


<b>Individual Mayoral Decision Proforma</b>  Decision Log No: <u>  179  </u>	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Acting Corporate Director, Place	<b>Classification:</b> Partially Exempt
<b>Commercial Lease Guarantee – Tower Hamlets Homes</b>	

<b>Is this a Key Decision?</b>	Yes
<b>Decision Notice Publication Date:</b>	06/06/18
<b>General Exception or Urgency Notice published?</b>	Yes
<b>Restrictions:</b>	The appendices are exempt under paragraph 3 of Schedule 12A of the Local Government Act 1972.
<b>Reason for seeking an Individual Mayoral Decision</b>	<p>There is no provision in the scheme of delegation for the Council to act as a guarantor so this would need executive Mayor authority.</p> <p>The amount of rent being guaranteed is greater than the ceiling delegated to officers to approve.</p> <p>The term of the lease being taken exceeds the contract expiry of the management agreement between the Council and THH of July 2020.</p> <p>The Board of Tower Hamlets Homes has identified that a significant element of their required budget savings can be achieved by relinquishing accommodation at Jack Dash House and Rushmead and taking up alternative accommodation.</p> <p>Tower Hamlets Homes advises that the deadline for the decision is immediate.</p>

## EXECUTIVE SUMMARY

- 1.1. At its meeting on July 26th 2016 the Mayor in Cabinet agreed a Housing Revenue Account (HRA) savings target of £6m over the period to 2022 from the HRA including the management fee provided to Tower Hamlets Homes.
- 1.2. Tower Hamlets Homes (THH) occupy the majority of Jack Dash House (JDH)

and a further property - Rushmead - under 10 year leases from the Council at an annual cost of £1.5m covering rent, service charges, FM charges and business rates. They also have an additional office space at Harford Street which THH lease from London & Quadrant which runs until May 2023

- 1.3. To contribute towards the achievement of the agreed savings the Board of THH considered vacating JDH and Rushmead and to seek alternative more cost effective accommodation. In their 2018/19 budget presented to Cabinet in February 2018, they proposed a reduction to their budget for accommodation costs from £1.5M to £941k p.a. which matched the costs expected to be paid at the alternative premises (see 4.4 below). Notice was served on the Council in September 2016 of their intention to determine the leases and the Service Level Agreement (SLA) for JDH and Rushmead with an effective date of April 2018. THH subsequently negotiated terms for a sublease at alternative premises (identified in exempt Appendix A, but for the purposes of the open report, referred to as the 'Alternative Office') which they identified as a suitable alternative location, the impact of which they estimated would save a net sum of £580k per annum to THH and the HRA, this figure being the equivalent of the amount of the reduced accommodation allocation in their budget. A rent free period of 10 months has been agreed and is triggered on completion of the sublease in addition to which a sum of £321k in recognition of certain fit out costs being incurred are on entering into the agreement for lease.
- 1.4. The THH Board considered and approved a report on 25th April setting out the options and benefits from such a move and agreed to proceed with a proposed move as soon as practically possible in order to substantially deliver the agreed savings and to facilitate the necessary cultural change as part of their transformation programme. A copy of the board report and minute is appended as Appendix B.
- 1.5. The 'superior landlord' for the 'Alternative Office' has made a condition of the grant of the sublease that the Council acts as a guarantor for THH given the Council's position as sole shareholder, THH's reliance on the Council for financial support through the annual management fee and the term of the lease continuing beyond the term of the THH management agreement. The status of guarantor would mean that the Council not only guarantees any rental payment due but would also take on all liabilities of the tenant under the terms of the lease.
- 1.6. The contents of the report represent the current position. The Chief Executive, in accordance with the recommendations, will be updated on any changes to that position before a delegated decision is taken.

## DECISION

The Mayor is recommended to:

- a) Agree that the Council is to act as Guarantor under the commercial lease for office accommodation in favour of Tower Hamlets Homes Limited and;
- b) 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 Sub-Lease and any other documents (including Agreement for Lease, Licence to Underlet, Licence to Occupy and Licence to Alter) to give effect to the above decision.

## 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. I confirm that the Mayor and/or Lead Member have agreed to this decision being taken using this process.

Signed .....  ..... Date ....15/06/18

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 ....15/6/18

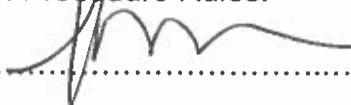
3. **Monitoring Officer or his/her deputy**

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 .15/6/18

4. **Chief Executive**


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

Signed Wai Tuckey Date 15/6/18

5. **Mayor**

I agree the decision proposed in the recommendations above for the reasons set out in paragraphs 1.1 and 1.2 in the attached report.

Signed [Signature] Date 15/6/18

<b>Individual Mayor's Decision</b>	 <b>TOWER HAMLETS</b>
15 June 2018	
Report of: Acting 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>	Richard Chilcott – Acting Divisional Director Property & Major Programmes
<b>Wards affected</b>	All Wards
<b>Key Decision?</b>	Yes
<b>Community Plan Theme</b>	All Themes

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. At its meeting on July 26<sup>th</sup> 2016 the Mayor in Cabinet agreed a Housing Revenue Account (HRA) savings target of £6m over the period to 2022 from the HRA including the management fee provided to Tower Hamlets Homes.
- 1.2. Tower Hamlets Homes (THH) occupy the majority of Jack Dash House (JDH) and a further property - Rushmead - under 10 year leases from the Council at an annual cost of £1.5m covering rent, service charges, FM charges and business rates. They also have an additional office space at Harford Street which THH lease from London & Quadrant which runs until May 2023
- 1.3. To contribute towards the achievement of the agreed savings the Board of THH considered vacating JDH and Rushmead and to seek alternative more cost effective accommodation. In their 2018/19 budget presented to Cabinet in February 2018, they proposed a reduction to their budget for accommodation costs from £1.5M to £941k p.a. which matched the costs expected to be paid at the alternative premises (see 4.4 below). Notice was served on the Council in September 2016 of their intention to determine the leases and the Service Level Agreement (SLA) for JDH and Rushmead with an effective date of April 2018. THH subsequently negotiated terms for a sublease at alternative premises (identified in exempt Appendix A, but for the purposes of the open report, referred to as the 'Alternative Office') which they

identified as a suitable alternative location, the impact of which they estimated would save a net sum of £580k per annum to THH and the HRA, this figure being the equivalent of the amount of the reduced accommodation allocation in their budget. A rent free period of 10 months has been agreed and is triggered on completion of the sublease in addition to which a sum of £321k in recognition of certain fit out costs being incurred are on entering into the agreement for lease.

- 1.4. The THH Board considered and approved a report on 25<sup>th</sup> April setting out the options and benefits from such a move and agreed to proceed with a proposed move as soon as practically possible in order to substantially deliver the agreed savings and to facilitate the necessary cultural change as part of their transformation programme. A copy of the board report and minute is appended as Appendix B.
- 1.5. The 'superior landlord' for the 'Alternative Office' has made a condition of the grant of the sublease that the Council acts as a guarantor for THH given the Council's position as sole shareholder, THH's reliance on the Council for financial support through the annual management fee and the term of the lease continuing beyond the term of the THH management agreement. The status of guarantor would mean that the Council not only guarantees any rental payment due but would also take on all liabilities of the tenant under the terms of the lease.
- 1.6. The contents of the report represent the current position. The Chief Executive, in accordance with the recommendations, will be updated on any changes to that position before a delegated decision is taken.

### **Recommendations:**

The Mayor is recommended to:

- a) Agree that the Council is to act as Guarantor under the commercial lease for office accommodation in favour of Tower Hamlets Homes Limited and;
- b) 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 Sub-Lease and any other documents (including Agreement for Lease, Licence to Underlet, Licence to occupy part and Licence to Alter) to give effect to the above decision.

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

- 1.1. The Board of Tower Hamlets Homes has identified that a significant element of the savings required from the management fee could be achieved by relinquishing accommodation at Jack Dash House and Rushmead and taking up accommodation at the Alternative Office.
- 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 (3) the length of the lease being taken exceeds the expiry of the management contract with THH in 2020 and (4) the various legal documentation (except the completion of the sublease) need to be completed before the end of June 2018.

## **2. ALTERNATIVE OPTIONS**

- 2.1. THH could remain in their current accommodation which would require the identification and delivery of alternative savings to meet the agreed savings target but may not achieve the changes required for their transformation programme (see para 4.5 below). This would need to include re-stacking their accommodation needs and continue to occupy their office at Harford Street which is held on a separate lease with London & Quadrant. This is estimated to result in c £500k per annum savings being made to THH and the HRA and would represent less risk to the Council corporately as no moves other than from Rushmead would be needed until the new Town Hall is ready for occupation.

## **3. INTRODUCTION**

- 3.1. Tower Hamlets Homes (THH) are a wholly owned company of the Council. They deliver a number of housing related 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 Council service delivery to identify and implement savings because of an overall reduction in the resources available to the Council.
- 3.2. At its meeting on 26<sup>th</sup> July 2016 the Mayor in Cabinet agreed a savings target of £6m over the period to 2022 to be met from the HRA including the management fee provided to THH.
- 3.3. In 2016 a number of options were discussed with THH including the potential for reduced accommodation costs and a proposed reduction to the SLA was suggested which would have brought total costs down from £1.5M to £1.121M per annum for the occupation of JDH and Rushmead. There would have been a reduction in floor space of approximately 20% at JDH as part of a re-stack exercise and the Council also offered to carry out a light internal refurbishment of the property. The proposal was on the basis that JDH would continue to be occupied. This information was shared with THH and discussed with them in July / August 2016 as part of an annual review of the SLA but not taken any further when the SLA reduction of £400k p.a. was declined by THH.
- 3.4. The Board of THH decided the best option for them to deliver a substantial element of the savings requirement was by relinquishing their existing accommodation and

moving to other more cost effective accommodation appropriate to their needs. This would also enable them to effect transformational change through more effective ways of working and bringing together staff. A lease on the 'Alternative Office' was identified by THH as meeting this objective. Notice was served on the Council in September 2016 confirming the intention of THH to vacate both premises by the end of April 2018 and negotiations were then undertaken by THH with the intention of taking occupancy of the 'Alternative Office' from a date in April 2018.

- 3.5. However, the 'Landlord' of the 'Alternative Office' requires that the Council act as guarantor for this lease and this report seeks approval to enter into the various legal agreements (see para 4.5 below) including the sublease as guarantor. The lease is for a period until December 2023. This period exceeds the expiry date of the management agreement between the Council and THH and is also beyond the date when it is envisaged that the new Town Hall will be completed where the working assumption is that the majority of staff would be relocated there. There is no tenant break option in the lease although there are provisions for subletting and assignment with the landlord's consent.
- 3.6. The 'Superior Landlord' is in the process of disposing of the property having obtained permitted development consent in March 2017 for a conversion of the property from offices to residential. The permitted development consent would have been otiose, but for a late addition to the heads of terms and sublease which provides for a landlord only break option at the end of April 2019 exercisable by the landlord's service of written notice before 30 October 2018.

#### **4. Details of the Report**

- 4.1. The Council is being asked to act as guarantor for this lease; this was a requirement of the 'Landlord' which recognises that the Council is the sole shareholder whom 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.
- 4.2. The proposal is for THH to take a sublease from the existing tenant/proposed landlord (identified in exempt Appendix A, but referred to as the "Landlord") of the ground, second and third floors of the property at an annual rent of £430,000 with the lease expiring on 18<sup>th</sup> December 2023. On entering into the Agreement for Lease, the Landlord is to obtain from the Superior Landlord (identified in the exempt Appendix A, but referred to as the "Superior Landlord") their consent through a Licence to Underlet, which is to be secured within 2 months. The lease will be granted outside of the security provisions of the 1954 Landlord and Tenant Act. In addition to the rent, a service charge will be levied and THH would also be responsible for paying business rates and utility charges for directly metered services. The lease is granted on an internal repairing basis with a condition to reinstate to Category 'A' standard at the end of the term.



- 4.3. Whilst 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 or if THH were to be wound up, the guarantor status of the Council would mean that we would inherit the liabilities for the lease until the end of the term with no option to break the lease. There is pre-approval from the 'Landlord' to the assignment of the lease to the Council and there are also provisions for otherwise subletting the whole of the property or whole floors and also assignment of the whole lease (with the landlord's consent) which to some level may mitigate a degree of the risk, although the likelihood of being able to secure a subtenant in that event for the term remaining is unknown and therefore a risk.
- 4.4. In considering the benefits of moving to the 'Alternative Office' the Board of THH have identified potential annual financial benefits to THH and the HRA of £580k per annum as mentioned before, by reducing their accommodation budget allocation to £941k p.a. A rent free period of 10 months from the completion of the sublease (which is retrospective from the date of occupation under the Agreement for Lease) and a contribution of £321k in lieu of reinstatement costs from the landlord have been agreed which total a one-off saving of £679k. THH has carried out fit out works, with a total cost incurred to date of c £1.1M whilst negotiating with the Landlord to secure formal consent from the 'Superior Landlord' on the occupation, alterations and sub-letting, which remain outstanding. The £1.1M was funded by £500k from THH reserves with the remainder being set-off with from the value of the 10 month's rent free period and the £321k contribution from the 'Landlord'. Whatever decision is taken those costs are sunk, although of the £1.1M incurred to date approximately £0.3M can be attributed to items of furniture and equipment which could be recycled and used elsewhere.
- 4.5. In addition to making significant savings for the HRA the re-location of staff is key to the transformation programme in THH by addressing a number of cultural and service delivery issues that have arisen from silo working. They will significantly improve the service to tenants and leaseholders by improving the working relationship and communication between teams that will be co-located. For example, Tenants will see service improvements by co-locating the rents and neighbourhood teams; Leaseholders will see improvements by co-locating Asset Management and Leasehold Services; and, Both tenants and leaseholders will see improvements from the co-location of the HSC and the repairs team.
- 4.6. In order to facilitate and finalise the transaction THH and the Council both need to be parties to the legal documentation that supports the proposal which involves the completion of an agreement for lease from the landlord of all three floors of the property; a licence to occupy under the agreement for lease from the superior landlord; a licence for alterations from the superior landlord (to document the fit out

work undertaken); and a licence to underlet from the superior landlord. The agreement for lease must be completed before THH can take occupation of the building, the various licences should be completed and in place at the same time and, thereafter, the sublease will be completed once the conditions in the Agreement for Lease have been fulfilled..

- 4.7. From 1<sup>st</sup> April 2018 it is no longer lawful for a landlord to grant a new lease of any commercial premises that have an EPC (energy performance certificate) rating of less than 'E' in accordance with the MEES (minimum energy efficiency standards) legislation, unless a valid exemption is granted and registered. Following the completion of the THH fit out works the landlord commissioned a new EPC assessment, however only the ground floor space was confirmed as meeting the minimum requirements. In the event that the landlord is unable to obtain and register an exemption 'Landlord' has obtained superior landlord consent and has also undertaken further works to the property and obtained a new EPC (energy performance certificate) for the space (or obtained and The 'Landlord' is now seeking to apply and register an exemption from having to carry out the additional works necessary for the second and third floors of the property to meet the minimum requirement of 'E'. They must do this before the Agreement for Lease is entered into. In the event that they are unable to secure such an exemption, a further condition contained within the Agreement for Lease will be that they are required to undertake the necessary works within a fixed period of time and the sub-lease will not be completed until those works are completed and a compliant EPC is obtained.
- 4.8. Where those works are necessary, THH will need to make arrangements to decant from the relevant floors for the period of the works.
- 4.9. The 'Superior Landlord' obtained consent under permitted development in March 2017 to convert the property from offices to residential. This current consent needs to be implemented in full and all conditions discharged by March 2020. As mentioned previously it is apparent that the 'Superior Landlord' has been attempting to sell the property off market with the benefit of that consent as it has been largely vacant for some time – although the existing tenant (the 'Landlord') is still responsible for paying rent under their existing lease and there is a sub tenant in occupation of the first floor space. The Council understands that in order to facilitate the sale, (and upon the insistence of a potential purchaser), the 'Superior Landlord' required a landlord only break clause to be added into the heads of terms just before Easter which was accepted by THH and has been translated into the draft documents. That break option provides the 'Superior Landlord' the option to serve written notice on the tenant by 30 October 2018 to bring the lease to an end on 30 April 2019. If that break is not operated by the end of October 2018 the lease will run to 2023. It should be noted that at this stage there continues to be an absence of feedback from the Superior Landlord on the status of their negotiation and therefore level of confidence around whether the break clause will be triggered is not possible to determine.
- 4.10. In the event that the 'Landlord' exercises their break clause this would mean that THH would need to vacate the property by the end of April 2019. They would in the

interim have to negotiate and secure alternative suitable premises on the market and it is possible that in those circumstances a move to such premises may be needed from January 2018 in order to provide vacant possession and carry out any required reinstatement works by the end of April 2019. If this were to be the scenario then the Council would work and support THH on any new lease for an alternative office to align with the end of the management agreement and/ or the proposed move date to the new Town Hall in 2021/22.

- 4.11. The need for a further move and requirement to secure another alternative property is considered to be a further risk to all parties involved and the 'value' of the fit out costs on the Alternative Office largely lost.

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

- 5.1. The Board of THH have considered and agreed that the approach set out in this report for moving to alternative accommodation, provides a significant contribution to their savings target, delivering annual savings in the order of £600k. This benefit has been realised by the Council through its reduction in the THH management fee in 2018/19.
- 5.2. Given that the Council provides substantially the resources in support of THH the issue of whether the liabilities arising from the lease are costs for THH in its own right or the Council as guarantor of the lease is largely irrelevant; the budget provision will, all things being equal, be available in either case and is not impacted by the liable party.
- 5.3. There are however, a number of financial implications arising from the options being considered which will impact differentially depending on the option chosen:
- There is the potential for periods of double accommodation costs being incurred – for example between the end of the lease and once a move to the Town Hall is completed or possibly to accommodate a further move if the break clause is invoked.
  - There may be further one-off costs including for example fees and dilapidation costs incurred to move and fit out premises which would not be incurred if the option to remain was taken.
  - There is uncertainty that the level of budget savings achieved from the move to the alternative office will be maintained should there be a need for a second move in the event of the break clause being invoked.
  - There are sunk costs of £1.1m whichever option is chosen.
- 5.4. However, if the decision is taken to move there is an impact to the Council's General Fund arising from the loss of the income from THH in respect of accommodation costs (£940k) as its tenant of JDH and Rushmead; this will continue until a suitable tenant can be found or another alternative agreed that reduces this liability.

## **6. LEGAL COMMENTS**

### Governance of Tower Hamlets Homes Limited

6.1. Tower Hamlets Homes Limited (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.

6.2. The THH Board, on 25 April 2018, took a decision to enter into an Agreement for Lease and Lease.

### Power to act as Guarantor to a lease

6.3. 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.

6.4. 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.

6.5 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 8 below.

## **7. ONE TOWER HAMLETS CONSIDERATIONS**

7.1. THH operates in accordance with the Council's commitments to equality and diversity, with service transformation processes designed to deliver positive impacts for protected characteristic groups within the resident population. Reconfiguring THH staff teams to improve the physical and digital accessibility and delivery of services is

an important part of the THH transformation strategy and will have demonstrable positive impacts for equality groups.

## **8. BEST VALUE (BV) IMPLICATIONS**

- 8.1. The achievement of the savings through securing suitable alternative accommodation at significantly lower costs is considered to represent best value for THH.

## **9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 9.1. There are no 'Sustainable Actions for a Greener Environment' considerations contained within this report.

## **10. RISK MANAGEMENT IMPLICATIONS**

- 10.1. A number of risks have been identified and consideration given to mitigating action where possible.
- 10.2. THH may not make the savings as agreed in 2016 however the overall financial issues for the Council should be considered rather than just the THH and HRA impact.
- 10.3. The value of the fit out works of £1.1M was carried out at risk in the knowledge that the lease may never be entered into (but without knowledge that the permitted development consent existed) and there may not be any benefit realised through the expenditure if the move to 'The Alternative Office' does not go ahead.
- 10.4. The superior landlord may not approve the licence to underlet and any agreement to lease is immediately ended and THH would have to vacate the property, relocate and forego the rent free period. This is mitigated by the fact that such consent cannot unreasonably be withheld and a letter of comfort has been requested to confirm the superior landlord's intentions.
- 10.5. THH's occupation of the premises under the Agreement for Lease is not strictly in accordance with the superior lease in the absence of a Licence to Occupy from the superior landlord. The superior landlord could forfeit the superior lease in these circumstances, re-enter the premises and take possession. THH would have to vacate the premises and forego the rent-free period.
- 10.6. The carrying out of fit-out works by THH without the consent of the superior landlord is not strictly in accordance with the superior lease. Again, the superior landlord could forfeit the superior lease, re-enter the premises and take possession. THH would have to vacate the premises and forego the rent-free period.
- 10.7. In the event the landlord cannot obtain or register a valid exemption to the EPC requirements, they would be required under the Agreement for Lease to carry out those works and obtain a compliant EPC certificate by a longstop date. There is a risk that they may not carry out those works, in which case the sub-lease would not

be entered into, the Agreement for Lease could be rescinded and THH would have to vacate the premises, relocate and forego the rent-free period.

- 10.8. In any of the above scenarios where the Agreement for Lease has been entered into, but THH vacate the premises (for whatever reason) prior to taking the sub-lease, they would be required to remove all fit-out works and reinstate the premises.
- 10.9. Another risk is that the superior landlord makes arrangements to sell the property and instructs the landlord to exercise the break clause. THH need to move again and may not secure alternate premises that are cost effective. Mitigated by weak market conditions and availability of space but savings may not be as high as being envisaged by THH but the Council would have greater control over the length of any lease term.
- 10.10. In the event that the 'Superior Landlord' does not execute the break clause then there is also an upward only rent review due in December 2018 to open market rent and based on the assumption that the tenant has complied with their repairing obligations and to an assessment of the rent on the basis that the property is in CAT A condition. This is only therefore relevant if the lease is to run to the full term, but that does introduce further risk and uncertainty as the current rent was fixed in 2013 and although the general market conditions have weakened more recently there is thought to be scope for some increase from that figure which would impact on the longer term viability of the proposal.
- 10.11. The Landlord does not reimburse the fit out contribution, being mitigated by confirmation on this specific point from THH and the landlord.
- 10.12. The council may not be able to secure alternative occupiers for the space being vacated by THH so larger holding costs than expected. Early marketing to commence once terms negotiated with the freeholder of JDH and we have a better idea of the timescale for any moves.
- 10.13. Town Hall project over runs – impact on possible lease length or break period for alternate properties. No risk if THH remain in council premises.

## **11. CRIME AND DISORDER REDUCTION IMPLICATIONS**

- 11.1. There are no 'Crime and Disorder' considerations contained within this report.

## **12. SAFEGUARDING IMPLICATIONS**

- 12.1. There are no 'Safeguarding Implications' considered within this report.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- NONE

## **Appendices**

- Exempt Appendix A: Identification of Alternative Office and Landlord(s)
- Exempt Appendix B: THH Board Report and Minutes

**Background Documents – None.**

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

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