

<b>Cabinet</b> 3 December 2014	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Corporate Director, Development & Renewal	<b>Classification:</b> Partially exempt
<b>Interim Disposals Programme</b>	

<b>Lead Member</b>	Councillor Alibor Choudhury, Cabinet Member for Resources
<b>Originating Officer(s)</b>	Service Head, Corporate Property & Capital Delivery
<b>Wards affected</b>	St Dunstan's
<b>Community Plan Theme</b>	One Tower Hamlets
<b>Key Decision?</b>	Yes

### Executive Summary

The council owns a number of assets that are either currently vacant or due to become vacant shortly. These assets are an additional burden at a time of fiscal constraint.

The council has reviewed the opportunities that are available through these buildings and sites, including bringing them back into use, developing them as council-led projects and/or as part of a disposal programme.

This report sets out the proposal for the disposal of some land and buildings that have remained vacant for quite some time (Whitehorse Road/Commercial Road).

### Recommendations:

The Mayor in Cabinet is recommended to:

1. Note the contents of this report;
2. Agree that the land and buildings at Whitehorse Road/Commercial Road (as shown in the map in Appendix A) are surplus to requirement;
3. Agree to the disposal of the site by informal tender;
4. Authorise officers to appoint external agents to support the marketing of the

site;

5. Authorise the Corporate Director, Development and Renewal to accept the best tender return for the site on conclusion of the marketing exercise; and
6. Authorise the Corporate Director, Development and Renewal, following consultation with the Service Head – Legal Services, to agree the terms and conditions of any agreements required to implement the recommendations above.

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

- 1.1 It is important at a time of reducing funding and budgets in the public sector, to ensure that efficiencies are driven through the running and/or disposals of our assets to reduce revenue costs.
- 1.2 The decisions in this report will contribute to the continual review and rationalisation of council assets, and help reduce the council's operational portfolio to the minimum required.
- 1.3 The disposals will generate capital receipts for the council, which can be directed to the its priorities on housing, education, and infrastructure projects. They will also reduce revenue expenditure on upkeep, maintenance and security.
- 1.4 The development of the Whitehorse Road/Commercial Road site will also bring an empty and derelict site back into use.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The council has considered the possibility of developing the Whitehorse Road/Commercial Road site itself, but the funding to deliver this option is not currently available.

## **3. DETAILS OF REPORT**

- 3.1 The council has a significant operational and commercial portfolio that it manages. Council officers keep the property portfolio under review and bring forward sites for direct development and/or disposal from time to time. The direct development options depend on the availability of funding, while

disposing of properties reduces the revenue costs for the maintenance and security of vacant buildings, while generating a capital receipt.

- 3.2 This report focuses on a council site that is currently vacant. The buildings on the site have stood empty for a number of years, whilst still placing a demand on a limited revenue budget to ensure the buildings remain secure and safe.
- 3.3 The council, through the disposal of the land and buildings, intends to achieve the maximum capital receipt that can be realised. It is therefore proposed that the site at a minimum will be sold with a planning brief/statement.
- 3.4 The site consists of 38-44 Whitehorse Road, 611-613 Commercial Road, 619-623 Commercial Road and a strip of land behind hoardings at 603 Commercial Road. The exact boundaries are indicated in the site plan, contained in the appendix to this report.
- 3.5 The site is on the north side of Commercial Road at the junction with Whitehorse Road, opposite Butchers Row, and comprises former shops and commercial premises; many units are vacant and derelict or semi-derelict. This had made the properties a magnet for criminal and anti-social behaviour, including vandalism, squatting, and breaking and entering.
- 3.6 The buildings are currently squatted, although possession proceedings have been taken and the council is in the process of enforcing a possession order. The squatters launched a sophisticated challenge, albeit one that was ultimately unsuccessful, based on the Human Rights Act, claiming the length of time they had remained in the properties while they were not in use by the council gave them rights to continue their occupation of the properties based on the Human Rights Act.
- 3.7 Cabinet originally resolved, on 6<sup>th</sup> July 2005, that these properties be declared surplus to the council's requirements and instructed the then-Head of Corporate Property Services to enter into negotiations to dispose of the complete site to Registered Providers for the development of social housing. That was ultimately unsuccessful as funding was not available at the time.
- 3.8 There has been a long-standing intention to redevelop the site and a number of attempts were made but ultimately the site assembly was never successfully concluded. Taking constructive action on this site would fulfil the borough's strategic enabling role in promoting regeneration, bringing derelict sites back into use and increasing the supply of housing.
- 3.9 Over the past few years, costs have been incurred in relation to these properties. This is expenditure that has not provided any direct benefit to the

residents of Tower Hamlets. Reduction of this revenue spend by disposing of the site allows the council to focus revenue expenditure on the services that our most vulnerable residents rely on.

- 3.10 The success of the disposal will be determined on the basis of being able to undertake the pre-sale work, carrying out solid and targeted marketing, along with the provision of a draft lease, and Heads of Terms issued with the marketing details. This will help expedite the process of concluding exchange of contracts with the successful bidder.
- 3.11 It is anticipated that up to 4% of the capital receipt value will be used to ensure the successful marketing of the sites. This will cover the appointment of an external marketing team, legal and property team support, and where necessary architectural / planning input.
- 3.12 An estimated capital receipt is contained in the linked exempt report.

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

- 4.1 This report asks the Mayor in Cabinet to re-affirm that the land and buildings at Whitehorse Road/Commercial Road are surplus to requirement, and to agree to their disposal by informal tender. In addition the Mayor in Cabinet is recommended to authorise officers to appoint external agents to support the marketing of the site, and to authorise the Corporate Director, Development and Renewal to accept the best tender return for the site on conclusion of the marketing exercise.

##### **Whitehorse Rd/ Commercial Rd**

- 4.2 As shown in Appendix A, the sites consist of (a) 38-44 Whitehorse Road, 611-613 Commercial Road and a strip of land behind hoardings at 603 Commercial Road, and (b) 619-623 Commercial Road. Council records indicate that the buildings are held under Housing powers.
- 4.3 The sites are unused and generate no income for the Authority, but the Authority is currently incurring revenue costs in order to ensure that the buildings are secure and safe. Disposing of these sites will avoid the need for the Authority to incur these costs in future.
- 4.4 The linked exempt report provides an indication of the capital receipt that may be realised from the sale of these sites.

- 4.5 Any receipts from sites held under Housing powers would be 100% usable within the Housing Revenue Account (HRA) as such receipts are no longer subject to the pooling regime. If these receipts were to be used within the General Fund for purposes other than the provision of affordable housing or regeneration, then an adjustment would be made to the HRA's Capital Financing Requirement (CFR). This would have the effect of reducing the capital financing charges allocated to the HRA and increasing those allocated to the General Fund.
- 3.13 As indicated above (paragraph 3.3) it is proposed that the site be marketed with a planning brief/statement already in place in order to achieve the highest possible capital receipt. The cost of this and other marketing costs could be met through the 'top-slicing' of the receipt value. These costs will initially have to be forward funded in advance of the capital receipt being generated, and because they will be offset against the capital receipt raised, are at risk if they are incurred but the sale does not proceed for any reason. In these circumstances the costs would need to be met from General Reserves.
- 4.7 The proposed property disposal would generate a capital resource if ultimately realised. Although the property has previously been earmarked for disposal, no potential receipt has been assumed as a resource available to finance the capital programme. The Authority adopts a prudent approach to the use of capital receipts and will only allocate them to schemes once they have been received and all contractual commitments met.
- 4.8 As highlighted in previous reports to Members, funding for capital investment is severely restricted over the next few years, while the Borough's population will continue to increase. Government capital grants to local authorities have reduced significantly, and investment in local priorities will be increasingly dependent upon the sale of surplus assets.

## **5. LEGAL COMMENTS**

- 5.1 The report states that the land at Whitehorse and Commercial Roads is held for housing purposes. It is understood that this means the land is held for the purposes of Part 2 of the Housing Act 1985.
- 5.2 The Council has power to dispose of land held for the purposes of Part 2 of the Housing Act 1985 by virtue of section 32 of that Act and not otherwise. Pursuant to that power, the Council requires the consent of the Secretary of State before disposing of the land, except where the disposal consists of letting the land under a secure tenancy or an introductory tenancy or under what would be a secure tenancy but for any of paragraphs 2 to 12 of

Schedule 1 to the Act. As those exceptions do not apply to the proposed disposal, the Secretary of State's consent is required.

- 5.3 Section 34 of the Housing Act 1985 contains provisions about how the Secretary of State may give consent to disposals. It specifies that the Secretary of State's consent may be given generally to all authorities or to a particular authority or description of authority. The consent may be given in relation to particular land or to land of a particular description. The consent may be subject to conditions. In accordance with the powers given, the Secretary of State has published the General Housing Consents 2013, which came into force on 11 March 2013.
- 5.4 Paragraph A3.1.1 of the General Housing Consents provides that a local authority may dispose of land for a consideration equal to its market value. This power does not permit the following types of disposals –
- a disposal of land which is subject to a secure, introductory or demoted tenancy;
  - a disposal of land falling within consent D, which concerns the disposal of reversionary interests in houses and flats;
  - a disposal to a body in which the Council owns an interest, unless (relevantly) it is one of the first 5 such disposals in a financial year.
- 5.5 None of the exceptional categories appear to apply to the proposed disposal and provided that continues to be the case, the Council has power under the General Housing Consents to dispose of the land for market value. The proposal in the report for sale by informal tender with support from external agents should enable the Council to achieve market value.
- 5.6 On 4 November 2014, the Secretary of State indicated that he was considering exercising his powers of direction in section 15 of the Local Government Act 1999 in relation to Tower Hamlets. He proposed to appoint commissioners who would oversee specified functions at Tower Hamlets. Relevantly, the Council may be required to obtain the prior written agreement of the commissioners before entering into any commitment to dispose of, or otherwise transfer to third parties any real property other than existing domestic property for the purposes of residential occupation. If such a direction is made, then that will have to be complied with in the proposed sale process.
- 5.7 It is proposed to engage external agents to assist with marketing the land. The procurement of the agents will need to be carried out in accordance with the Council's procurement procedures.

- 5.8 When considering and carrying out the proposed disposal, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). There is information in section 6 of the report relevant to these considerations.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1. The sale of the sites identified in this report will raise capital receipts which will be available to support the council's overall capital programme which supports all service areas to deliver on the Community Plan objectives, as reflected in the Strategic Plan as well as achieve Mayoral priorities.

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

- 7.1 Any new developments will be to higher environmental standards. The sale of these properties will reduce the council's CO2 emissions.

## **8. RISK MANAGEMENT IMPLICATIONS**

- 8.1. The key risks are as follows:
- 8.2. **Timing and marketing strategy** – the maximum capital receipt may not be realised if the disposal and marketing strategy are not managed well, or insufficient information exists at the time of marketing the properties. This may lead to values being suppressed.
- 8.3. *Mitigation* – ensure that full and complete property information is compiled. Ensure that a planning brief available on the sites. Professional marketing is undertaken with clear details, processes and timeline for submitting bids.
- 8.4. **Market saturation** - the marketing of the site and others already declared surplus for disposal all happen at the same time. This could lead to the market being saturated, which could drive down or suppress the values and/or level of interest.
- 8.5. *Mitigation* – ensure that the marketing of this site is undertaken in isolation to ensure that market interest is maintained.
- 8.6. **Squatting** – the disposal is delayed leading to resquatting of the properties after vacant possession is secured.

8.7. *Mitigation* – ensure the sites are secured after the council regains vacant possession and the disposal is carried out expeditiously.

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

9.1 Vacant sites attract anti-social behaviour, including vandalism and squatting. The council expends funds ensuring that the buildings are secure however there are still attempts to enter the buildings in order to squat and/or vandalise.

9.2 The subsequent redevelopment of those sites will also remove the unsightly empty buildings within the borough.

## **10. EFFICIENCY STATEMENT**

10.1 Where an asset has been identified as surplus to requirements, the council has the option to retain the asset for future use, and in the meantime to pay any costs associated with maintaining and securing the asset, or to sell the asset for a capital receipt.

10.2 In this case, it is more appropriate that the council dispose of the site. The council will receive a capital receipt from the sale of the site.

---

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

#### **Linked Report**

- Interim Disposals Programme (Exempt report)

#### **Appendices**

- Appendix A – Site plan for Whitehorse Road/Commercial Road

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

- None

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

- Ann Sutcliffe, Service Head, Corporate Property & Capital Delivery (020 7364 4077)