

<b>Individual Mayoral Decision</b>	 <b>TOWER HAMLETS</b>
15 April 2019	
<b>Report of:</b> Ann Sutcliffe, Corporate Director, Place	<b>Classification:</b> Partially exempt
<b>Commercial Lease Guarantee – Tower Hamlets Homes</b>	

<b>Lead Member</b>	<b>Mayor John Biggs</b>
<b>Originating Officer(s)</b>	Alan P McCarthy – Interim Head of Asset Management
<b>Wards affected</b>	All Wards
<b>Key Decision?</b>	No
<b>Forward Plan Notice Published</b>	N/A
<b>Reason for Key Decision</b>	N/A
<b>Strategic Plan Priority / Outcome</b>	<p>1. People are aspirational, independent and have equal access to opportunities;</p> <p>2. A borough that our residents are proud of and love to live in;</p> <p>3. A dynamic outcomes-based Council using digital innovation and partnership working to respond to the changing needs of our borough.</p>

By virtue of section 100A of the Local Government Act 1972 and paragraph 3 of Schedule 12A of the Local Government Act 1972, Appendices A and B of this report are exempt as they contain information relating to the financial or business affairs of any particular person (including the authority handling the information). Specifically they contain the identification of the premises and the landlord(s). The premature publication of this information could prejudice Tower Hamlets Homes and the Council in securing the premises on the negotiated terms, which remains subject to contract. In the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing it.

## Executive Summary

- 1.1. THH occupy offices at Boatman's House, 2 Selsdon Way, London E14 9GL. On 18<sup>th</sup> October 2018 the superior landlord of Boatman's House (Boatman's

House Ltd) served THH with notice terminating their lease on 30<sup>th</sup> April 2018.

- 1.2. THH is a wholly owned company of the Council and the Council acted as guarantor to the existing commercial lease for the office accommodation in favour of THH.
- 1.3. Boatman's House Ltd have offered THH a new lease from the 1<sup>st</sup> May to end November (Lease B in appendix A).
- 1.4. The landlord requires the Council to act as a guarantor again.

### **Recommendations:**

The Mayor is recommended to:

1. Agree that the Council is to act as Guarantor under the commercial lease for office accommodation in favour of THH and;
2. Delegate to the Chief Executive, following consultation with the Corporate Director, Place and the Corporate Director Governance and Monitoring Officer, the authority to enter into the Lease and any other documents to give effect to the above decision.

### **1    REASONS FOR THE DECISIONS**

- 1.1 THH has been served with notice terminating their existing lease and this decision will allow THH to remain in occupation on a short-term basis until they relocate to new office accommodation.
- 1.2 An Individual Mayoral Decision is requested because (1) there is no provision within the scheme of delegation to officers to allow the Council to act as a guarantor (2) the amount of the annual rent payable under the lease exceeds the level of delegation for officers and (3) the legal documentation needs to be completed before the end of April 2019, when THH's existing lease terminates.

### **2    ALTERNATIVE OPTIONS**

- 2.1 THH could vacate the property at the end of their existing lease at the end of April 2019. Although THH have identified alternative office accommodation to move to. THH are currently in negotiations to agree terms and complete a lease on this building. It will therefore be a challenge for them to vacate Boatman's House by the end of April. This new lease on Boatman's House allows THH to remain in occupation on a short-term basis on the existing terms including rent until the lease on their new office accommodation is completed.

### **3 DETAILS OF THE REPORT**

#### **Background**

- 3.1 THH is a wholly owned company of the Council. THH delivers a number of services on behalf of the Council for which an annual management fee is payable by the Council. The management fee is calculated in accordance with the THH management agreement, but there are other elements factored into the calculation including, in recent years, the need for all areas of the Council service delivery to implement savings because of an overall reduction in the resources available to the Council.
- 3.2 In August 2018 THH took a sublease [Lease A in appendix A] from a tenant (GE Capital Equipment Finance Limited) of the ground, second and third floors at Boatman's House, 2 Selsdon Way, London, E14, 9LA.
- 3.3 The lease provided for a landlord only break clause on the 30th April 2019 and the tenant is entitled to not less than six months written notice to determine the lease.
- 3.4 The Council acted as guarantor under the existing commercial lease for the office accommodation in favour of THH.
- 3.5 On 18th October 2018 the then freehold owners (Woodchester House (Number 1) Limited) sold the building to Boatman's House Limited. On the same day THH were given notice terminating their lease on 30th April 2019 by the new owner.
- 3.6 The new owner (Boatman House Limited) has offered THH a new lease from 1st May 2019 as this will fit in with the break clause timetable for the only other tenant in the building.
- 3.7 The new lease [Lease B] will be granted for a term from the 1st May 2019 and will expire on the 19th November 2019, with summary as set out at Appendix A with full lease report at Appendix B
- 3.8 In addition to the rent, THH will be responsible for paying service charge, insurance and other outgoings including business rates.
- 3.9 THH will benefit from a rent free period as summarised in Appendix A
- 3.10 There will be an option to terminate the lease exercisable by either the landlord or and tenant. Either the landlord or the tenant will be required to give at least three months' written notice of its intention to exercise the break provision.
- 3.11 It is considered that THH may be in a position to operate the break clause under the lease, as it is currently in negotiations to complete a lease of a single floor at an alternative office building [Lease C in Appendix A].

- 3.12 The proposal is that the lease will be for a 5 year term with break clause and rent deposit rather than Council as guarantor.
- 3.13 Rent details are at Appendix A [Lease C]. Additional to the annual rent are service charge, insurance and business rates. Although the space is slightly smaller than the current office at Boatman's House there are economies of scale with all the accommodation being on one floor.
- 3.14 The Council does therefore need to be a party to Lease C but has been working alongside THH colleagues looking at the options and would concur that this is the best deal on the open market. If of course THH's operation is wound up and the service is brought back in house then it is very likely that the Council would inherit the lease liability post July 2020 although this may be mitigated if some form of break clause can be negotiated.
- 3.15 THH have reported to their board and received authorisation to proceed.
- 3.16 The freehold owner of Boatman's House, as part of the terms negotiated, request that that the Council acts as guarantor again as before. However as there is no provision in the scheme of delegation for the Council to act as a guarantor this requires a decision via an Individual Mayoral Decision (IMD). This report seeks approval to enter into various legal agreements.

### **Details**

- 3.17 The Council is being asked to act as guarantor for the new short term lease; this was a requirement of the 'Landlord' which recognises that the Council is the sole shareholder whom and substantially controls the financial viability of THH. There is also likely to be a perceived risk to the 'Landlord' that THH could cease to exist with insufficient resources to meet the remaining obligations under the lease terms which the 'landlord' would not be prepared to take.
- 3.18 The proposal is for THH to take a new short term lease from Boatman's House Ltd, the new landlord (identified in exempt Appendix A, but referred to as the "Landlord") of the ground, second and third floors of the property.
- 3.19 The obligations of THH as a separate legal entity cannot be enforced on the Council in the event of default save for contractually where, for example, it acts as guarantor. It is highly unlikely that the Council would cease to provide appropriate support to THH or to wind it up in a way that caused reputational damage to the Council or recognising that it is the Council's statutory housing obligations that are being discharged by THH as its agent. However, the issue for the Council corporately is that in the event of such a situation arising, the guarantor status of the Council would mean that the Council would inherit the liabilities for the lease until the end of the term.
- 3.20 In the event that the 'Landlord' exercises the break right provision THH would need to vacate the property within three months. This would just mean

that THH would need to move to new office accommodation sooner. If this were to be the scenario then the Council would work and support THH.

#### **4 EQUALITIES IMPLICATIONS**

- 4.1 There are no equalities implications to be considered in this report.

#### **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
  - Consultations,
  - Environmental (including air quality),
  - Risk Management,
  - Crime Reduction,
  - Safeguarding.
  - Data Protection / Privacy Impact Assessment.
- 5.2 Best Value Implications: The decision to guarantee the original lease (now being terminated) as a result of THH moving to new premises was made by IMD dated 15<sup>th</sup> June 2018. This move achieved savings through securing an office relocation for THH and was considered to represent best value for THH at the time. There are no further Best Value Implications created by this decision as it is, in practice, re-iterating and replacing, the Guarantee already in place.
- 5.3 There are no other statutory implications considered within this report.

#### **6 COMMENTS OF THE CHIEF FINANCE OFFICER**

- 6.1 This report seeks the approval of the Mayor for the Council to act as financial guarantor in relation to T H Hs' lease of Boatman's House for the period from 1st May 2019 to 19th November 2019. A similar guarantee was approved by the Mayor in June 2018 for a period to December 2023 however, as outlined in this report, Boatman's House has been sold to a new superior landlord and following the new owner's triggering of the break clause to take effect on 30th April 2019, a new short term lease has been negotiated in order for THH to continue to occupy the building until November 2019. The lease rental charges remain on the same terms, and the Council's guarantee will replace the one that is currently in effect.
- 6.2 As a result of the need for THH to relocate from Boatman's House by November 2019, suitable alternative accommodation is being identified. All options will have differing financial arrangements which will be assessed in

conjunction with Council officers, with any approvals being sought in future reports if necessary. The new short-term lease being entered into for Boatman's House includes the option for THH to give three months' notice to vacate the building if suitable alternative accommodation is identified and it is beneficial to relocate before November 2019. It should be noted however that there is also a similar break clause in favour of the landlord which means that there is a risk that THH will need to vacate at three months' notice if the landlord serves notice.

- 6.3 The accommodation costs incurred by THH are fully funded from the management fee provided by the Council. This is agreed annually as part of the budget process.

## 7 **COMMENTS OF LEGAL SERVICES**

- 7.1 Governance of THH.
- 7.2 THH is a Company Limited by Guarantee and wholly owned by the Council. THH was established in July 2008 by the Council to manage some of its housing management functions. The powers of THH are set out in and governed by its Articles of Association and its relationship with the Council is managed through a management agreement made pursuant to section 27 of the Housing Act 1985 and approved by the Secretary of State.
- 7.3 The THH Board on 26<sup>th</sup> February 2019 took a decision to enter into a new Lease.
- 7.4 Council's Power to act as Guarantor to a new lease
- 7.5 The Council has the legislative power to give a guarantee. Section 1 of the Localism Act 2011 gives the Council a general power of competence, which allows it to generally do anything that a natural person might otherwise be able to do, unless there is a limitation on that power in any legislation. Additionally, or in the alternative, section 111 of the Local Government Act 1972 affords the Council 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" which, in this case, are its housing functions. On that basis, the Council has the legislative power to provide guarantees, but subject to other considerations including the state aid rules and its statutory best value duty.
- 7.6 State Aid can take many different forms, but includes the situation where the Council acts as guarantor. Where the guarantee is being given in favour of a company which is Teckal compliant, as THH is, it is reasonable to expect that the arrangement will not constitute an unlawful state aid.
- 7.7 Both THH and the Council have a statutory duty under section 3 of the Local Government Act 1999 to secure best value and this is covered further at paragraph 7.8 below.

- 7.8 As stated at point 5.2 the decision to guarantee the existing lease (now being terminated) as a result of THH moving to new premises was made by IMD dated 15th June 2018. This move achieved savings through securing office relocation for THH and was considered to represent best value for THH at the time. There are no further Best Value Implications created by this decision for THH and the Council.
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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

None

### **Appendices**

- Exempt Appendix A: Leases – summary of headline terms
- Exempt Appendix B: Lease Report – Short-term lease renewal – Boatman's House

### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

None

### **Officer contact details for documents:**

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