



City of Westminster

Cabinet Member Report

Meeting or Decision Maker:	Cabinet Member for Finance Property and Regeneration
Date:	6 October 2020
Classification:	General Release but that Appendix 2 and Appendix 3 be declared as exempt from publication as it involves the disclosure of information as prescribed by paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972, (as amended), in that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information).
Title:	Acquisition Approval for the Lisson Grove Programme
Wards Affected:	Church Street
City for All/Policy Context:	This project builds upon the City for All commitment that everyone should have the opportunity to build their lives, careers and families here.
Key Decision:	Key Decision
Financial Summary:	The funding required for these acquisitions are included within Church Street Regeneration budget
Report of:	Executive Director of Growth Planning and Housing – Debbie Jackson

1. Executive Summary

- 1.1 The Cabinet Member decision taken on 6th June 2019 agreed that option 3 under the Lisson Grove Programme (**LGP**) – Preferred Way Forward (**PWF**) should be adopted. This option would ensure the regeneration of the local area, the delivery of 73 new homes, including 28 re-provided affordable homes and 16 new affordable homes in addition to improved public realm and open space opportunities.
- 1.2 Following this Cabinet Member decision, officers commenced discussions with Notting Hill Genesis (**NHG**), a registered provider, to secure agreement in principle on the transfer of the four tenanted properties at 6, 8, 10 and 12 Lilestone Street and 8 parking spaces which are held under a lease of 125 years dated 18th September 1997 and made between (1) Westminster City Council and (2) Paddington Churches Housing Association, registered at HM Land Registry under title NGL755766 (the **Lease**). Westminster City Council (**Westminster**) remains the freehold owner of the reversionary interest of the Lease. The Lease plan is at Appendix 1 with the relevant properties area marked as site 5, and the car parking spaces marked as sites 1-4. Securing this land, subject to the tenancies, from NHG is critical towards implementing the Cabinet Member decision taken on 6th June 2019.
- 1.3 Following negotiations with NHG, Westminster's offer for the land subject to the four tenanted properties at 6, 8, 10 and 12 Lilestone Street and eight car parking spaces has now been accepted by NHG. Details of Westminster's offer price is set out in Appendix 2. In addition, Westminster has agreed to pay for NHG's reasonable fees associated with these acquisitions.
- 1.4 Although the price agreed to be paid by Westminster to NHG for these land interests is more than Westminster's own valuation, it is significantly less than NHG's own valuation figure and is a saving on those additional compensation costs Westminster could incur in a potential compulsory purchase scenario and therefore represents a considerable saving. Formal agreement of these transactions now will enable early land assembly in advance of the proposed regeneration under option 3 LGP of the PWF.
- 1.5 Subject to Cabinet Member approval, if the properties at Lilestone Street transfer to Westminster the existing tenants will become secure tenants of Westminster and will therefore be entitled to be rehoused by Westminster in line with Westminster's policy for Tenants in Housing Renewal Areas. The car parking spaces shall be taken subject to any rights or tenancies currently in force.
- 1.6 It will be necessary to serve an initial demolition notice on the 4 properties at 6, 8, 10 and 12 Lilestone Street upon transfer to Westminster's ownership to

prevent any new right to buy applications being submitted by secure tenants there

2 Recommendations

- 2.1 That this report be exempt from disclosure by virtue of s100A and Schedule 12A of the Local Government Act 1972 (as amended), in that it contains information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 2.2 That the Cabinet Member for Finance, Regeneration and Property approves the following recommendations:
 - 2.2.1 that Westminster proceed with the acquisition of the tenanted properties at 6, 8, 10 and 12 Lilestone Street, by way of a transfer of part of the Lease held by Notting Hill Genesis (**NHG**), with the intent of merging the properties into Westminster's freehold reversion and becoming the landlord of the four existing tenancies as Site 5 for a consideration as set out in Appendix 2 and enter into all necessary contracts and deeds in this regard;
 - 2.2.2 that Westminster proceed with the acquisition of 8 parking spaces by way of a further transfer of part of the Lease held by NHG which are identified as Sites 1,2,3 and 4 as shown at Appendix 1, and for a consideration set out in Appendix 2, and enter into all necessary contracts and deeds in this regard;
 - 2.2.3 that Appendices 2 and 3 of this report be exempt from publication under Section 100 (A) (4) and Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) as it contains information which should be exempt from publication relating to the business and financial affairs of the authority.
 - 2.2.4 that the tenants at 6, 8, 10 and 12 Lilestone Street will become secure tenants of Westminster upon the acquisition of these properties from NHG to Westminster and will be entitled to the same rehousing entitlements as provided in the existing policy for Tenants in Housing Renewal Areas as other council tenants in Church Street affected by regeneration.
 - 2.2.5 authorises the serving of Initial Demolition Notices on 6, 8, 10 and 12 Lilestone Street immediately upon the transfer of these properties into Westminster's ownership, in accordance with the Housing Act 1985, in order to suspend the requirement for the Council to complete Right to Buy applications for as long as the notices remain in force;
 - 2.2.6 delegates approval and timing of all necessary steps to implement and serve the Initial Demolition Notices to the Executive Director of Growth Planning and Housing;
 - 2.2.7 approves the reletting of any void properties under Part VII of the Housing Act 1996 to provide temporary accommodation to homeless households.

3 Reasons for Decision

- 3.1 The Church Street/Edgware Road Area is one of five priority areas identified in Westminster's Housing Renewal Strategy (2010) as needing significant improvement and investment. In line with the City for All objectives and the Church Street Masterplan, the overarching objective of regenerating the Church Street ward is to bring about physical change that is sustainable and creates new and better homes, health and wellbeing services, economy and employment, public realm and open spaces to improve the lives of residents, business and visitors alike.
- 3.2 The Cabinet Member for Finance, Regeneration and Property agreed the decision taken on 6 June 2019 to take forward option 3 as the PWF for Gayhurst House and 6 to 12 Lilestone Street.
- 3.3 Securing by agreement the transfer of 6, 8, 10 and 12 Lilestone Street and those eight parking spaces from NHG to Westminster will assist with land assembly in advance of the regeneration.
- 3.4 The consideration agreed represents a saving to Westminster in comparison to the compensation costs that would be required if any potential Compulsory Purchase Powers were required to secure ownership of these interests
- 3.5 It will be a requirement to take the transfer of the four properties 6, 8, 10 and 12 Lilestone Street and to provide the tenants there with secure tenancies for Notting Hill Genesis. The transaction is subject to the approval of the Social Housing Regulator.
- 3.6 Westminster intends (subject to planning and procurement in the usual way) to demolish the four properties shortly after acquisition. Serving an initial demolition notice on the 4 properties at 6, 8, 10 and 12 Lilestone Street immediately upon transfer to will be necessary to suspend the right to buy.

4 Background, including Policy Context

- 4.1 The Cabinet Member for Finance, Regeneration and Property agreed the decision taken on 6 June 2019 to:
 - Take forward option 3 as the PWF for Gayhurst House and 6-12 Lilestone Street.
 - To progress Gayhurst House and 6-12 Lilestone Street in conjunction with the wider programme of sites and return to the Cabinet Member with an Outline Business Case in autumn 2019.
 - Authorised Officers to enter into voluntary negotiations with residents and organisations and to spend the acquisitions budget to acquire all interests by agreement at open market value and offer compensation in line with Westminster's Policy for Leaseholders in Housing Renewal Areas.
- 4.2 Following the Cabinet Member decision on 6 June 2019, officers commenced discussions with NHG to agree the transfer by voluntary

agreement of 6, 8, 10 and 12 Lilestone Street and 8 car park spaces that form part of the Lease.

- 4.4 Following ongoing negotiations between Westminster and NHG, NHG agreed to retain responsibility for the legacy grant of £141,000 held against the properties and officers have increased Westminster's offer by 5% on top of Westminster's original valuation. This 5% increase is generally the upper limit Westminster will pay for properties above their valuation. NHG have now agreed this offer. In addition, the NHG has agreed Westminster's offer for the car parking spaces which is higher than the Council's original offer but significantly less than NHG's own valuation.
- 4.5 NHG have now agreed Westminster's combined offer as set out in Appendix 2 for the four tenanted properties 6, 8, 10 and 12 Lilestone Street and 8 parking spaces. Westminster has also agreed to pay NHG's reasonable professional fees, that include their legal and valuation costs assuming a standard transaction. NHG legal team has as at the date of this report agreed that their fees will be capped. Proposed head of terms have now been circulated to NHG and are provided at Appendix 3.
- 4.6 As Westminster begins the decanting phase for properties at 6, 8,10 and 12 Lilestone Street, it would be counter-productive to create new secure tenancies in properties that become void, and thus to have to decant further households from these properties and grant them the right to return. It is therefore recommended that such permanent lettings cease at Lilestone Street once the properties transfer to Westminster from NHG and as the properties subsequently become void.
- 4.7 However, to ensure that decanted properties do not remain void, thus impacting financially upon the Housing Revenue Account (**HRA**), it is recommended that void properties should be relet on part VII tenancies (that means, tenancies granted under Part VII of the Housing Act 1996) to provide temporary accommodation to homeless households. As these tenancies will be temporary in nature, vacant possession can be secured upon one week's notice. There will however be a duty upon Westminster to re-house these residents when the properties are required for demolition.
- 4.8 Currently there are no leaseholders among the residents of 6, 8,10 and 12 Lilestone Street. The presence of leaseholders and the requirement of Westminster to purchase these properties from them would have represented a significant capital outlay for this renewal scheme, a financial burden and a potential delay for achieving vacant possession. However, on becoming secure tenants of Westminster, these tenants will have an automatic right to buy should they have previously been assured tenants of their to-be former landlord NHG for at least 5 years. Under current Right to Buy rules, a secure tenant can purchase their property with a maximum discount of £110,500 in the full knowledge that Westminster will then have to buy back the property at full market value plus 10% (the 10% representing the statutory home loss payment that Westminster would be obliged to pay, subject to the leaseholder meeting the statutory criteria).

- 4.9 It is therefore recommended that the Right to Buy be suspended on Lilestone Street, by issuance of the Initial Demolition Notices (the 'Initial Notice'), for properties that are due to be demolished, immediately upon the transfer of these properties into Westminster's ownership. Further details of this are given at Clause 7 below in the Legal Implications.

5 Consultation

- 5.1 In November 2019, Westminster, with NHG's agreement, wrote to the tenants at 6, 8, 10 and 12 Lilestone Street to advise that Westminster and NHG were in discussions regarding the proposed transfer of their homes to Westminster. In the letters the tenants were advised that if agreement was reached with NHG then the tenants would become secure tenants of Westminster and immediately have the same rights as all other secure tenants under the '*Policy for Tenants in Housing Renewal Areas 2019*'. Tenants were provided with a summary of the policy.
- 5.2 Prior to the transfer of the tenanted properties to Westminster, NHG will consult with its tenants in accordance with the Regulator of Social Housing's Tenant Involvement and Empowerment Standard. This is likely to happen once exchange has happened such that completion of the sale would be conditional upon confirmation of a satisfactory consultation. The consultation needs to be over a period of 28 calendar days. The consultation process is likely to be uncontentious as these tenants will become council tenants once the transfer goes through and will be entitled to the same rehousing entitlements as other council tenants in Church Street affected by regeneration.

6 Financial Implications

- 6.1 Bowen and Partners (**Bowen**), Westminster's retained consultants have provided valuation advice on the four tenanted properties and 8 car park spaces to be secured by the Westminster. Details of the valuation are set out in Appendix 2. The price agreed between Notting Hill Genesis and Westminster for the four tenanted properties represents a saving of at least £51.5K on the price that NHG would be entitled to under compulsory purchase provisions.
- 6.2 The price agreed for the combined properties and car park spaces at represents a saving of £157,250 when compared to NHG's original valuation of these interests.
- 6.3 Westminster will be required to pay Stamp Duty Land Tax (**SDLT**) to HM Revenue & Customs on the purchase of the properties. SDLT has been estimated at £54,232 (this figure assumes a claim for multiple dwellings relief). The government's current 'SDLT holiday' may apply and will be explored further before a tax liability is incurred. (Under the 'SDLT holiday' there are reduced rates of SDLT until 31 March 2021 for all residential property, where completion occurs within the period 8 July 2020 to 31 March 2021).

- 6.4 The Cabinet Member decision taken on 6 June 2019 to take forward option 3 as the PWF for Gayhurst House and 6-12 Lilestone Street, agreed the necessary budget to deliver this option and included the costs of land assembly.
- 6.5 There are approved capital budgets under General Fund Capital programme to cover the costs of the acquisition of these properties and car park spaces from NHG.

7 Legal Implications

- 7.1 Westminster has power to acquire property generally under section 120 Local Government Act 1972, for the exercise of any of its functions or for the benefit, improvement or development of its area. Lilestone Street forms part of the Lisson Grove regeneration programme.
- 7.2 On the property passing into council ownership, any tenants will automatically obtain the rights of secure council tenants, including the Right to Buy (**RTB**). Therefore, Westminster will need to ensure that initial demolition notices are served immediately upon acquisition, to ensure that no RTB claims are activated.
- 7.3 If a RTB claim is made, the procedure will follow that set out in Part V of the Housing Act 1985 (**HA 1985**). Where no initial or final demolition notice has been served, Westminster must continue to follow the RTB process in respect of any claims made. However, as soon as an initial demolition notice has been served on a secure tenant under Schedule 5A of the HA Act 1985, provided Westminster has not already conveyed the property pursuant to its duty under section 138 (1), Westminster will no longer be bound to comply with that duty, even where the tenant's claim has otherwise been established: section 138A HA 1985. Westminster can rely on section 138A for as long as the initial demolition notice is in force. The s.138 (1) duty no longer applies to the landlord in connection with that claim from the time the final demolition notice comes into force.
- 7.4 In both of these cases, the claimant affected can claim compensation under s.138C HA 1985. However, that is subject to:
- (i) his RTB claim having been established before the initial or final demolition notice comes into force;
 - (ii) the claim for compensation being made within 3 months of the initial or final demolition notice coming into force;
 - (iii) that claim for compensation being made for expenditure reasonably incurred by the tenant, before the coming into effect of that notice, in respect of legal and other professional costs and fees in connection with his exercise of the RTB; and
 - (iv) that expenditure being evidenced by receipts or other documents showing that it was in fact incurred by the tenant.

- 7.7 In relation to the four properties themselves, Westminster holds the freehold reversion of the property. NHG holds a long lease over the property. It is anticipated that the transfer will take place by way of a surrender of part of that lease corresponding to the four properties and the car parking spaces. In acquiring property Westminster shall incur SDLT liability which shall need to be dealt with when substantial completion takes place, however tax advice should be obtained at the earliest opportunity.
- 7.8 Legal Services have carried out initial due diligence including a review of the title to all four properties. The transfer will be subject to a restriction and a charge currently on the leasehold title (NGL755766). It will be necessary to remove these from the title as part of the transaction. It is anticipated that further and more detailed due diligence will be carried out during the transaction process.

8 Equality Act 2010

- 8.1 The Equality Act 2010 (**EA 2010**) requires public authorities to have due regard to the need to eliminate discrimination and advance equality of opportunity. Westminster must take into account its wider public sector equality duty under section 149 of the EA 2010 when making decisions. Westminster should have due regard to this duty in terms of the processes used, if a decision is taken to deliver the development scheme by way of a developer or delivery partner.

9 Next steps

- 9.1 Formal consultation to be undertaken with the tenanted properties, prior to completion of the transfer.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:

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APPENDICES

Appendix 1 – Extract from lease Plan showing location of properties and carpark spaces

Appendix 2 – Details of Financial Consideration agreed between Westminster and NHG

Appendix 3 -Head of Terms circulated to NHG

For completion by the **Cabinet Member For Finance, Property and Regeneration.**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____

NAME: _____

State nature of interest if any

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled Church Street Site A delivery route and consultant appointment and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Finance, Property, and Regeneration

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, the City Treasurer and, if there are resources implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the

criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.