



City of Westminster

Cabinet Member Report

Decision Maker:	Cllr David Boothroyd Cabinet Member for Finance & Council Reform
Date:	07 November 2023
Classification:	General release
Title:	Variation to Existing Lease and Agreement to Reversionary Lease at Alfred Road, W2
Wards Affected:	Westbourne
Policy Context:	This decision supports maintaining a valuable income that supports the General Fund and supports a long-term business and tenant.
Key Decision:	No
Financial Summary:	The income received supports the General Fund
Report of:	Director of Corporate Property

1. Executive Summary

- 1.1 The purpose of this report is to provide a recommendation to vary the current lease and enter an agreement for lease on expiry of the current lease to David Lloyd Leisure Ltd (DLL) at Alfred Road, W2. The transaction ensures a continued and growing income stream to the Council's General Fund.

2. Recommendations

That the Cabinet Member for Finance and Council Reform:

- 2.1 Approves the principle of the Council varying the existing lease between DLL and the Mayor and the Citizens of the City of Westminster and entering into an Agreement For Lease (AFL) between the same parties, on the terms set out in this report; and
- 2.2 Delegates authority to the Director of Corporate Property following consultation with the Executive Director of Finance and Resources, to approve the Council entering into any necessary legal documents required to facilitate the transactions.

3. Reasons for Decision

- 3.1 Subject to approval, the variation and the agreement for lease enables the Council to receive a significant rental increase from the tenant and ensures the Council receives income from the asset for the longer term. Not proceeding with the recommendation would result in a lower rental return and a lack of certainty of income at the end of the current lease in 2030.

4. Background, including Policy Context

- 4.1 Westminster owns the freehold of The Harbour Club, Alfred Road, Westbourne Green, W2 5EU. The property forms part of a wider Westminster freehold land ownership in the vicinity that includes Westminster Academy and a number of housing estates. The Harbour Club is held in the General Fund.
- 4.2 The Harbour Club is a gym arranged over ground, mezzanine and first floors with an associated car park. It extends to approximately 64,000 sq ft and the car park has approximately 80 spaces. The total site area extends to circa 0.42 hectares (1.05 acres). The leisure centre contains three full sized indoor tennis courts, a 20m indoor swimming pool, an indoor health spa, an indoor gym, indoor fitness studios and an indoor children's club.
- 4.3 A lease was granted to Next Generation Clubs (Property Holdings) Limited in 2000 and expires on 1st August 2030 (7 years unexpired). Next Generation Clubs were founded by David Lloyd but bought out by London and Regional in

2006. The majority of clubs are under the David Lloyd brand but the Alfred Road club is under the Harbour Club brand.

- 4.4 Following 2020 rent review, the passing rent is £114,802 (an uplift from £100,910.67 pa at 2015 review) and there is a further review in 2025 before expiry. The lease provides for the rent to be reviewed in line with movement in the Retail Price Index (RPI).
- 4.5 A turnover top up rent also applies in the lease, which is 1% of the total gross income. Total Gross Income is defined as the aggregate of all gross annual subscriptions/ membership fees plus annual court fees and swimming pool and gymnasium fees.
- 4.6 The proposed variation would be on the same terms as the current lease (summarised in Appendix A of this report), with the exception of the following terms:
- The rent would increase at the next review date (2025) to £320,000 pa.
 - The review provision would move to annual CPI-linked rent reviews (collared and capped at 1-4%)
 - The turnover top-up rent is removed.
 - The agreements are via a variation of the current lease and an agreement for lease (AFL), with the new lease commencing on expiry of the current lease, for a new 22 year term.
 - The current lease will be assigned to David Lloyd Leisure Limited (Company no – 01516226) and the new lease in 2025 will be same party.
- 4.7 Following analysis, the report author and the Council’s RICS qualified advisors confirms to the decision maker that the variation and the agreement for lease represent best value under section 123 of the Local Government Act 1972.
- 4.8 Of note, in the course of negotiations – it has been identified that there has been a miscalculation by DLL in its interpretation of the turnover top-up and in turn an underpayment. This has been reviewed and the additional turnover top-up rent due has been settled in the course of the negotiations.

5. Financial Implications

- 5.1 The current lease currently generates £114,802 pa plus a turnover top up rent. The rent and turnover top up rent for the last three years is presented below:

	Rent	Turnover top-up	Total rent
2020	£ 114,802	£ 14,973	£129,775
2021	£ 114,802	£ 19,019	£133,821
2022	£ 114,802	£ 30,004	£144,806

- 5.2 Under the proposal, the rent remains as per the current terms until the next review date on 1 August 2025, when the rent moves to £320,000 pa and is then reviewed annually in line with CPI (cap and collared at 1-4%).
- 5.3 The negotiated terms are estimated to generate a total minimum income of £1.6m from 2025-2030, whereas should the current lease term continue the total income generated is estimated to be £1.0m (including estimated turnover top-up) over the same period.
- 5.4 The proposal has the benefit of the increased rent but the turnover top up will be removed. The turnover top up received since 2015 has not exceeded £31,683 pa and has been as low as £2,903 (2020 covid effected year) and has typically averaged between £21-31k pa.
- 5.5 The current rent is inflated in line with RPI which as of August 2023 stood at 9% but has historically tracked at far lower levels. A summary of historic RPI figures is provided in Appendix B of this report. It would take a significant period of RPI growth at the current levels for the rent to grow beyond the negotiated increase of £320,000.
- 5.6 As noted the negotiations have highlighted a miscalculation and underpayment of the top-up rent due under the current lease terms and the underpayment of approximately £ 134,709 has been settled in the course of negotiations.
- 5.7 We are advised by the Council's legal advisors that no SDLT is payable on the proposed variation or the Agreement to Lease to grant the new lease in 2030 under current legislation. The Agreement for Lease is not chargeable to SDLT until substantially performed. This will not be the case until actual grant of the new lease because the tenant's right to occupy the property arises until the existing lease until 2030. The SDLT consequence of not entering into the new lease now is to postpone the charge to tax until grant of the new lease in 2030. In any event any SDLT arising will be payable by DLL.
- 5.8 DLL have agreed to cover WCC's legal costs of up to £10,000 + VAT. It is estimated the remaining legal costs the Council will incur will not be in excess of a further £10,000 + VAT. A fee will also be due to the Council's advisors at Avison Young of approximately £16,000+ VAT (payable by WCC).

6. Legal Implications

- 6.1 Section 123 of the Local Government Act 1972 gives the Council the power to dispose of property. The grant of a new lease in 2030 would be a 'disposal' for these purposes.
- 6.2 Section 123 of the LGA 1972 goes on to provide that except with the consent of the Secretary of State, a Council shall not dispose of land otherwise than by way of a short tenancy, for a consideration less than the best that can

reasonably be obtained. Under the Local Government Act General Consent (England) 2003 the Council can dispose of land for less than the market value reasonably obtainable without the consent of the Secretary of State if the authority considers it will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. In all cases, disposal at less than best consideration is subject to the condition that the undervalue does not exceed £2,000,000 (two million pounds). The report author is satisfied the proposal is for the best consideration reasonably obtainable and Avison Young as the Council's advisors have also confirmed their opinion of the same.

- 6.3 The report author has confirmed that the lease will be contracted out the provisions of Sections 24-28 of the Landlord and Tenant Act 1954. Essentially, this means that the tenant will not have a statutory right to return to the property on expiry of the term. This gives the Council the flexibility to re-market or redevelop the property, therefore ensuring it captures the best consideration in rental income and allows flexibility in how it manages the asset.
- 6.4 In terms of any ancillary licences and/or deeds that may be required as part of the arrangements, the Council can rely on the power in section 111 of the LGA 1972 in this regard. This section provides that a local authority shall have power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions. This would include the Deed of Variation of the existing Lease.
- 6.5 The terms confirm that David Lloyd shall be liable for any SDLT that arises on granting of the new lease and therefore the Council will not have a SDLT liability as a result of the transaction.
- 6.6 This report seeks approval of the Cabinet Member to approve the recommended arrangements for this lease regear and to delegate to the Director of Corporate Property, the authority to approve the necessary legal documents. The delegation to the Director is justified for the expeditious execution of the documents required to give effect to the decision.

7. Carbon Impact

- 7.1 As the property is tenanted, there is currently considered no carbon impact and nor would the proposed new lease affect the Council's commitment to becoming a carbon neutral Council by 2030 and a carbon neutral City by 2040.

8. Consultation

- 8.1 A briefing was circulated to the Cabinet Member and Ward members have been consulted.

9. Equalities

- 9.1 The Equality Act 2010 requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. The Council must further take into account its wider public sector equality duty under section 149 of the Equality Act 2010 when making decisions.
- 9.2 There are no equalities implications on this asset regear, and the report author confirms that due consideration has been given in progressing the proposals.

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

Sarah-Jayne Hurst shurst@westminster.gov.uk

APPENDICES

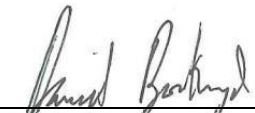
Appendix A - Summary of the current lease and Agreement for Lease of Alfred Road, W2

Appendix B – RPI figures 2012-23

For completion by the **Cabinet Member for Finance and Council Reform**

Declaration of Interest

I have no interest to declare in respect of this report

Signed:  Date: 07 November 2023
NAME: **Councillor David Boothroyd**

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 Variation to Existing Lease and Agreement to Reversionary Lease at Alfred Road, W2 and reject any alternative options which are referred to but not recommended.

Signed: 

Cabinet Member for Cabinet Member for Finance and Council Reform

Date: 07 November 2023

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:

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, 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.