

MAYOR'S EXECUTIVE DECISION MAKING

Monday, 27 July 2015

Mayor's Decision Log No. 84 (Response to Call-In)

1. **RECOMMENDATION TO SELL 296 BETHNAL GREEN ROAD BY AUCTION - (RESPONSE TO CALL-IN) (Pages 1 - 16)**

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact: John S. Williams, Service Head, Democratic Services

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LONDON BOROUGH OF TOWER HAMLETS

PROFORMA:

MAYORAL DECISION SUBJECT TO CALL-IN AND REFERENCE BACK

Mayoral Decision Log No: 084

Title: Recommendation to sell 296 Bethnal Green Road by auction instead of by informal tender as authorised by Cabinet on 4th February 2015 and taken by the Executive on 27th April, 2015.

Is this a Key Decision?

No

UNRESTRICTED / RESTRICTED:

Unrestricted

DATE OF OVERVIEW AND SCRUTINY COMMITTEE:

12th May, 2015

DECISION OF THE OVERVIEW AND SCRUTINY COMMITTEE:

1. That this decision is referred back and that it is re-considered through the established cross party procedure.

BACKGROUND

The overall report is attached at Appendix 1. However for ease, the decisions as agreed by the Executive in relation to the report are listed below:-

DECISION:

On 4th February 2015 Cabinet authorised the sale, by informal tender, of five council owned properties, being 11-31 Toynbee Street, 2 Jubilee Street, 31 Turner Street, 329 Morville Street and 296 Bethnal Green Road. The report however recommended that 296 Bethnal Green Road should be sold by auction rather than informal tender for a number of reasons as set out within

the report. Following that decision by Cabinet in February, 2015 the Executive on the 27th April, 2015:

- A. Agreed the sale of 296 Bethnal Green Road by auction; and
- B. Noted that following a direction given by the Secretary of State on 17th December 2014, prior written agreement will be required from appointed Commissioners before disposing of the property.

Reasons for the Decision

Appendix 1 to this report sets out the full reasons for the proposals.

Alternative Options Considered

Appendix 1 to this report sets out any alternative options considered

REASONS FOR THE REFERENCE BACK

The Call-in requisition in relation to the above decision on the Executive on 27th April, 2015 set out the following reasons for the call-in:-

1. Until the election of a new mayor, Executive decisions should have been paused in order to ensure legitimacy and accountability of any decisions made. That then Deputy Mayor had no democratic mandate to a decision over 296 Bethnal Green Road.
2. The disposal of assets such as 296 Bethnal Green Road during a period of uncertainty over governance issues – namely the removal of the Executive Mayor from office – would have benefitted from full scrutiny in a cross-party arena and that consideration by the Overview and Scrutiny Committee would have provided such scrutiny and examination.
3. The disposal of assets was a decision for the Department for Communities and Local Government's appointed Commissioners.

ALTERNATIVE ACTION RECOMMENDED BY THE OVERVIEW AND SCRUTINY COMMITTEE (IF ANY)

The Call-in requisition proposed the following alternative action in relation to the Mayor's decision:-

- I. That this Executive decision should be reversed; and
- II. That there should be a moratorium on decision making (decisions made unilaterally by the Deputy Mayor) until the election of the new Mayor.

ORIGINAL DECISION

The original Mayor's Decision Log No. 84 is set out in Appendix 1 to this report.

LEGAL COMMENTS

Additional legal comments are set out in Appendix 1 to this report.

DECISION OF THE MAYOR

I have reconsidered the Mayor's Decision Log No. 84 "Recommendation to sell 296 Bethnal Green Road by auction instead of by informal tender" and in the light of the information provided by the Overview and Scrutiny Committee at its meeting on 12th May, 2015 as set out above.


Accordingly, having taken into consideration all of the relevant information I have decided to:-


✓ (a) Confirm the Executive decision, of 27th April, 2015 published on 27th April on the matter of the sale of 296 Bethnal Green Road by auction instead of by informal tender *: or

~~(b) Amend the Executive decision, of 27th April, 2015 published on 27th April on the matter of the sale of 296 Bethnal Green Road by auction instead of by informal tender as set out below *:-~~

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(* Delete as applicable)

Signed  Date 27/7/2015
Mayor John Biggs

Individual Mayoral Decision Proforma Decision Log No: 84	 TOWER HAMLETS
Report of: Aman Dalvi Corporate Director D&R	Classification: Unrestricted.
Recommendation to sell 296 Bethnal Green Road by Auction instead of by informal tender as authorised by Cabinet on 4th February 2015	

Is this a Key Decision?	No
Decision Notice Publication Date:	N/A
General Exception or Urgency Notice published?	Not required
Restrictions:	None

EXECUTIVE SUMMARY

On 4th February 2015 Cabinet authorised the sale, by informal tender, of five council owned properties, being 11-31 Toynbee Street, 2 Jubilee Street, 31 Turner Street, 329 Morville Street and 296 Bethnal Green Road. Officers are recommending that 296 Bethnal Green Road is sold by auction rather than informal tender for a number of reasons as laid out within the report. This recommendation does not affect the other properties noted in the 4th February 2015 Cabinet decision that are to be sold by informal tender.

Although sale by auction is not considered appropriate for the properties at Toynbee Street, Jubilee Street, Turner Street and Morville Street, as noted in the Executive Summary above, sale by auction is an ideal method of sale for the shop at 296 Bethnal Green Road which has no development potential and has a straightforward retail use.

Due to its poor condition, small size and straightforward use, 296 Bethnal Green Road will benefit from being sold at auction rather than by informal tender. Investors and developers and those who are likely to be interested in purchasing this type of property regularly purchase at auction houses, often without viewing the property. Sale by auction will ensure good market coverage and that the property is seen by those parties typically interested in this type of purchase. During an auction the price paid for properties can exceed its estimated market value.

Sale by auction is usually a quick process with the sale becoming legally binding on the fall of the hammer. The buyer must pay 10% of the purchase price immediately and is contracted to pay the outstanding amount within 28 days after the auction. There can be no renegotiating of price. A quick sale

will be particularly advantageous: 296 Bethnal Green Road has suffered from squatters in the past and there is currently a full time security guard on the premises which is costing the Council £250 per day.

Auctions are ideal methods of sale for relatively straightforward transactions where purchasers often carry out minimal pre-sale due diligence.

The alternative option is to remain with the Cabinet decision of 4th February and to sell 296 Bethnal Green Road by informal tender. Sale by informal tender will delay the sales process and security costs will remain until the property sale completes.

DECISION

The Mayor is recommended to:

1. Agree the sale of 296 Bethnal Green Road by auction.
2. Note that following a direction given by the Secretary of State on 17 December 2014, prior written agreement will be required from appointed Commissioners before disposing of the property.

APPROVALS

1. (If applicable) Corporate Director proposing the decision or his/her deputy

I approve the attached report and proposed decision above for submission to the Mayor.

Signed  Date 28/4/15

2. Chief Finance Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.

Signed  Date 14/4/15

3. Monitoring Officer or his/her deputy

I have been consulted on the content of the attached report which includes my comments.


Signed  Date 16/04/15


Deputy

4. Mayor

I agree the decision proposed in paragraph above for the reasons set out in ~~paragraph X~~ in the attached report.

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Signed  Date 27/4/15

Individual Mayoral Decision	 TOWER HAMLETS
Report of: Aman Dalvi, Corporate Director D&R	Classification: Unrestricted
Recommendation to sell 296 Bethnal Green Road by Auction instead of by informal tender as authorised by Cabinet on 4th February 2015	

Lead Member	Oliur Rahman
Originating Officer(s)	Kevin Pulsford
Wards affected	Weavers ward
Community Plan Theme	
Key Decision?	No

Executive Summary

On 4th February 2015 Cabinet authorised the sale, by informal tender, of five council owned properties, being 11-31 Toynbee Street, 2 Jubilee Street, 31 Turner Street, 329 Morville Street and 296 Bethnal Green Road. Officers are recommending that 296 Bethnal Green Road is sold by auction rather than informal tender for a number of reasons as laid out within the report. This recommendation does not affect the other properties noted in the 4th February 2015 Cabinet decision that are to be sold by informal tender.

This report sets out the reasons why selling 296 Bethnal Green Road by auction is the preferred method of disposal.

Recommendations:

The Mayor is recommended to:

1. Agree the sale of 296 Bethnal Green Road by auction.
2. Note that following a direction given by the Secretary of State on 17 December 2014, prior written agreement will be required from appointed Commissioners before disposing of the property.

1. REASONS FOR THE DECISIONS

- 1.1 Following the Cabinet decision made on 4th February 2015 authorising the sale of a number of properties by informal tender officers have reconsidered the options of sale for 296 Bethnal Green Road. Upon further reflection officers are of the opinion that sale by auction for this property would be beneficial in terms of speed of sale, market coverage and likely price achieved.

2. ALTERNATIVE OPTIONS

- 2.1 The alternative option is to remain with the Cabinet decision of 4th February and to sell 296 Bethnal Green Road by informal tender. Sale by informal tender will delay the sales process and security costs will remain until the property sale completes.

3. DETAILS OF REPORT

- 3.1 The Council owns a number of assets that are currently vacant or due to become vacant. Following a review of the options available including bringing them back into use, developing them as Council-led projects and disposal, the Cabinet took a decision on 4th February 2015 to:

- Agree that the land and buildings are surplus to requirements;
- Agree to the disposal of the sites by informal tender;
- Agree to the sale of the sites on 199 year leases;
- Note that following a direction given by the Secretary of State on 17th December 2014, prior written agreement will be required from appointed Commissioners before disposing of these properties;
- Authorise the Corporate Director, Development and Renewal to appoint external agents to support the marketing of the sites;
- Authorise the Corporate Director, Development and Renewal to accept the best tender return for the sites on conclusion of the marketing exercise;
- Authorise the Corporate Director, Development and Renewal, following consultation with the Service Head, Legal Services, to agree the terms and conditions of any agreements required to implement the recommendations above;
- Agree to proceed with the decision made on 5th September 2012 to market and dispose of 329 Morville Street
- Agree that the vacant retail unit at 296 Bethnal Green Road is declared surplus to requirements and authority granted for its open market disposal.

Four of the properties to be sold are development sites or have potential for substantial refurbishment or conversion. Informal tender is the method most often used by Local Authorities to sell properties of this type. Whilst it carries the risk that the buyer can withdraw or renegotiate and can be a lengthier process overall, sale by informal tender has the following advantages:

- It is fully understood by the developer, house-builder and registered provider market and has their acceptance due to its common usage.
- It achieves best consideration by virtue of full exposure to the widest target market.
- The seller has the flexibility under certain circumstances to further negotiate some of the terms after bidder selection.
- It allows the buyer to carry out some detailed due diligence once they have been selected and whilst contracts are prepared.

3.2 Although sale by auction is not considered appropriate for the properties at Toynbee Street, Jubilee Street, Turner Street and Morville Street, as noted in the Executive Summary above, sale by auction is an ideal method of sale for the shop at 296 Bethnal Green Road which has no development potential and has a straightforward retail use.

3.3 Due to its poor condition, small size and straightforward use, 296 Bethnal Green Road will benefit from being sold at auction rather than by informal tender. Investors and developers and those who are likely to be interested in purchasing this type of property regularly purchase at auction houses, often without viewing the property. Sale by auction will ensure good market coverage and that the property is seen by those parties typically interested in this type of purchase. During an auction the price paid for properties can exceed its estimated market value.

3.4 Sale by auction is usually a quick process with the sale becoming legally binding on the fall of the hammer. The buyer must pay 10% of the purchase price immediately and is contracted to pay the outstanding amount within 28 days after the auction. There can be no renegotiating of price. A quick sale will be particularly advantageous: 296 Bethnal Green Road has suffered from squatters in the past and there is currently a full time security guard on the premises which is costing the Council £250 per day.

3.5 Auctions are ideal methods of sale for relatively straightforward transactions where purchasers often carry out minimal pre-sale due diligence.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

4.1 On 4 February 2015, the Mayor in Cabinet confirmed that various Council owned sites were surplus to requirements and approved their disposal by informal tender.

4.2 Following that decision, officers have concluded that one of the sites, 296 Bethnal Green Road, is likely to secure more interest if it is disposed of at auction, and that a higher capital receipt would be likely. This report seeks approval for this method of disposal to be used.

4.3 The site is currently unused and generates no income for the Authority, but the Council is incurring revenue costs of £250 per day to secure the property

– see paragraph 1.3. Assuming that the property is sold, disposal at auction will be a quicker method of both generating a capital receipt and ending the need for these security costs to be incurred.

- 4.4 Any disposal by the Council must be progressed in accordance with the direction issued by the Secretary of State on the 17th December 2014 – specifically that the Council must obtain the prior written agreement of the Commissioners before entering into any commitment to dispose of, or otherwise transfer to third parties, any property other than dwellings.
- 4.5 296 Bethnal Green Road is held under General Fund powers, and as such, any receipt would be 100% usable. Any costs incurred in relation to the sale could be met through the ‘top-slicing’ of up to 4% of the receipt value. If the sale does not progress, any costs will be abortive and would need to be met from existing revenue budgets.
- 4.6 Any capital receipt accruing from the sale of the property will be fully usable to support capital expenditure incurred by the Council. These potential resources are not currently included within the capital programme as the Authority adopts a prudent approach to the use of capital receipts and only allocates them to schemes once they have been received and all contractual commitments met.

5. LEGAL COMMENTS

- 5.1 Under section 123 of the Local Government Act 1972, the Council may dispose of its land in any manner that it may wish. However, except in the case of a short tenancy, the consideration for such disposal must be the best that can reasonably be obtained. Otherwise, the Council requires the Secretary of State's consent for the disposal.
- 5.2 The Council's procedures for disposals and lettings, adopted at Cabinet on 8 April 2015, specify that disposals may be by one of the following means: (a) informal tender; (b) formal tender; (c) auction; and (d) sale by negotiation. The procedures provide that the Service Head, Corporate Property and Capital Delivery will determine the most appropriate method of sale, based on the type and location of the property and the prevailing property market and subject to the Council meeting its legal requirements. In this case, auction is recommended for reasons set out in the report. Provided that it is properly marketed and conducted, auction should be capable of yielding best consideration for the Council.
- 5.3 The Council is obliged as a best value authority under section 3 of the Local Government Act 1999 to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”. The disposal of property in accordance with the Council's duty under section 123 of the Local Government Act 1972 and its adopted disposal procedures should ensure compliance with the best value duty.

- 5.4 A contract for sale of land by auction usually consists of the following: (a) the particulars describing the land to be sold; (b) the conditions, stating the terms of the sale; and (c) the memorandum of sale, which will be signed by or on behalf of the buyer at the auction itself. In this case it will be necessary to attach the draft lease, since it is proposed to sell a 199 year lease. The conditions of sale will be prepared by the Council's solicitors in conjunction with the auctioneer, who will prepare the particulars of sale. It is usual for the contract to provide that a full 10% deposit is to be paid at auction.
- 5.5 The title to the property must be investigated by the Council's solicitor prior to the preparation of the auction contract and official copy entries of the registered title, a local authority search, replies to standard pre-contract enquiries and any other relevant searches must be available to prospective buyers both before the auction and at the auction itself. The Council's solicitor should attend the auction in order to answer any queries which may arise.
- 5.6 A bid made at auction is an offer and is accepted by the fall of the auctioneer's hammer. By virtue of section 5 of the Sale of Land by Auction Act 1867, the contract must state whether or not the property is subject to a reserve price. Unless a reserve price is placed on the property, the auctioneer will be bound to sell to the highest bidder. The risk for insurance purposes of damage to the property passes to the successful bidder at the conclusion of bidding. Completion of the contract is usually 20 working days after the date of auction.
- 5.7 On 17 December 2014, the Secretary of State appointed Commissioners pursuant to powers under section 15(5) and (6) of the Local Government Act 1999 whose prior written agreement will be required to the disposal of property other than existing single dwellings for residential occupation.
- 5.8 In carrying out its functions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). Information is contained in section 6 of the report relevant to these considerations.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The property is surplus to requirements, so no adverse equality impacts should arise from the disposal. The Council will include appropriate equality obligations in the contract with the auctioneer. The proceeds of the sale will be used in pursuit of the Council's Community Plan objectives.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

7.1 There are no immediate 'sustainable action for a greener environment' implications arising from this report.

8. RISK MANAGEMENT IMPLICATIONS

8.1 Sale by auction will remove the risk of the buyer withdrawing or renegotiating after the fall of the hammer.

8.2 The Council is in the process of appointing selling agents whose brief will include a valuation of each property, advice on method of sale and also whether the sites should be sold conditionally or unconditionally. Should their advice differ from that set out above a supplemental report will be prepared.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

9.1 There are no immediate crime and disorder implications arising from this report.

10. EFFICIENCY STATEMENT

10.1 A sale by auction is likely to be concluded considerably quicker than a sale by informal tender. This will bring about considerable savings in terms of existing security. The property is at risk of squatters and there is 24 hour manned security currently in place to mitigate this risk.

Linked Reports, Appendices and Background Documents

Linked Report

- List any linked reports [Cabinet decision of 4th February 2015 6.3 (Interim Disposals Programme)].

Appendices

- NONE

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

- NONE.

Officer contact details for documents:

Kevin Pulsford

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