

Cabinet	 TOWER HAMLETS
22 September 2021	
Report of: Ann Sutcliffe, Corporate Director of Place	Classification: Unrestricted
Sutton Street Depot, 6 Sutton Street, London, E1 0AY	

Lead Member	Mayor Biggs
Originating Officer(s)	Stephen Shapiro, Interim Head of Asset Management
Wards affected	Shadwell
Key Decision?	No
Forward Plan Notice Published	16 August 2021
Reason for Key Decision	This report has been reviewed as not meeting the Key Decision criteria.
Strategic Plan Priority / Outcome	<ol style="list-style-type: none"> 1. People access a range of education, training, and employment opportunities 2. Good jobs and employment 3. People say we work together across boundaries in a strong and effective partnership to achieve the best outcomes for our residents

Executive Summary

The report is to seek authority to grant a new lease at a level that exceeds Delegated Thresholds.

Recommendations:

The Cabinet is recommended to:

1. Grant a new 3-year lease, excluding security of tenure, to the existing occupier of 6 Sutton Street at a rent of £125,000 per annum, subject to an initial 12 month rent free period.
2. Approve the repayment of £80,000 in arrears by virtue of an up-front payment of £40,000 with the balance payable after 3 months after completion of the lease.
3. Agree a Schedule of Works with the tenant to be appended to the lease and to be completed within 6-months of completion. These works are appended at Appendix 1.

1 REASONS FOR THE DECISIONS

- 1.1 The proposed terms regularise the position of the tenant whose previous lease expired in June 2018. To prevent the tenant from acquiring security of tenure under the Landlord and Tenant Act 1954 the Council had the rent stopped.
- 1.2 The rent of £125,000 per annum represents best value for the Council because it provides an income for an otherwise disused building. The tenant has agreed to undertake a schedule of improvement works to the building which will cost in the region of £100,000 - £150,000. Considering the capital payment made by the tenant respect of the improvement works to be undertaken and the benefit that the Council will gain from such works on expiry of the lease a rent-free period of 12 months has been agreed.
- 1.3 Upon expiration of the June 2018 lease, the tenant did not pay rent and the building has remained vacant and unused. During this time the tenant has covered business rates and security costs associated with the building. However, on expiry of the lease, the Council did not seek possession to recover the property and the tenant remained in occupation. As the tenant has been in occupation since June 2018 it is possible that they could have obtained security of tenure. This means that the tenant has a right to a new tenancy even though the expired lease was excluded from the Landlord and Tenant Act 1954 (the Act). The Council are seeking to recover monies which are equivalent to rent for occupation from June 2018 to present day via a legal principal known as 'mesne profits'. The costs to pursue the arrears could be costly plus the time and resources taken to recover the rent outweighs the potential rent received. Therefore an £80,000 payment has been agreed with the tenant which will go towards the potential arrears for the building.
- 1.4 Discussions have been on-going to grant the tenant a new 3 year lease outside the Act, thereby continuing to prevent them securing continual rights of occupation. This ensures that the Council retains flexibility regarding future use of the site at the conclusion of this lease term.

The new lease would also include an obligation to undertake works within 6-months of completion of the lease. In the former lease there was an obligation upon the Council to pay £50,000 towards capital works on the building.
- 1.5 The documentation is ready to complete, but due to the rental level of £125,000 per annum being above Delegated Authority levels further authority is sought.

2 ALTERNATIVE OPTIONS

- 2.1 The main alternative option is not to agree the proposed lease and associated agreements. The Council would therefore need to seek vacant possession and be responsible for voids, re-letting the space and security costs.

3 DETAILS OF THE PROPOSAL

- 3.1 Terms have been agreed with the existing tenant to take a new 3-year Outside the Landlord and Tenant Act 1954 lease at an annual rent of £125,000 per annum, subject to an initial 12 month rent free period.
- 3.2 At the same time the Tenant will agree to undertake a Schedule of Works to be appended to the Lease within 6 months as well as repay £80,000 of arrears.

4 EQUALITIES IMPLICATIONS

- 4.1 There are no specific equalities implications arising from the report at this stage. The future redevelopment of the market site will require planning consent, which will involve consideration of issues such as affordable housing, access and employment opportunities.

5 OTHER STATUTORY IMPLICATIONS

- 5.1 The future transaction involving the Council's leasehold interest will be subject to the best consideration obligations in s123 of the 1972 Local Government Act.

6 COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 This report seeks approval from the Mayor to grant a new 3-year lease, without Security of Tenure, to the existing occupier of the 6 Sutton Street site at a rent of £125,000 per annum, subject to an initial 12 months rent free period. The report also requests approval for the repayment of £80,000 of arrears by the tenant by virtue of an up-front £40,000 with the balance payable after 3 months, alongside removing the Council's liability to pay £50,000 to the lessee.
- 6.2 6 Sutton Street is a general fund asset and granting the rent holiday will create a budget pressure in year. However, this rent loss is being mitigated through the repayment of historic arrears and the avoidance of void costs (rates, utilities, security, letting fees etc) if the building were to remain empty. The void period would be unknown especially as the building is in a poor state of repair which the current tenant is dealing with (para. 6.3).
- 6.3 The lessee will also undertake dilapidation works to bring the building into use, estimated at £125,000. These works are capital in nature and therefore although the Council is incurring a revenue pressure from the rent holiday, it is benefitting from an equivalent saving within its capital programme. Should the

lessee not undertake these works then the liability and resultant cost would fall on the Council, further affecting the marketability and effective rent and void periods.

- 6.4 Entering into a lease arrangement Outside of the Act allows the Council to value the asset and associated rental payments inclusive of these capital works should the lease be renewed, potentially allowing the Council to benefit from increased rental income in future years.
- 6.5 All other revenue costs associated with the property, for example insurance, business rates will be met by the tenant and not the Council's budgets.
- 6.6 Although on first appearances it does not go fully towards meeting the Council's income targets, there is a far greater benefit to the mitigation, including £80,000 this financial year than by delaying or not entering into the lease which would result in zero income for an unknown period with resultant costs to be incurred by the Council. Therefore, from a finance perspective this proposal is recommended.

7 COMMENTS OF LEGAL SERVICES

- 7.1 Local authorities are given powers under the Local Government Act 1972, subject to applicable legal constraints, to dispose of land in any manner they wish, including sale of their freehold interest, granting a lease or assigning any unexpired term on a lease, and the granting of easements. However, a disposal must be for the best consideration reasonably obtainable, as set out in section 123 of the Local Government Act 1972 (except in the case of short tenancies), unless the Secretary of State consents to the disposal.
- 7.2 It is noted in this report at paragraph 1.2 that this transaction represents best consideration for the Council.
- 7.3 When a former tenant remains in occupation after a tenancy has been terminated, a landlord can claim money from the tenant for continued use of the premises. These payments are known as mesne profits. The amount of mesne profits payable is usually equivalent to the rent that the former tenant was paying (Swordheath Properties Ltd v Tabet [1979]).

Linked Reports, Appendices and Background Documents

Linked Report

- None.

Appendices

Appendix 1 – Schedule of Works

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

- None.

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SCHEDULE OF WORKS

PREPARED BY;

**TAYLORED SPACE
111A GEORGE LANE
LONDON E18 1AN**

JUNE 2020

THE FOLLOWING DOCUMENT DESCRIBES VARIOUS BUILDING WORKS TO BE CARRIED OUT AT THE YARD AND PREMISES AT 6 SUTTON STREET LONDON E1 ORB.

THE WORKS ARE PRESENTED IN TWO SECTIONS AS FOLLOWS;

SECTION 1 EXTERNAL WORKS TO YARD AND BUILDINGS

SECTION 2 INTERNAL REFURBISHMENT WORKS TO THE REAR REAR BUILDINGS

(NO WORKS TO THE TWO FRONT BUILDINGS EACH SIDE OF THE ACCESS ARCH
ARE PROPOSED IN THIS SCHEDULE)

ALONG WITH A DESCRIPTION OF THE WORKS AN ESTIMATE OF THE COSTS OF THE WORKS IS INCLUDED AND IS CALCULATED TO INCLUDE ALL NECESSARY MATERIAL, LABOUR, PLANT AND MACHINERY AND PRELIMINARY COSTS. V.A.T. IS NOT INCLUDED

SECTION 1 EXTERNAL WORKS TO YARD AND BUILDINGS

A ROOF AND GUTTERS

- 1) Provide access scaffold as necessary to both roof slopes of right hand side or rear building. Remove all defective and broken roof slates. Check roof timbers and fit replacement matching slates with bright zinc clips. Leave roof watertight.
- 2) Provide access scaffold as necessary to all roof slopes of single storey left hand rear building. Remove loose and defective artificial slates along front roof verge. Check roof timbers and fit replacement matching slates with bright zinc clips. Leave roof watertight.
- 3) Provide access scaffold as necessary to flat roof over single storey storage sheds along rear boundary. Clean all roof surfaces and prepare as necessary. Apply single ply GRP membrane with all necessary proprietary flashing and weathering details. Leave roof watertight.
- 4) Using above reference scaffolding or access towers remove all gutters and fascias including barge boards from gables. Check and repair all roof timbers as necessary. Fit new black upvc fascia boards and ventilated soffit boards. Fit new black upvc deep flow guttering and ensure all roofs discharge into gutters.
- 5) Clean all debris from valley gutter extending full length of boundary parapet walls adjoin the various premises along Commercial Road and Deancross Street. Check for defects and repair as necessary.
- 6) Remove and clear away all r.w. downpipes. Provide new black upvc 75mm downpipes with brackets at 1.2m c/s.

B External walls

- 1) Remove all weed and plant growth from external wall faces of rear buildings and rake out all defective mortar pointing generally to a depth of 20mm. Repoint to match existing finish with sand cement mortar.
- 2) Provide all necessary access towers and remove all weed and plant growth from all boundary fence walls and rake out all defective mortar pointing generally to a depth of 20mm. Repoint to match existing finish with sand cement mortar.

- 3) Locate all brickwork fractures in boundary wall with adjoining premises in Sutton Street. Carefully rake out mortar from horizontal beds to a depth of 75mm and 500mm each side of fracture at 225mm vertical centres. Insert proprietary Thor Helical reinforcement bars and repoint with weather struck mortar finish.
- 4) Locate and repoint all defective mortar and replace missing or damaged coping stones.
- 5) Remove defective lintel over ground floor opening in right hand flank of rear building. Insert new concrete lintel and make good to brickwork.
- 6) Remove external waste pipes at low level to right hand side of main entrance of rear building.
Re-run wastes with new upvc pipe securely clipped to the wall and discharging into sealed gully.
- 7) Replace defective lateral soil pipe over main entrance door with new upvc pipe securely fixed to the wall and to an adequate fall.
- 8) Patch repair as necessary all external render faces. Prepare and paint 2no. coats Dulux Weathersheild masonry paint.
- 9) Provide 2no. vertical heavy duty galvanised steel roller shutters with electric motor operation to openings of rear single storey store rooms.
Make good surrounding brickwork.
- 10) Overhaul existing roller shutter to rear single storey store.

SECTION 2 INTERNAL REFURBISHMENT WORKS TO THE REAR BUILDINGS

A CLEARANCE

- 1) Remove all loose furniture from all areas of the rear buildings. Remove suspended ceilings and floor tiling from ground floor left hand side.
- 2) Demolish all non load-bearing partitions and false ceilings from rear single storey building.
- 3) Remove all redundant radiators and surface heating pipework from first floor offices.
- 4) Remove all redundant ventilation equipment and ducting from rear single storey building.

B ELECTRICAL WORKS

ALL WORKS TO BE CARRIED OUT BY A REGISTERED NICEIC ELECTRICIAN AND PROPERLY CERTIFIED ON COMPLETION.

- 1) Remove all electrical wiring and fittings from g.f. left hand side and rear single
- 2) From the existing meter position run 4no. new sub mains cables to separate office suites on both floors. Fit new consumer units.
- 3) To first floor office suites and ground floor right hand side suite, inspect existing wiring for compliance and carry out any necessary up-grades.
Connect existing circuits to new consumer units and leave fully operational.
- 4) To ground floor right hand side and rear single storey building provide complete new installation to provide lighting, power, heating and ventilation.
- 5) Provide 8no. LED external flood lights to yard area, mounted at h/l on rear building walls.
- 6) Inspect and upgrade as necessary existing integrated fire alarm and smoke detection systems.

C GENERAL REFURBISHMENT WORKS

- 1) Inspect and overhaul all fire doors at within first floor offices and leave fully operational.
- 2) Clean all wall surfaces and redecorate throughout first floor offices .
- 3) Clean all first floor toilet areas thoroughly including floor coverings. Replace any damaged or missing wall tiles.
- 4) Inspect all first floor sanitary fittings and replace or repair as necessary.
Leave operational.
- 5) Clean all first floor kitchen facilities. Inspect all fitted units and appliances.
PAT test any electrical equipment and repair or replace as necessary.
- 6) Thorough clean all common stairwell surfaces. Inspect balustrade and repair or replace any loose or missing balusters.
- 7) Clean all wall and ceiling surfaces and redecorate throughout stairwell.

Cont./

- 8) Consult with Fire Officer and fit 'Fire Escape' signage and fire extinguisher as directed by the officer.
- 9) Inspect ground floor ceiling of left hand side showroom for fire resting integrity and carry out any necessary remedial works.
- 10) Provide suspended tile ceiling to entire ceiling of left hand side showroom. Allow for incorporating light and alarm fittings.
- 11) Inspect all retained ceilings at both floor levels and repair suspended grid system as necessary. Provide replacement tiles as necessary.
- 12) Provide door and ironmongery to ground floor w.c.
- 13) Remove glass screen separating ground floor left hand showroom from stairwell. Construct new 1/2hr fire resisting partition full height.
- 14) Lay levelling screed to entire floor area of left hand side ground floor showroom and leave ready for floor covering .
- 15) Clean all wall surfaces and redecorate to left hand side ground floor showroom.
- 16) Inspect all sanitary fittings in ground floor left hand side showroom and replace or repair as necessary. Leave operational.
- 17) Lay d.p.m and 70mm screed to rear single storey rear building.
- 18) Infill 2no. opening in brick wall between external storage areas and office area of single storey building.
- 19) Make good all wall surfaces to single storey rear building and apply patch plaster to level as necessary. Redecorate all wall and ceiling surfaces.
- 20) Provide new continuous suspended ceiling to single storey rear building.