

# MAYOR'S EXECUTIVE DECISION MAKING

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Friday, 14 July 2017

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Mayor's Decision Log No. 164

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1. **229 BETHNAL GREEN ROAD, E2 6AB, PDC - PROPERTY TRANSACTION (Pages 1 - 8)**

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: Matthew Mannion, Committee Manager, Democratic Services

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# Agenda Item 1

<b>Individual Mayoral Decision Proforma</b> Decision Log No: <u>164</u>	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Acting Corporate Director, Place	<b>Classification:</b> Unrestricted
<b>229 Bethnal Green Road, E2 6AB, Professional Development Centre – Property Transaction</b>	

<b>Is this a Key Decision?</b>	<b>Yes</b>
<b>Decision Notice Publication Date:</b>	22 May 2017
<b>General Exception or Urgency Notice published?</b>	<b>Not required</b>
<b>Restrictions:</b>	Not applicable
<b>Reason for seeking an Individual Mayoral Decision</b>	Property transactional matter under an existing contract

## EXECUTIVE SUMMARY

The Mayor is asked to agree to a payment of £1.67m being made by the Council to Tower Hamlets College in order to extinguish the remaining property interest held by the College in the property, which is the location for the Council's Professional Development Centre (PDC). The mechanism for this is within an existing contract between the parties.

## DECISION

The Mayor is recommended to;

1. Agree to a payment of £1.67m being made by the Council to Tower Hamlets College (now New City College Further Education Corporation) in order to extinguish the remaining property interest held by the College in the PDC property in accordance with the mechanism within the existing contract.
2. Adopt a revised capital estimate of £1.67 million for inclusion within the capital programme and approve funding from capital reserves.

**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 ..... 14/7/2017 .....

**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 14/07/2017

**3. Monitoring Officer or his/her deputy**

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

(For Key Decision only – delete as applicable)

I confirm that this decision:-

(a) has been published in advance on the Council's Forward Plan OR  
(b) is urgent and subject to the 'General Exception' or 'Special Urgency' provision at paragraph 18 or 19 respectively of the Access to Information Procedure Rules.

Signed .....  ..... Date ..... 14/7/2017 .....

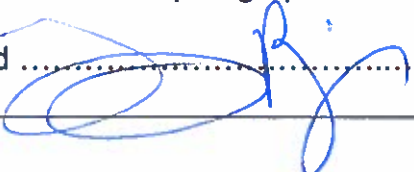
**4. Chief Executive**

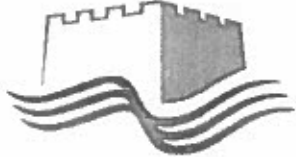
I have been consulted on the content of the attached report which includes my comments where necessary.

Signed , Date 14/7/2017.

**5. Mayor**

I agree the decision proposed in the recommendations above for the reasons set out in paragraph 1.1-1.3 in the attached report.

Signed .....  ..... Date ..... 14/7/17 .....

<b>Individual Mayoral Decision</b>  12 July 2017	 <b>TOWER HAMLETS</b>
<b>Report of: Acting Director of Place</b>	<b>Classification:</b> Unrestricted
<b>229 Bethnal Green Road, E2 6AB, Professional Development Centre – Property Transaction</b>	

<b>Lead Member</b>	<b>Councillor Edgar, Cabinet Member for Resources</b>
<b>Originating Officer(s)</b>	Ann Sutcliffe, Acting Director Place
<b>Wards affected</b>	Weavers
<b>Key Decision?</b>	Yes
<b>Community Plan Theme</b>	<b>One Tower Hamlets; Great Place to Live</b>

### Executive Summary

The Mayor is asked to agree to a payment of £1.67m being made by the Council to Tower Hamlets College in order to extinguish the remaining property interest held by the College in the property, which is the location for the Council's Professional Development Centre (PDC). The mechanism for this is within an existing contract between the parties.

### Recommendations

The Mayor is recommended to;

1. Agree to a payment of £1.67m being made by the Council to Tower Hamlets College (now New City College Further Education Corporation) in order to extinguish the remaining property interest held by the College in the PDC property in accordance with the mechanism within the existing agreement for a lease dated the 26<sup>th</sup> March 2010.....
2. Adopt a revised capital estimate of £1.67 million for inclusion within the capital programme and approve funding from capital reserves.

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

- 1.1 229 Bethnal Green Road is the location of the Council's PDC. Tower Hamlets College (THC) formerly occupied part of the building and has continuing rights of occupation under the 1992 Further and Higher Education Act.
- 1.2 Under an agreement for lease dated March 2010, the Council agreed to grant a lease to THC of the part of the building that it formerly occupied, or to pay a capital sum to THC in lieu. The payment of the sum will bring to an end any rights enjoyed by THC in respect of the building.
- 1.3 The Council and THC employed third party valuers to negotiate the sum to be paid in accordance with the mechanism in the agreement and a figure of £1.67m has been agreed. There is a deadline date for the payment to be made of 31 July 2017.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The Council has three main options.
- 2.2 Grant the lease as set out in the agreement. Given the occupation by the PDC, which would need to relocate, this would be a challenging and costly exercise. It could not be achieved by the current long stop date. The option would leave the PDC split across two sites or a new site for the PDC would need to be identified and the facilities created. THC has indicated that it does not wish to take such a lease. Alternatively the Council could take a sub-lease from THC. This has not been raised with THC and may not be acceptable to it. The terms of any sub-lease, including rent to be paid by the Council, would need to be agreed.
- 2.3 Extend the long stop date. This would require the agreement of THC, which may not be forthcoming, given that it is anticipating the capital payment by 31 July. If an extension could be agreed it is likely that the capital sum will increase as property values in the sector generally also increase.
- 2.4 Make the payment as proposed. The Council will secure the location for the PDC and remove an encumbrance on its title for the site. This will provide flexibility in the future use of the site, for example by allowing other uses to be co-located, for an alternative use such as for a school or for disposal.

## **3. DETAILS OF REPORT**

- 3.1 THC occupied part of 229 Bethnal Green Road when further education colleges became independent of local authorities. THC retained a statutory right to occupy the part of the property involved, which was 49% of the total building floor area. Some time ago and by agreement of the parties, THC

vacated the building and the Council used the vacated space for school decanting in support of the BSF programme.

- 3.2 In 2010 when THC agreed to vacate the building, the Council and THC entered into an agreement for lease under which the Council agreed to grant THC a lease of 49% of the building. The lease would be for 99 years at a peppercorn rent. In the absence of such a lease being granted by a long stop date, the Council agreed to pay THC a capital sum. The capital sum is set in a formula at 49% of the difference between the value of the freehold of the building with vacant possession and the value subject to the lease.
- 3.3 The long stop date has been extended twice since 2010 and is now 31 July 2017.
- 3.4 THC had previously confirmed that it did not intend to resume occupation of the building. On that basis the Council proceeded with a capital scheme to adapt and refurbish the whole building to relocate the PDC, which completed in 2013. This allowed the PDC to relocate from another building which was then converted to use as a primary school to help meet the need for places.
- 3.5 The Council appointed agents, Montagu Evans to negotiate the values in the formula. Likewise THC appointed Lambert Smith Hampton on its behalf. The negotiations have been taking place over recent months. After detailed analysis and negotiation in respect of the valuation evidence, provisional agreement has now been reached at a figure of £1.67m, subject to formal Council approval by the Mayor.

#### **4. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 4.1 This report seeks the agreement of the Mayor to the payment of £1.67 million to New City College Further Education Corporation (formerly Tower Hamlets College) in order that the Council can secure the unencumbered freehold of 229 Bethnal Green Road. If approved, the report also seeks the adoption of a corresponding capital estimate.
- 4.2 During 2012, the Council's Professional Development Centre relocated from English Street to its current location at the site of the former Bethnal Green Centre: 229 Bethnal Green Road. The centre was subsequently refurbished and works undertaken in order to adapt it for the change of use as the Professional Development Centre and also to improve accessibility to the building. The capital costs of the works totalled £2.53 million, financed from the Council's DfE Basic Need capital allocation.
- 4.3 The Council owns the freehold of the site, but the centre was shared for many years by Tower Hamlets College which has an interest in the premises and has a continuing right to occupy. Under the terms of an agreement reached between the College and the Council on 26<sup>th</sup> March 2010, if the College permanently vacates the building and gives up its long term interest, compensation will be paid by the Council. Provision of £1 million was

incorporated into the 2016-17 capital programme to finance these costs, initially to be financed by capital reserves. These resources have been carried forward into 2017-18.

- 4.4 Discussions have been on-going between the College and the Council to agree the compensation sum to be paid by the Council. Following a detailed negotiation process, a sum of £1.67 million has been agreed between the Council's advisers - Montagu Evans - and the College in accordance with the calculation methodology set out in the lease agreement dated 26th March 2010. Although this is an increase from the initial budgeted sum, this is a significant reduction from the settlement sum that was initially sought by the College. The additional sum will also be financed from capital reserves, although the possible use of specific education capital resources will be investigated.
- 4.5 The settlement calculation is based on the difference between the market value of the property with vacant possession and the market value subject to the lease. This difference is then applied to the proportion of the floor area (49%) that is held by the College in order that the compensation sum can be derived. The capital improvement works financed by the Council have had the effect of increasing the building's value and therefore have raised the sum payable to the College, however the methodology to be applied is set down in the 2010 agreement and has been followed.
- 4.6 If the Council obtains the unencumbered freehold of the property it will enhance the value of the asset with the additional benefit that the Centre could be used for school provision purposes at a later date if this becomes necessary.

## 5. LEGAL COMMENTS

- 5.1 The report seeks Mayoral approval for the surrender of the Agreement for Lease dated the 26th March 2010 and pursuant to paragraph 9.8 thereof to authorise the payment of £1.67 million representing a fair and reasonable proportion of the Market Value of the Building as referred to in paragraph 1.2 herein. The Council is under an obligation within the 2010 Agreement for Lease to grant a lease to New City College Further Education Corporation (formerly THC) or make payment in lieu
- 5.2 Paragraph 9.8 of the said Agreement for Lease sets out a formula in calculating the said Market Value. Following negotiations between the surveyors acting on behalf of the Council and THC in accordance with that formula it has been agreed that the figure of £1.67 million should be paid to THC in full and final settlement in accordance with the terms of the said Agreement for Lease.
- 5.3 Funding for the Agreement for Lease surrender will be met from existing capital reserves held by the Council.



- 5.4 The said Agreement for Lease would have been granted pursuant to the Council's disposal powers in section 123 of the Local Government Act 1972 which states that the Council may dispose of its land in any manner that it may wish. However, except in the case of a short tenancy (i.e. leases of less than seven (7) years), the consideration for such disposal must be the best that can reasonably be obtained. Otherwise the Council requires consent of the Secretary of State for the disposal. The report indicates that the sum negotiated between the parties represents the best that can reasonably be paid to THC in accordance with the Agreement for Lease and is supported by independent valuation .
- 5.5 The Council's procedure for disposals and lettings, adopted at Cabinet on 8th April 2015, specifies 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 disposal, 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 the sum due and payable to THC has been agreed in accordance with the terms of the Agreement for Lease and by negotiation.
- 5.6 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 information within the report suggests that the proposed transaction will secure the objectives set out in the 1999 Act.
- 5.7 The Council is required when exercising its functions to comply with the duty set out in section 149 of the Equality Act 2010, namely to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity between those who share a protected characteristic and those who do not, and foster good relations between those who share a protected characteristic and those who do not. There are no direct equality implications arising from the proposed transaction and relevant considerations have been made in the One Tower Hamlets Considerations below.

## 6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The proposed payment will facilitate the continuation of the Professional Development Centre, which operates to support the teaching of pupils in Tower Hamlets schools and for the benefit of the wider community.

## 7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The provisions relating to the payment are contained in an existing agreement. The figure has been negotiated on the Council's behalf by a specialist valuation consultant and has been recommended for acceptance as representing value for the Council.

**8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

8.1 The proposal does not involve changes to the existing building and there are no direct environmental implications.

**9. RISK MANAGEMENT IMPLICATIONS**

9.1 The proposal mitigates the risks inherent in the possible alternative courses of action set out in paragraph 2.2 and 2.3. THC has indicated that it wishes to proceed with the course of action proposed and legal documentation has been prepared so that the matter can be finalised as soon as possible following the Council's decision.

**10. CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 There are no direct crime and disorder reduction implications.

**11. SAFEGUARDING IMPLICATIONS**

11.1 There are no direct safeguarding implications.

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**Linked Reports, Appendices and Background Documents**

**Linked Report**

- NONE

**Appendices**

- NONE

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

- NONE

**Officer contact details for documents:**

- N/A