

Cabinet 9 January 2019	 TOWER HAMLETS
Report of: Ann Sutcliffe, Acting Corporate Director, Place	Classification: Partially Exempt
Mulberry Place Lease Surrender & Renewal	

Lead Member	Mayor John Biggs
Originating Officer(s)	Richard Chilcott, Acting Divisional Director, Property and Major Programmes
Wards affected	Poplar
Key Decision?	Yes
Forward Plan Notice Published	20 December 2018 – General Exception Urgency
Reason for Key Decision	Financial Threshold
Strategic Plan Priority / Outcome	1. People are aspirational, independent and have equal access to opportunities; 2. A Borough that our residents are proud of and love to live in; 3. A dynamic outcomes-based Council using digital innovation and partnership working to respond to the changing needs of our Borough.

Executive Summary

The report recommends that the Council surrenders the current lease of Mulberry Place and simultaneously enters into a new lease on the terms set out in the report below and exempt appendix – such lease to expire on 24th March 2023.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Agree that the Council surrenders the existing lease of Mulberry Place and simultaneously enters into a new lease, on the terms set out in the report.
2. Agree that the final negotiations for the surrender and re-grant are delegated to the Acting Corporate Director Place working in liaison with the Corporate Director Governance to complete the required transactions by 31st January 2019.
3. Agree to consider the information in Appendix 1 as exempt in accordance with section 12A of the 1972 Act, (3) Information relating to the financial or business

affairs of any particular person (including the authority handling the information).

1. REASONS FOR THE DECISIONS

- 1.1 The grant of a new lease to March 2023 will provide the Council with certainty on being able to remain in occupation of the current Town Hall until the new replacement project is completed and ready for occupation.
- 1.2 The terms proposed for the new lease relating to the increase in rent payable from July 2020 exceed the level of delegated authority provided to officers and so requires the authorisation of the Mayor in Cabinet.

2. ALTERNATIVE OPTIONS

- 2.1 Alternative options were considered as set out in the body of the report. These include pursuing the potential lease renewal through the Courts in accordance with legislation or vacating Mulberry Place by the end of June 2020 and relocating staff and service delivery to a number of other locations within the Borough until the new Town Hall project is completed.
- 2.2 Those alternative options would expose the Council to considerable risk and expenditure which officers do not recommend being pursued as alternative solutions to meet the need to provide office accommodation for the Council to enable the continued delivery of key services to residents and the public from 2020.

3. DETAILS OF THE REPORT

- 3.1 The current lease of Mulberry Place expires on 1st July 2020 and officers have been engaged in negotiations with the Landlord's agents to discuss and agree terms for a lease extension. It has always been recognised that the new Town Hall will not be ready for occupation until probably midway through 2022, so an extension to the current lease was seen as the best option to provide accommodation for this period of time.
- 3.2 Discussions started with the landlord's agents in December 2016 shortly after they had purchased the freehold from the former owners. Those discussions including sharing the Council's plans for the move to the new Town Hall and the timescale for that project and opened the door for further negotiation for a lease extension.
- 3.3 The Council appointed external consultants (JLL) in October 2017 to progress the negotiations following a number of meetings with officers and the landlord's agents where proposals were submitted for consideration.

- 3.4 The landlord's agents (Trilogy) initially proposed a surrender and re-grant with an immediate rent increase from summer 2017 which was firmly rejected. Thereafter the negotiations have progressed in a measured way exchanging proposals and options but making it clear what the Council had to have in terms of a rolling break provision in any new lease.
- 3.5 Whilst the Council currently has the benefit of a 'protected lease' meaning we have a right to request a new lease from the landlord when the current lease expires, the landlord also has the right to oppose the grant of a new lease. The formal proceedings under the provisions of the Landlord & Tenant Act (1954) would not come into play until 2nd July 2019 where either London Borough of Tower Hamlets (LBTH) as the tenant, or the landlord, could serve a formal notice requesting a new lease or providing grounds under which the landlord would oppose the grant of a new lease. This process is explained later in paragraphs 3.10 to 3.14 of the report, but in this case our external legal advice is that the landlord would have a very strong case to oppose any formal request the Council may make and so put the Council at considerable risk of not having an office base to operate from if we were to solely rely on this legal process as an outcome.
- 3.6 If the main heads of terms for the grant of a new lease could be agreed before the date formal proceedings would need to commence and the current lease surrendered and a new lease granted, then any uncertainty that would arise from the formal procedure would be avoided.
- 3.7 The other alternative option would be for the Council to decant all occupiers from Mulberry Place before the expiry of the current lease in July 2020 and move to a mixture of alternative office premises owned or controlled by the Council. This would involve fragmenting the operation of the Council into 5 or more locations, maximising utilisation of those alternative premises and potentially renting in some additional space from the open market. This would involve both a double move of staff who would be then moving again to the new Town Hall and also some substantial investment in those other locations to make them fit for purpose as well as incurring new revenue costs associated with renting in additional new space. Details of this alternative option are set out later in the report.
- 3.8 The main heads of terms are set out below and the commercial terms provided in Appendix 1.
- Immediate surrender of the current lease and entering into a new contracted out lease until 24th March 2023.
 - Rolling 6 month tenant break option exercisable on serving 6 months' notice at any time on or after 29th September 2022.

- Rent increase from 2nd July 2020 from the current rent of £2.8M p.a. to an increased rent as set out in exempt appendix 1. This will result in additional revenue costs to either the end of the lease or to an earlier date if the Council exercises its break option.
- Surrender of 20 'floating' car parking spaces under Anchorage House (which we pay an additional sum for anyway and have agreed in principle to the retention of 70 parking spaces under Mulberry Place.
- The new lease to contain the same conditions and liabilities as the current lease – particularly no tenant liability for dilapidations or reinstatement at the end of the lease.
- Service charge to be paid in accordance with the provisions of the current lease but to be fair and reasonable in accordance with the RICS code
- The landlord's agents have requested the Council's agreement as tenant not to object to any planning application that may be submitted during the period of our occupation – that at first consideration may seem a little odd, but as our occupation is for a limited period of time and we don't own any adjoining property that may be affected Council officers would be prepared to accept that, as it does not impact on the Council in its role as planning authority. As a tenant we would have the right to be consulted on any application made and would have a statutory right to object.
- Existing provisions relating to cleaning, use, signs, alterations, alienation (which permits assignment of whole, sub-letting of whole or part provided part is no less than 5,000 sq ft, outside the Act and no more than 15 units are created including the residue to the tenant) to be replicated in the new lease.
- Subject to Contract
- Subject to the Landlord's formal Investment Committee approval (which has already been agreed in principle)
- Tenant's formal Cabinet approval
- Documents agreed and engrossed by Monday 28th January 2019
- Simultaneous completion on or before Thursday 31st January 2019

3.9 JLL as the consultants acting for the Council have confirmed that they recommend the Heads of Terms represents best terms that can be agreed and that the Council proceeds on the basis as set out above.

- 3.10 A brief explanation of the formal procedure under the Landlord and Tenant Act (1954) and the risks associated with this taking account of the circumstances relating to this case are set out below.
- 3.11 If the parties cannot reach agreement through negotiation and proceed with the surrender and grant of a new lease (as described above) before 2nd July 2019 then either party could start the formal process to either seek a new lease (tenant action) or serve a 'hostile' notice (landlord action) citing grounds upon which the landlord would oppose granting a new lease. This can be a lengthy and expensive process which is managed through Court action starting at the County Court – but potentially with appeals and further hearings through the High Court and even Supreme Court in some cases.
- 3.12 The risks the Council would face if we had to progress our case through the formal procedure are associated with the grounds upon which the landlord could potentially refuse to grant a new lease – in this case they would be relying on S.30 ground (f) – redevelopment or change of use; and ground (d) provision of alternative accommodation. The landlord obtained prior approval planning consent in August 2018 for conversion of the building from offices to residential which they could in theory implement following the submission of further details to the planning authority. This consent would be sufficient for them to potentially defend ground (f) above. The landlord's agents also carried out an exercise to determine whether the Council's space requirements could be met in an alternative building within the estate. This was also confirmed on the basis that they could in theory offer the Council an equivalent amount of office space within Capstan House as an alternative. Both of these issues strengthen their position legally in terms of the landlord being able to defeat a claim by the Council as tenant for a new lease under the provisions of the Landlord and Tenant Act (1954) (LTA) without the requirement to pay any compensation to the Council (which may have been due if they only relied on ground (f) above.)
- 3.13 Foot Anstey who have been appointed by the Council to provide legal advice and to deal with this case on our behalf have summarised their advice below.
- It is likely that any LTA process dealing with whether the Landlord is entitled to successfully oppose the grant of a new lease would be completed within circa 12 months.
 - It is likely that the Landlord will look to start the process of termination both by serving notice and issuing proceedings very soon after 2 July 2019.
 - If LBTH lost the LTA case then it is likely but not certain that the landlord would still grant a new lease but the ransom cost would be much higher.

- If the LTA process is followed and the Landlord seeks to oppose the grant of a new lease pursuant to either ground (d) or (f) we would advise that there is a high risk of the Landlord being able to successfully oppose the grant of a new tenancy.

- Our advice would be to agree a new lease with the Landlord or make plans now to temporarily move out (Plan B) whilst the new Town Hall is made ready. We would not advise taking the risk of pursuing a lease renewal under the LTA procedure.

3.14 Whether the Council could raise a robust enough case to try and defeat the Landlord in the Courts is an unknown scenario although the advice as set out above is that the Council's position is not particularly strong – and so this strategy involves a substantial amount of risk and cost. Ultimately if the Landlord is successful in defeating the Council's claim for a new lease then the Court would award in their favour and typically the Council would be given only 3 months and 21 days to vacate.

3.15 The other alternative option referred to in the report would be for the Council not to pursue the lease extension from July 2020 but instead to follow plan B and move all staff and services to other office locations from Mulberry Place before the end of the current lease and fragment the operation of the Council in a range of Council owned or controlled alternative office premises and lease in additional space as needed for a short term.

3.16 Detailed analysis has been undertaken by the Council's Facilities Management team to look at current and potential capacity in a range of alternative properties on the assumption that the Council adopts a 7:10 work station ratio – which would be moving closer to the operating model envisaged when the new Town Hall is in use and is supported by the utilisation data that has been gathered on desk use over the last 6 months or so. At present Mulberry Place accommodates 1379 work stations; 34 meeting rooms and 26 cellular offices. Applying the 7:10 ratio would mean as a minimum we would need to accommodate 960 work stations in other locations and the provisional maximum numbers below show capacity for just over 1000. The peak occupancy rate evidenced from space surveys is 70% which means that 960 work stations need to be provided to equate to the Mulberry Place provision, which includes the democratic support staff and the office spaces for members. This assessment is based upon 6 monthly space utilisation surveys of Albert Jacob House, John Onslow House, Jack Dash House, and Mulberry Place. Spare capacity based upon a 7:10 ratio exists at the following sites.

- AJH – 96 staff could be added.
- JDH – 410 staff could be added.
- JOH – 285 staff could be added.

- Southern Grove – 200 staff could be added.
 - St Georges – 50 staff could be added. [Subject to planned project works being completed and the relocation of registrars put on hold]
- 3.17 However, the need to group teams together in a sensible way and also to provide additional meeting rooms and cellular offices in those other locations cuts into the total amount of space that can be used for desks – and so it is highly likely that in this scenario additional office space would need to be leased from the open market.
- 3.18 Detailed space planning has not been undertaken although some initial options have been considered but this will only be needed if this alternative option is to be considered any further. There are substantial costs involved in pursuing this option as well as the unquantifiable cost to the disruption and fragmentation of services and functions of the Council for up to 3 years.
- 3.19 The costs of works estimated below is fairly substantial as we have been working on the principle that major investment in satellite offices was to be avoided as once the move to the new Town Hall takes place these existing sites will be redeveloped or disposed of.

Assumptions and Exclusions:

- No FF&E (furniture and equipment) costs have been added, the working assumption is that we make best use of our existing furniture and equipment taking as much of that with us, but that some purchases will be needed.
- No account has been taken of the disruption to operational services.
- If we do not increase the amount of meeting spaces in those alternative locations and also provide a similar number of cellular offices then there would be far fewer meeting rooms available for staff use or bookings and senior managers would need to work within general open plan areas – which would impact on the number of work stations needed as well as adding further pressure on the provision of meeting room space and quiet work space for them to be able to function effectively.
- Budget costs to improve each of the sites sufficiently to enable higher densities of occupation are shown in the table below; circa £2.5m is the budget cost estimate for building fabric and M&E work.
- Budget costs to upgrade the IT and wireless systems for JDH and Southern Grove to enable largescale LBTH staff use is estimated to be £400k.
- Relocation costs for Mulberry Place staff based upon an estimate of £3k per person are estimated at circa £4m for 1379 staff and members. The budget

estimate for creating new meeting rooms and cellular offices is £450k in addition to the costs above.

- Re-providing or relocating major elements of the IT infrastructure to support the network could be in the region of £1M
- No cost has currently been attributed to the cost of relocating the CCTV room and creating links if needed to support that infrastructure.
- The physical environment of these alternative properties is not to the same standard as Mulberry Place – no air conditioning etc.

3.20 Summarising this information suggests that the physical cost of moving to these alternative council locations could cost in the region of **£8M** and the Town Hall project would still need to cover the cost of moving staff again in 2022.

3.21 To accommodate all staff and requirements it is envisaged that additional office space may need to be leased in to make up the shortfall in provision. Our consultants JLL prepared a brief report on the current availability of additional office space that is on the market. The two main assumptions are that we might need somewhere in the order of 20000 (gross) sqft of space and for a lease of about 3 years (Jan 2020 to Dec 2022 to allow sufficient time to carry out works to any new location and to move staff out from Mulberry Place).

3.22 JLL have used their market intelligence to identify two different solutions to our need – traditional office space on a lease basis and alternatively a serviced office type provision. The first option would require the Council to commit to a new lease for 3 years (generally the minimum timeframe that landlords are willing to consider) and whilst it may be possible to introduce some flexibility with a tenant break option in the last 6 months of the lease, this may impact on the rental to be paid because it introduces some uncertainty for the landlord. If we were to consider a traditional lease then we would need to consider the need to fit out the space, carry out internal alterations to make it fit for our needs – and there may be a requirement to remove such adaptations at the end of the lease. This short lease option would be on the basis of a contracted out lease which would not provide the Council with any security of tenure – but that is acceptable as we only want to occupy for a short period of time. Most of the options in the JLL report are for properties that are located within the Borough principally located in Canary Wharf or Crossharbour and the majority are ‘second hand’ space and all in multi-let buildings. The one exception was a new build option at The Royal Docks.

- 3.23 The analysis has been conducted on a desktop basis only and so the cost of any fit out works and adaptations are unknown but some locations will be more expensive than others based on floor plans and general descriptions given – but will be factored in if it is decided to pursue plan B any further. The sizes of properties considered ranges between 18800 sqft to 31000 sqft – but in most cases the layout is already predetermined as a single floor or multiple floors – to give a flavour of both the current amount of choice on the market and corresponding costs. Broadly speaking the 3 year cost (rent, Service Charge, Rates, Estate Charges only – so no additional running costs factored in as these will be broadly similar) ranges from £2.9M to £6.59M. The cheapest property on the list will potentially need more fit out works undertaken. The out of Borough option is also likely to be expensive to fit out as it is a new build – but the 3 year cost is £3.31M.
- 3.24 Taking a mid-range size and cost option provides a 3 year cost of **£4.23M** which would need to be added to the £8M cost previously mentioned for decanting to our own properties – so a total cost of just over **£12M** is estimated to be the cost to the Council in pursuing this alternative option and is therefore not recommended.
- 3.25 The serviced office option provides a great deal more flexibility in terms of structuring the length of occupation although for the purpose of comparison it has been assumed the need would be to occupy 200 work stations for 2 years and 7 months. These facilities generally come with furniture and equipment provided – the Council would need to provide a data link to the building for our network, but this is relatively simple and low cost. Typically in these kind of settings there are a number of add on costs for dealing with post, copying, meeting room hire etc. – but without full details of what each location might offer / include in the rate per desk, these have been excluded from the calculation. In terms of availability, there are 3 locations within Canary Wharf that could accommodate 200 desk spaces and another location at the Relay Building in Whitechapel High Street. The 2.7 year costs vary slightly with the range being £4.16M to £5.44M – which is not substantially different from the lease options mentioned above. Some of these options may need a degree of fit out / alteration works based on the details to hand, but these have not been factored in so the comparison is consistent.
- 3.26 Having considered the potential costs involved when considering proceeding with the alternative options none can be recommended because of the potential overall impact on the Council both financially and operationally and the level of additional risks that these introduce.

4. EQUALITIES IMPLICATIONS

- 4.1 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. The information within the report suggests the proposed surrender and grant does not affect these objectives.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 It is recommended that the Council proceeds with the recommendation to surrender the existing lease and take a new lease in order that it can then satisfy its best value duty and reduce the level and complexity of risk that the Council would be potentially exposed to if any of the alternative proposals were to be followed.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 Following the recent appointment of the main works contractor for the redevelopment of the new Town Hall site in Whitechapel, it is important that the Council has certainty regarding its office accommodation provision over the period prior to relocation to the new building which is likely to be in mid-2022. This report seeks the approval of the Mayor in Cabinet for the Council to remain in its current accommodation by surrendering the existing lease for Mulberry Place that expires on 1st July 2020 and simultaneously entering into a new lease that will expire on 24th March 2023.
- 6.2 The report sets out in paragraphs 3.16 to 3.26 the alternative options to the Mulberry Place lease extension that have been considered. These make use of existing Council buildings together with the possibility of acquiring additional short term accommodation. These alternatives have been assessed as being significantly more expensive than the Mulberry Place lease extension, as well as potentially not providing the suitable accommodation that the Council needs to support its service delivery.
- 6.3 The Council has a current annual budget of £2.8 million in respect of the rent for Mulberry Place. In addition service charges are payable to the landlord. Under the terms of the new lease, the existing financial arrangements will continue to 1st July 2020 when the higher rental charge will come into effect. It is envisaged that the service charges will still be based on the existing level of provision. The revised rental figure is shown in the exempt Appendix One. The future higher rental costs are not currently included in the Council's Medium Term Financial Strategy which is the subject of a report elsewhere on this agenda, but will need to be incorporated from 2020-21 to 2022-23.
- 6.4 The Council has been supported by external property consultants (JLL) in negotiating the revised lease terms. The costs of this appointment have been met from within existing resources.

- 6.5 The proposed lease includes a rolling 6 month tenant break option exercisable on serving 6 months' notice at any time from September 2022. This will provide flexibility to the Council in managing its arrangements in relation to the relocation of staff to the completed Civic Centre.
- 6.6 It should be noted that the existing conditions and liabilities that are incorporated within the current lease will remain. This means that there will continue to be no liability for the Council to incur dilapidations or reinstatement costs at the end of the lease period.

7. COMMENTS OF LEGAL SERVICES

- 7.1 The report seeks approval for:
- a) the surrender of the current lease; and
 - b) the acquisition of a new three year lease

Power to surrender current lease of the property

- 7.2 The report seeks the decision to simultaneously dispose of the Council's leasehold interest by way of a surrender of the current lease.
- 7.3 The land is held in the General Fund and, therefore, the Council has the power by virtue of section 123 of the Local Government Act 1972 to dispose of it in any manner that it may wish. The land is being surrendered by direct negotiation.

Power to acquire the property

- 7.4 Section 120 of the Local Government Act 1972 empowers the Council for the purpose of any of its functions under that or any other act, to acquire by agreement any land, whether situated inside or outside their area. Accordingly, the Council has the legal power to acquire a leasehold interest of this property.
- 7.5 The Council's procedure for disposals and lettings specifies that the procedure adopted for disposals and lettings is to be determined by the Divisional Director Property and Major Programmes. The Divisional Director Property and Major Programmes will determine the most appropriate method of letting, 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 letting has been by negotiation. This is referred to in paragraph 3.8 of this report and as shown in the Appendix 1 to this report.
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Linked Reports, Appendices and Background Documents

- None

Linked Report

- None.

Appendices

- Appendix One – exempt information about the commercial terms

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

- None

Officer contact details for documents:

- N/A