

Committee: Cabinet	Date: 2 April 2008	Classification: Unrestricted	Report No: CAB 156/078	Agenda Item:
Report of: Corporate Director, Development and Renewal Originating officer(s) Emma Peters		Title: Disposal of Land 10 Backchurch Lane E1 Wards Affected: Whitechapel		

1. **SUMMARY**

- 1.1 This report updates members on the proposed sale of land at 10 Backchurch Lane, London E1, (originally agreed by Cabinet on 10th March 2004); on failure to date to progress the scheme; on the legal and commercial implications of this; and presents the options for to the Council for moving forward on this site.

2. **RECOMMENDATIONS**

Cabinet is recommended EITHER to:-

- 2.1 Agree to market the site on a competitive basis by informal tender, on the basis of the attached planning statement; and on the basis that any purchaser assumes responsibility for the relocation of existing tenants and on the basis that any purchaser indemnifies the Council against any clawback in respect of grant funding expenditure on the site in the past; OR
- 2.2 Agree to pursue the sale to the Tower Hamlets Environment Trust on the basis of the revised valuation (see paragraph 4.below) and on the basis of the attached planning statement; and on the basis of that the Tower Hamlets Environment Trust assumes responsibility for the relocation of existing tenants and on the basis that the Tower Hamlets Environment Trust indemnifies the Council against any clawback in respect of grant funding expenditure on the site in the past.

Local Government Act, 1972 Section 100D (As amended)
List of “Background Papers” used in the preparation of this report

Brief description of “back ground papers”	Name and telephone number of holder and address where open to inspection.
File: Eco Tower – land at 10 Backchurch Lane	Emma Peters ext 4247

3. BACKGROUND

- 3.1 Land at 10 Backchurch Lane is in the freehold ownership of the Council. The site is 0.3 ha in size and consists of the disused railway viaduct plus the yard immediately to the south. There are two existing tenancies on the site.
- 3.2 In 2003-4 the Tower Hamlets Environment Trust (THET) approached the Council and proposed to develop an ECO Tower on the site as part of a much larger development, providing B1 workspace in Cable Street, the incorporation of other railway arches in Pinchin Street, leading into the Environment Trust's existing small business scheme at Johnson's Yard. At the time, the Eco Tower was proposed to be a 15 storey residential development providing some 92 residential units, 50 being for market sale and 42 for a shared equity basis for key workers. There would also be 300 sqm of light industrial workspace. There was no discussion about this proposal at that time about appropriate redevelopment with the Council's planning service.
- 3.3 The proposal required site assembly; specifically the acquisition by THET of adjacent land owned by Network Rail, plus the relocating of existing tenants (2 on the Council's land, and further tenancies on adjacent land).
- 3.3 In March 2004 the Cabinet received a report from the then Service Head Property and Facilities Management on behalf of the then Acting Corporate Director in the former Environment and Culture Directorate. That report recommended the disposal of the site to the THET, on an off market basis, subject to a number of conditions.
- 3.4 Those conditions were:
- (a) an initial payment of £25,000 followed by a payment of £100,000 or 10% of the profit on the final scheme, whichever is the greater;
 - (b) the Council receiving 10% of the profit in the scheme, from future commercial disposals as and when they occur;
 - (c) the Tower Hamlets Environment Trust indemnifying the Council against any grant clawback in respect of grant funding expenditure on the site in the past;
 - (d) the Environment Trust assuming responsibility for the site funding relocation of existing tenants, and
 - (e) a time limit of two years for the commencement of development.
- 3.5 At the time, Cabinet was advised that, due to the nature of the site and the terms of its current occupation, this site was of limited value to the Council, and that the proposed disposal would both protect current uses, protect the Council against clawback of ERDF grant (the clawback period being 20 years); provide an initial capital receipt and a further capital receipt on completion of the development.

- 3.6 At the time, the Council did not have a protocol on the disposal of assets, but the disposal was in accordance with (then) Financial Regulation D.6.3, which allowed for negotiated disposals with not for profit organisations.
- 3.7 In terms of risk, it was reported to Cabinet that the principal risk was that the development specified would not proceed. This risk was mitigated by placing a time limit (two years) on the commencement of development.

4. PROGRESS TO DATE

- 4.1 In March 2007 the Assistant Chief Executive (Legal Services) wrote to solicitors for the Environment Trust advising that, since the two years time limit had passed and the transaction had not been completed, the Council had a statutory duty to reconsider the disposal, and to assess whether the terms proposed in March 2004 still represented the best consideration that can reasonably be obtained. The Environment Trust's solicitors were advised that this would require a fresh reference to the Council's Cabinet to achieve a valid authority to dispose.
- 4.2 This letter was prompted in part by an approach by THET to the Council's planning service regarding the construction of much larger development on the site, incorporating a 34 storey tower. In planning terms, this proposal is not considered appropriate in scale.
- 4.3 The Solicitors maintained that whilst the transaction had not been completed there had been intermittent liaison with Council Officers in which the commencement of development had been confirmed as being within 2 years of the transfer of the land and not within 2 years of the Cabinet resolution, and that THET still wished to proceed on the basis of that resolution. In demonstration of THET's intentions the Solicitors mentioned continuing negotiations with Network Rail to assemble other parcels of land so as to achieve ownership of the entirety of the development site.
- 4.4 It should be noted that the site is a designated Site of Importance for Nature Conservation (SINC) in both the Adopted Unitary Development Plan (1998) and in the emerging Local Development Framework Core Strategy, which was approved as Interim Planning Guidance for the purpose of development control in September 2007. Mixed residential and employment use is considered suitable, subject to such development not compromising the integrity of the site in respect of the SINC. The constraints of the site due to the close adjacency of the DLR and C2C railway tracks also present design challenges. The site is capable of supporting a high density development (within the range of 650-1100 habitable rooms per ha) subject to the other constraints noted above.

- 4.5 Whilst the resolution referred to a two year time limit on the development commencing, legal advice obtained is that it was implicit that contracts would be exchanged within a reasonable period of time and that the developer would obtain planning consent rapidly. Neither criterion has been fulfilled in four years and the resolution is now regarded as expired by effluxion of time. Additionally, in any event Cabinet is at liberty to determine how it now wishes to proceed as contracts have not been exchanged and there is no legally binding commitment to proceed on the 2004 resolution. It is now policy under the disposal protocol that all properties must be revalued after 6 months if contracts are not exchanged and it is best practice to do so to ensure that the Council achieves best value.
- 4.6 A planning statement, setting out current planning policy considerations, has subsequently been prepared and is attached to this report.
- 4.7 The Council instructed the District Valuer to value the site in the light of the planning statement. That valuation is significantly in excess of the disposal sum agreed with THET

5. THE COUNCIL'S ASSET MANAGEMENT STRATEGY

- 5.1 A thorough review of the Council's corporate property function has been undertaken since April 2007, the service has been restructured and new standards, systems and procedures have been put in place. The new approach to property is set out in the Council's Asset Management Strategy, which was approved by Cabinet in January 2008.
- 5.2 As part of the Asset Management Strategy, a protocol governing the disposals of property has been prepared and agreed (Appendix 3 to the AMP, also appended to this report at Appendix 4). A number of standards set out in the Disposals Protocol are highlighted below.
- 5.3 The Disposals Protocol states at section 2.2 that sales should require the open invitation of competitive bids, with exceptions only by approval of the Assistant Chief Executive (Legal Services) and Chief Finance Officer and only in specific circumstances listed in the protocol as follows:
- i) sale to a sitting tenant
 - ii) sale of an access which would enable a purchaser to release development value locked up in other property
 - iii) sale to an adjoining owner or sale of a part interest in a property where amalgamation of interests could enable substantial "marriage value" to be realised
 - iv) sale to a public body (e.g. a housing association or London Development Agency or English Partnerships) at less than market value where other

benefits are offered to the Council, provided that such sale is within the General Order (Statutory power) or receives Secretary of State consent.

5.4 Furthermore, the Disposals protocol states at section 2.3 that the methods of disposal to be used will comprise one of the following:

- a) informal tenders, leading eventually to a best and final offer (a two stage process)
- b) Formal tenders (a single stage process)
- c) Auction (a single stage process)
- d) Negotiation subject to statutory powers.

5.5 In terms of planning information, the Disposals Protocol states at paras 8.3-85 that a planning brief will be prepared for large and/or complex sites, which will themselves be the subject of public consultation and adoption as Council policy by the Cabinet. For smaller sites, a planning advice note will be prepared. Save for transactions under £50,000 in value no property will be valued or marketed without such an Advice Note, and all marketing information relating to disposals (except those under statutory powers) will include the relevant planning advice note.

5.6 Should the Cabinet resolve to dispose of the site on an open market basis, rather than to proceed with the sale to the Environment Trust, it would be proposed to undertake the sale on the basis of an informal tender, with a Planning Advice Note as attached to this report.

6. COMMENTS OF THE CHIEF FINANCIAL OFFICER

6.1 This report updates Members on the progress of the disposal of the site at 10 Backchurch Lane and seeks approval to either dispose of the land to the Tower Hamlets Environment Trust or via sale on a competitive basis by informal tender.

6.2 The site was originally deemed surplus to requirements by Cabinet on 10 March 2004, and disposal was approved on the basis that certain conditions were attached. It was anticipated that an initial receipt of £25,000 would be generated, followed by a payment of £100,000 or 10% of the profit on the final scheme, whichever is the greater.

6.3 As outlined in this report, it was stipulated that development must take place within two years of the sale being completed. In view of the fact that the disposal has not been finalised in the four years that have elapsed since the original Cabinet decision, the site should now be revalued and disposed of so as to achieve its current market value.

6.4 Financial Procedure CR10 requires disposals to be by competitive tender or public auction, with best value for the disposal being ensured. This requirement will be met through the sale taking place at market value.

6.5 The original disposal conditions also required the purchaser to assume responsibility for the relocation of existing tenants and to indemnify the Council against the clawback of any grant funding that had previously been received in respect of expenditure on the site. These conditions will be incorporated into the updated disposal agreement, irrespective of whether the disposal is to the Tower Hamlets Environment Trust, or on the open market.

6.6 The proposal, if approved, will result in a Capital Receipt which will be 100% usable and will accrue to the Council's Local Priorities Programme in the year of disposal.

7. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

7.1 Pursuant to Section 123 Local Government Act 1972 the Council may dispose of land in any manner it wishes provided the consideration is the best reasonably obtainable. Under the General Disposal Consent 2003 it may dispose at an undervalue provided the undervalue does not exceed £2 million and the disposal is for a well-being purpose within Section 2 Local Government Act 2000.

7.2 Other relevant legal considerations are dealt with in the body of the report . There is no binding agreement to sell to THET and the Council is therefore free to dispose of the land within the confines set out in clause 7.1 above

8. EQUAL OPPORTUNITIES IMPLICATIONS

8.1 None arising directly from this report.

9. ANTI-POVERTY IMPLICATIONS

9.1 None arising directly from this report.

10. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

10.1 Sustainable environmental issues are covered in the appropriate planning advice note.

11. RISK MANAGEMENT IMPLICATIONS

11.1 The need for relatively complex site assembly; the likely delay that this entails, remains most significant risk, whether the land is disposed of to the Environment Trust or to another purchaser. A further risk is that of clawback of ERDF funding

received in the past. The terms of the disposal seek to transfer these risks to the relevant purchaser. In terms of timing/delay, it is proposed that clear longstop dates are provided for in the heads of terms to be agreed with any developer (see concurrent report of Assistant Chief Executive, Legal Services, above).

12. **EFFICIENCY STATEMENT**

12.1 The Council's has consolidated its operational estate, and improved its processes and procedures in respect of property disposals through the adoption of the Asset Management Plan. Disposal of redundant buildings reduces costs and minimises risk of illegal occupation.