



City of Westminster

Cabinet Member Report

Decision Maker:

Cabinet Member for Finance and
Council Reform

Date:

15 March 2024

Classification:

Part Exempt – the accompanying
appendices are exempt from disclosure
by virtue of the following Paragraph 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:

Nursery Letting in W2

Wards Affected:

Westbourne

Policy Context:

This decision supports maintaining a
valuable income that supports the
General Fund

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 let the nursery at 300 Harrow Road to LEYF.
- 1.2 Following the conclusion of a full marketing campaign, analysis has been undertaken and concluded that the proposed letting provides the optimum social value and financial outcome for the Council.

2. Recommendations

- 2.1 The Cabinet Member approves the principle of the granting of the lease on the terms set out in Appendix A of this report, and delegates authority to the Director of Corporate Property following consultation with the Executive Director of Finance and Resources, to approve the Council entering into a new lease and any ancillary legal agreements thereto.

3. Reasons for Decision

- 3.1 The granting of the lease is recommended to generate the optimum social value and financial outcome for the Council's General Fund.

4. Background, including Policy Context

- 4.1 300 Harrow Road is new Council development comprising housing, enterprise space, a community hall and a children's nursery. The scheme will be held in both the Housing Revenue Account (HRA) and the General Fund (GF). (Residential and community hall -HRA, the nursery, café and enterprise space- GF).
- 4.2 The site formerly provided space for Warwick Community Hall plus a low-rise nursery, with both buildings needing improvement to provide modern facilities.
- 4.3 The new scheme improves the street scape along Harrow Road, provide high-quality affordable housing, community facilities and affordable enterprise space.
- 4.4 Harrow Road is one of the most deprived areas in Westminster and there are high levels of unemployment. The redeveloped scheme looks to provide opportunities for local people to enter employment and start-up businesses at the site with affordable childcare and access to affordable homes to improve the local economy.

The Nursery

- 4.5 LEYF were the previous provider of a nursery on the site prior to the development and to enable the development they were moved to alternative

temporary accommodation. There was no documented agreement for LEYF to return to the newly developed scheme, or to have any priority or first refusal rights to the new space.

- 4.6 The nursery space extends to 4900 sq ft and sits under a fully affordable social housing block. There is also a private outdoor space included in the nursery demise which extends to approximately 2,000 sq ft. The nursery is provided in a finished specification and comprises 3 classrooms, kitchen. WCs for adults and children, offices and storage.
- 4.7 The marketing on the scheme commenced in early October 2023 with the first viewing occurring post practical completion on 30th October. Specialist nursery property agent Bernard Gordon have undertaken the marketing of the nursery.
- 4.8 Bernard Gordon estimated a rent of £135-140,000 pa was achievable, which aligned with the minimum rent required under the business case for the redevelopment.
- 4.9 Parties were asked to bid based on a scoring sheet that gave weighting to offers that provided affordable and flexible childcare, demonstrated commitment to Westminster's Fairer Economy, Environment and Council policies as well as the suitability of the proposal and financial terms on offer.
- 4.10 Initial offers were requested to be received by 15th January 2024 and 8 initial bids were received.
- 4.11 Based on initial offers, 5 parties were then asked to provide final round bids, with a particular request to provide more detail on the affordable and flexible childcare they would offer.
- 4.12 Prior to these submissions, individual meetings were held with the shortlisted parties and the Head of Early Years and Childcare Council officer to explain and answer specific questions in what the Council wish to see in relation to affordable and flexible provision. The Council Officer who heads early years assisted in the analysis of the offers received.
- 4.13 Two parties were then found to be front runners and analysis of all offers is provided in the rear of this report.
- 4.14 Both offers are close but scoring has resulted in LEYF being the highest scoring bid and are the recommended party with whom to proceed.

5. Financial Implications

- 5.1 300 Harrow Road is a mixed tenure development on land owned by the Housing Revenue Account (HRA) and the General Fund (GF). The scheme delivers 112 residential units. The capital costs of the scheme have stood at

approximately £66m (from FBC) and the business case was predicated on a commercial income being received from the new nursery.

- 5.2 Following analysis, it has been concluded that the proposed letting to LEYF provides the optimum financial and social value outcome for the Council, with the scoring analysis and the associated commercial terms included in the confidential appendices of this report.
- 5.3 Although LEYF has a lower initial annual rental income than BLS, there is the possibility of achieving greater rental income in the future with a 5 year and 10-year rent review based on RPI compounded with a collar and cap of 3% and 6%. BLS's 5-year rent review proposal was fixed at £150k p.a.
- 5.4 LEYF also has a 5 and 10 year break clause which will allow more flexibility in achieving higher rental income in the future, in the event of significant market growth, with the opportunity to re-market.
- 5.5 The property is held in the General Fund and income received is revenue for the General Fund.

6. Legal Implications

- 6.1 The land has been appropriated for planning purposes. Section 233(1) of the Town and Country Planning Act 1990 (TCPA 1990) states where any land has been acquired or appropriated by a local authority for planning purposes and is for the time being held by them for the purposes for which it was so acquired or appropriated, the authority may dispose of the land to such person, in such manner and subject to such conditions as appear to them to be expedient in order to secure the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it (whether by themselves or by any other person).
- 6.2 Section 233(3) TCPA 1990 goes on to state that the consent of the Secretary of State is also required where the disposal is to be for a consideration less than the best that can reasonably be obtained and is not the grant of a term of seven years or less. The grant of a lease is a disposal of land. The Council should satisfy itself that this is best consideration that can be reasonable obtained. The financial implications do appear to support that is the best consideration that can be obtained.
- 6.3 It should be further be noted that under 233 (8) TCPA 1990 that if land has been appropriated under TCPA 1990 then section 123 Local Government Act 1972 does not apply.
- 6.4 Should land later be appropriated for housing purposes prior to the lease being granted then the Housing Act 1985 would apply, Under section 32 of the Housing Act 1985, the Secretary of State's consent is required in respect of a disposal of land held for the purposes of Part II of that Act (subject to limited exceptions such as a letting on a secure or introductory tenancy which

do not apply here). Under the General Housing Consent 2013 a local authority may, subject to certain exception under paragraph 3.1.2, dispose of land for a consideration equal to its market value.

- 6.5 A disposal as defined in the General Housing Consent 2013 inter alia means a grant of a lease for any duration and market value is defined as meaning the amount for which a property would realise on the date of the valuation on a disposal between a willing buyer and a willing seller in an arm's-length transaction after proper marketing where the parties had each acted knowledgeably, prudently, and without compulsion and where the market value is assessed not earlier than 3 months before the buyer applies or agrees to an offer in writing. Thus, Council should satisfy that the consideration is equal to its market value.
- 6.6 If Sections 24-28 of the Landlord and Tenant Act 1954 i.e., security of tenure is excluded. Essentially, this means is that the tenant will not have the right to request a new lease after the original term of their lease has expired, on the same terms as it had before. This right is known as a statutory right (Part II of the Landlord and Tenant Act 1954). The exclusion of this provision will give the flexibility to the Council to review the market and the needs of the area at the end of the term, without the obligation to renew the lease.
- 6.7 Where a lease is granted within the security of tenure provisions of Part II of the Landlord and Tenant Act 1954 (the 1954 Act), a landlord may only bring the lease to an end at the end of the term by serving a notice under section 25 of the 1954 Act and only if certain statutorily limited grounds for doing so can be proven to apply. Otherwise, at the end of the term, the tenant will be able to hold over on the terms of the lease regardless of expiry of the term granted. Furthermore, the tenant will have the right under section 26 of the 1954 Act to request a new lease on similar terms (apart from the rent) and the landlord will be obliged to renew the lease.
- 6.8 Conversely, if security of tenure were to be excluded, then the lease will determine on expiry of the term granted. However, it would be advisable to liaise with the Tenant before the expiry of the term to ensure that the property is vacated upon expiry, or it may be that the Landlord is content for the Tenant to remain and negotiate the grant of a new lease. Otherwise, a new secure tenancy could be established if the Tenant is allowed to remain in occupation and continue to pay rent.
- 6.9 The exempt Appendix C indicates whether this lease is to be granted with security of tenure or whether the security of tenure provisions of the Landlord and Tenant Act 1954 are to be excluded.
- 6.10 The Council has power to enter into further legal documents under section 111 of the Local Government Act 1972, a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

6.11 The Cabinet Member Terms of Reference delegate the powers of this decision to the Cabinet Member. Paragraph 33.12 of the Council's Constitution requires that all Cabinet Member decisions must be published on the Council's website for five clear days before the decision is taken. Any representations received during this period must be considered by the decision-maker before the decision is taken.

7. Carbon Impact

7.1 There is considered to be no carbon impact and nor would the proposed letting 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 the leader has been briefed on proposals. Ward members have been consulted.

9. Equalities Impact

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 (exempt from publication)

Appendix A – Offers Submitted

Appendix B – Assessment Criteria

Appendix C – Heads of Terms

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: 15 March 2024

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 **Nursery Letting in W2** and reject any alternative options which are referred to but not recommended.

Signed: _____

Cabinet Member for Finance and Council Reform

Date: 15 March 2024

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.