 50% of the budget attributable to the service in question;
- 6.3 Under section 32 of the Housing Act 1985, the consent of the Secretary of State is required for the disposal of premises held for the purposes of part II of the Housing Act 1985, i.e. premises held in the HRA. A General Housing Consent to disposal dated 2013 exists. It gives consent to disposal of houses or flats which are let for such consideration as the authority consider appropriate (other than to an entity in which the authority owns an interest). This is subject to conditions that (1) at least 50% of flats are let to tenants who are qualifying tenants under section 5 Leasehold Reform, Housing & Urban Development Act 1993 – they are so the disposal would be within the General Housing Consent of 2013, and (2) there is a leaseback for 999 years

to the authority of any flats let to a secure, introductory or demoted tenant. “Qualifying tenants” include tenants who bought under the right to buy and tenants for more than 21 years.

- 6.4 The procurement of a sales agent or auctioneer will be subject to the relevant external and internal procurement rules.
- 6.5 If the total estimated value of the services being procured (including any proposed extensions to the subsequent contract) is above £213,447 (inc VAT) then the procurement will be subject to the full conditions of the Public Contracts Regulations 2015 (PCR), meaning a competitive procurement process must take place. If the total estimated value of the services is below this figure, then only aspects of Part 4 of the PCR will need to be complied with.
- 6.6 The level of authority required to approve the procurement will again depend on the total estimated value of the subsequent contract. The relevant level of authorisation can be found in section 13 of Part 4B, Contract Procedure Rules in the Barnet Constitution, please note that authorisation is required at both the Procurement Commencement stage and the Bid Acceptance stage.
- 6.7 The Procurement Method which should be used will also depend on the total estimated value of the subsequent contract. The corresponding methods to the value of spend can also be found in sections 5 and 13 of Part 4B, Contract Procedure Rules in the Barnet Constitution.
- 6.8 Section 5.2 of Part B Contract Procedure Rules states ‘All Procurements for goods and services over £25,000 must be advertised on Contracts Finder within 24 hours of the time when the Procurement is advertised in any other way. Procurement over the tender financial threshold must be advertised since 1 January 2021 in the ‘Find a Tender’ first and then on Contracts Finder. A Contract award notice must also be published on Contracts Finder. Procurement will arrange this through provision of softcopy authorised contract from service area to procurement.’
- 6.9

7. Consultation

- 7.1 No formal consultations have taken place, however the long leaseholders have been informed that the council is considering a sale of the freeholds and have been requested to register any interest in purchasing them with the Estates team.

8. Equalities and Diversity

- 8.1 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.

The proposed sales are not considered to have any adverse effects on those with protected characteristics.

9. Background Papers

- 9.1 Housing and Growth Committee – 14 June 2021 - Watling Car Park Proposed Approach to Site Disposal <https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=10845&Ver=4>