



Cabinet Member Report

Meeting or Decision Maker:

Cabinet Member for Finance and Council Reform

Date:

21 December 2023

Classification:

Part exempt

Appendix 1 is exempt from disclosure by virtue of the following Paragraphs of schedule 12A to the Local Government Act 1972:

Paragraph Three: Information relating to the financial or business affairs of a particular person (including the authority holding that information).

Title:

Acquisition of superior landlord leasehold interests in W9

Wards Affected:

Westbourne

Policy Context:

Fairer Housing

Key Decision:

No

Financial Summary:

The acquisition of the flats will be funded from the Council's 'Invest to Save' budget, based on the saving in sublease rent payable. Through the acquisition of the long term lease the NPV of expenditure over a 20-year period could be c.£0.5m lower than operating through the current lease agreement. Therefore, it will be significantly more cost effective to acquire the superior long-term leases than to continue with the current sublease structure.

Report of:

Claire Nangle, Interim Director of Corporate Property

1.0 Executive Summary

- 1.1 This paper outlines a proposal to acquire the two superior leasehold interests in two flats namely, Flat 15, Barnard Lodge, Admiral Walk, London (W9 3TD) and Flat 10, Florey Lodge, Admiral Walk, London (W9 3TF) (the Property) that are currently sub-leased by Westminster City Council (the Council) from NHS Property Services in a residential complex in London W9 on the terms set out in the confidential appendix.
- 1.2 The flats are subject to a Section 106 covenant and a covenant within the lease restricting the use to disabled users or to the NHS for provision of care services. The flats will be commissioned by the Council to support the care of adults with complex physical needs.

2.0 Recommendations

- 2.1 That the Cabinet Member for Finance and Council Reform approves :-
- 2.2 The acquisition of the two superior leasehold interests in Flat 15, Barnard Lodge, Admiral Walk, London (W9 3TD) and Flat 10, Florey Lodge, Admiral Walk, London (W9 3TF) (subject to legal and physical due diligence), on the terms set out in the confidential Appendix 1
- 2.3 The arrangement and entering into all necessary legal documentation (including any deed of variations and maintenance agreements, subject to legal due diligence and any landlord's consent) and payment of any tax, charges or fees, in association with the purchase of the two properties.

3.0 Reasons for the Decision

- 3.1 The freehold of the building is currently owned by Pertinax Limited. Pertinax Ltd are the landlords to NHS, of the Properties. The NHS have a long lease of 125 years from 1st January 1989 with the freeholders for Flat 15, Barnard Lodge, Admiral Walk, London (W9 3TD) and Flat 10, Florey Lodge, Admiral Walk, London (W9 3TF). The NHS have subleased the two Properties above to the Council for the provisions of care services.
- 3.2 The Council currently lease the above flats from the NHS at RPI linked (and capped) market rentals for terms of 10 years from September 2018, with mutual rolling breaks in September 2025 onwards. The flats are currently void, and the Council will need to invest in the refurbishment of the flats to enable them to be fit for occupation by adults with complex physical needs.
- 3.3 Acquisition of the superior long leasehold interests from the NHS provides the long-term security required to invest in the properties. The capital premium paid for the peppercorn headleases is also cost effective relative to the annual rental cost of the current Council subleases.

4.0 Background

- 4.1 Flat 15 Barnard Lodge and Flat 10 Florey Lodge are 3-bedroom ground floor flats located adjacent to each other within the Carlton Gate private residential complex at the junction of Elmfield Way and Harrow Road. The Carlton Gate development was constructed in the late 1980s and comprises a mixture of private and social residential accommodation. Under the terms of the Section 106 Agreement, the developer was required to provide the subject flats for use by disabled persons. The exact wording in the S106 agreement is that ***'the disabled units shall not be used other than as accommodation for persons with disabilities or***

other community care use by a health authority or NHS Trust unless otherwise agreed in writing by the Corporation.'

- 4.2** At the time of construction of the two flats, the NHS were responsible for the commissioning of accommodation for persons with learning disabilities. The developer therefore granted long leasehold interests in each flat to Parkside NHS Trust, the local primary care provider at that time. Both leases are for a term of 125 years from 1 January 1989 at a peppercorn rental. The headleases now rest with NHS Property Services, the entity more recently established to hold NHS property interests.
- 4.3** The Council became involved during the 2000s, taking an underlease of each flat from the NHS Trust. The Council's current leases run from September 2018 for a term of 10 years. Prior to 2018, both flats had been occupied and care was being provided under contract to the Council by The Westminster Society (now known as LDN London). Barnard Lodge has been vacant since 2018 and Florey Lodge was vacated in 2020. It is understood that both properties were vacated in anticipation of comprehensive refurbishment. The refurbishment scheme was worked up by the Council's Adult Social Care and Corporate Property departments in 2019/2020 and allowed for complete replacement of the kitchens and bathrooms and installation of hoists and tracking to assist mobility throughout the property. The works were put on hold pending discussions on acquiring the NHS headleases to provide greater security of tenure.
- 4.4** The Council's Adult Social Care service has identified an acute need within Westminster for accommodation that can meet the requirements of adults with learning difficulties and complex physical needs.
- 4.5** The National Disabilities Strategy (2021) emphasises the need to address the difficulties faced by people with disabilities living in a home not adapted to their needs and creating more accessible, adapted, and safer homes.
- 4.6** The housing and support at Barnard and Florey Lodge can be built around the service user rather than 'shoehorning' them into an existing service set up. Supporting them have control of their life and living with the same choices, rights, and responsibilities as other citizens. It will also help in reaching the targets forecasted in the Bi-Borough accommodation strategy (2020) for an additional 128 units (Bi-Borough) required for residential care and supported living by 2040.
- 4.7** Sense and the National Centre for Social Research published the following figures in 2022:
1 in 10 disabled people have complex disabilities. By 2029, it is projected the number of people with complex disabilities in the UK will increase to 2 million.
- 4.8** The estimated population in London is just over 179,938 people with complex disabilities. 566,421 (18-64 years) 529,420 (Over 65 years). Within Westminster, population estimates continue to indicate growth in the local population of residents with a learning disability through to 2035 across all age groups

4.9 Table 1. Population Projections

Westminster Predicted Population	2020	2025	2030	2035
18-24 - predicted to have a learning disability	629	646	722	743
25-34 - predicted to have a learning disability	1,272	1,233	1,188	1,225
35-44 - predicted to have a learning disability	1,116	1,102	1,048	1,014
45-54 - predicted to have a learning disability	821	880	930	926
55-64 - predicted to have a learning disability	596	701	753	784
Aged over 65 predicted to have a learning disability	697	818	962	1,110
Total predicted to have a learning disability	4,435	4,561	4,641	4,691

Source: Institute of Public Care, Oxford Brookes University (PANSI and POPPI projections)

4.10 Acquiring Barnard and Florey Lodge will address the demand for ‘accessible’ supported living accommodation and the short fall in supply of suitable accommodation in-borough which drives up the level of out-of-borough placements, creating the risk of individuals becoming disconnected from their families (see table 1. Current Provisions & 2. Service Demand) as well as higher costs on average for the local authority.

4.11 The refurbishment of this property will mitigate the risks posed by:

- Existing provisions failing due to buildings that will not be suitable in the longer term for people with mobility issues/complex needs.
- The redevelopment of the 291 Harrow Road site

Additional cost where funding is required over and above the support needed at due to fire evacuation issues (£60k per year at William Gibbs Court).

4.12 According to the National Statement of Expectations for Supported Housing (2020), The Ministry of Housing, Communities and Local Government (MHCLG) “Every pound spent on supported housing contributes to positive outcomes for individuals, which can lead to more effective use of resources for the NHS, local councils and the wider public sector: for example, through lower health and social care costs, lower pressure on police, probation and prison services and reduced homelessness and rough sleeping.”

4.13 Barnard and Florey Lodge is located near to amenities and transport, supporting social inclusion and offers several opportunities including access to local amenities for all users including care support staff which will support access to quality care services.

4.14 Refurbishment of the property will be designed in conjunction with the service user where possible, with a view to including easily adaptable facilities that can be modified over time, to suit a diverse range of users. This approach considers the needs of a range of people of all ages and abilities by reducing environmental barriers.

4.15 Early Inclusion of digital technology in the refurbishment plans will ensure that Barnard and Florey Lodge are smart, accessible, adaptable, and environmentally friendly, allowing for better person-centred care, putting the service user first and giving them control over their own environment, care, and support needs.

4.16 Table 2. Current Provisions

ADDRESS	OWNER	RESIDENTIAL OR SUPPORTED	NUMBER OF PLACES	COMMENTS
Will Gibbs Court	Peabody	Supported	7	Poor state of repair
36 Cato Street	Octavia	Supported	4	Poor state of repair
Flats A, B and C 291 Harrow Road	WCC	Residential	8	Residential Care and therefore not suitable for wider cohort/Regen plans could impact placements

4.17 Table 3. Service Demand

Barnard & Florey Potential Referral (Feb 2023)	No. Service User
Complex Physical needs currently living at home	6
Complex Physical needs currently living supported living	5
Complex Physical needs currently living Residential Care	8
People waiting to return into borough	3
People accommodated in out of borough scheme	10
People in need of accessible and wheelchair/mobility adapted accommodation	5
People with complex physical disability/PMLD who live with older carers	9
People moved back into borough over the past 5 years	12

4.18 Terms of Acquisition

4.19 See confidential Appendix 1

5.0 Financial Implications

5.1 Currently a capital budget of £368k has been set aside for the capital works which was included in the 23/24 budget but has now been pushed back to 24/25 as part of the Q2 capital programme update. The acquisition of the flats will be funded from the Council's 'Invest to Save' budget, based on the saving in sublease rent payable. This is reflected in the NPV option analysis (confidential appendix 1) which compares the 20-year cost of the current lease structure with the cost of acquiring the superior peppercorn leases. Acquisition of the superior leases delivers a potential £0.5m saving, relative to the cost of the current sublease structure.

6.0 Legal Implications

6.1 Section s120 of the Local Government Act 1972 gives the Council power to acquire land by agreement for the purposes of (a) any of the Council's functions under the Local Government Act or (b) the benefit, improvement, or development of the area.

Section 120(2) of the Local Government Act 1972 further provides that where land is acquired for a purpose and it is not immediately required for that purpose, it may be used for

the purpose of any of the council's functions until it is required for the purpose for which it was acquired.

Section 17 of the Housing Act 1985 provides: "A local housing authority may for the purposes of this Partacquire houses, or buildings which may be made suitable as houses, together with any land occupied with the houses or buildings".

In addition to the above, section 12 of the Local Government Act 2003 gives local authorities the power to invest for any purpose relevant to its functions under any enactment and section 1 of the Localism Act 2011 ('the general power of competence') is, the power to do anything any individual may do.

The acquisition of the Property will be subject to satisfactory legal and structural due diligence. Legal due diligence will be required on the acquisition, to include a review of title and ownership, searches of land and seller in order to ascertain relevant liabilities and encumbrances connected with the Property. The results of the legal enquiries, and any associated risks, will report to Council officers and will be considered prior to any decision to enter into contracts.

7.0 Carbon Implications

7.1 Not directly applicable to this decision

8.0 Equality Impacts

8.1 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.

This Decision will secure two assets for the long-term use by the Council to house and care for persons with complex physical needs.

9.0 Consultation

9.1 Westbourne Ward Members were notified by email of this impending Decision on 27 November 2023.

**If you have any queries about this report or wish to inspect any of the background papers, please contact: Rupert Grass
(rgrass@westminster.gov.uk)**

APPENDICES

Appendix 1 – Financial Information (Exempt under Paragraph Three, Schedule 12A of the Local Government Act 1972)

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

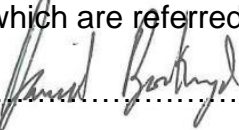
Signed:  Date: 21 December 2023

NAME: **Councillor David Boothroyd**

State nature of interest if any

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(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 recommendations in the report entitled **Acquisition of superior landlord leasehold interests in W9** and reject any alternative options which are referred to but not recommended.

Signed .....

Cabinet Member for Finance and Council Reform

Date ...21 December 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, 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.