


Commissioner Decision Report 24 June 2015	
Report of: Corporate Director, Development & Renewal	Classification: Unrestricted
Sale of the Blue Anchor Pub, Bromley High Street for a lease premium of £235,000	

Lead Member	N/A
Originating Officer(s)	Service Head, Corporate Property & Capital Delivery
Wards affected	Bromley North
Key Decision?	No
Community Plan Theme	Great Place to Live

Executive Summary

The Council is proposing to sell a 199 year leasehold interest in the Blue Anchor Pub, Bromley High Street for a lease premium of £235,000.

This matter is ready to proceed subject to Commissioners' agreement.

The Commissioners are asked to consider the offer of £235,000 and agree to the Council's proposal to dispose of a 199 year leasehold interest in the Blue Anchor Pub, Bromley High Street to Poplar Harca for a premium payment of £235,000.

Recommendations

The Commissioners are recommended to agree to the Council's proposed disposal of a 199 year leasehold interest in the Blue Anchor Pub, Bromley High Street to Poplar Harca for a premium payment of £235,000.

1. REASONS FOR THE DECISIONS

- 1.1 Cabinet decided on 5th September 2012 to formally declare the property surplus to operational requirements and authorised the Corporate Director, Development and Renewal to arrange its marketing and open market disposal using external selling agents.
- 1.2 The payment of £235,000 represents the market value of the Blue Anchor Pub, Bromley High Street (the property) as independently verified by the Council's external valuers.

2. ALTERNATIVE OPTIONS

- 2.1 The alternative option is not to proceed with the sale whereupon the Council will not benefit from the £235,000 capital receipt.
- 2.2 The Council will instead continue to receive the rental income of £17,500 p.a. from the tenant for the balance of the 20 year lease with an ongoing management responsibility.

3. DETAILS OF REPORT

Approvals and Authority

- 3.1 Cabinet resolved on 5th September 2012 to formally declare the property surplus to operational requirements and authorised the Corporate Director, Development and Renewal to arrange its marketing and open market disposal using external selling agents.
- 3.2 Cabinet also authorised the Corporate Director of Development and Renewal, in consultation with the Assistant Chief Executive (Legal Services), to accept the offers which represent best consideration for the Council and authorised the Assistant Chief Executive (Legal Services) to execute the necessary documents to implement the recommendation above.
- 3.3 The post of Assistant Chief Executive (Legal Services) was deleted in February 2014, so it is not possible for the Corporate Director to consult as initially expected by Cabinet. However, a disposal at the proposed price is within the Constitutional delegation to corporate directors and to the service head for corporate property specified. The relevant delegation is in paragraph 14 of the corporate delegations in part A of the Council's scheme of management and provides for: "Acquisitions and disposals at full market value. The purchase or sale of land up to £250,000 in value (including leases or easements where the annual rent multiplied by the length of the lease does not exceed that figure assuming that the rent is not increased on review)". In this instance the Corporate Director has determined, after taking advice from the Service Head Legal Services, that the proposed sale price represents best value and should be accepted subject to the views of the Commissioners.

Disposal Process

- 3.4 The property was marketed in 2013 on a long leasehold basis by specialist leisure agents, Fleurets, through an informal tender process. The initial round of bids produced offers which ranged from £210,000 to £250,000. Unfortunately, however, the higher offers subsequently fell away and the property was re-marketed. The second round of bidding produced a highest bid from Poplar HARCA. The price originally offered by Poplar HARCA was £210,000 and matched the offer it had made in the first round of bidding. This was £20,000 above the second highest bidder.
- 3.5 Terms were agreed for the sale and subsequently it was put under offer. Poplar HARCA's initial proposal was to purchase the property on a freehold basis. However, it was subsequently agreed they would purchase a long leasehold interest. At that stage it was known that Poplar HARCA had for some time been considering the long term redevelopment potential of the Blue Anchor pub given its position adjacent to other land in their ownership. Indeed they were encouraged by the Council's planning team to include the pub in any redevelopment during pre-application discussions in 2011.
- 3.6 In August 2014, following delays in completing the disposal, Asset Management asked Fleurets to confirm that the price agreed still represented Market Value reflecting two pertinent matters; the passage of time and the incorporation of the pub into Poplar HARCA's wider regeneration of neighbouring land. This redevelopment intention had become more obvious and imminent by virtue of Poplar HARCA's application in August 2014 to take an assignment of the occupational lease of the pub from the tenant.
- 3.7 Fleurets confirmed by e-mail on 28th August 2014 that, whilst there was a chance that re-marketing could produce a marginally better offer, there was a greater risk that the transaction could fall away leaving the Council without a buyer or with a buyer at a lower price. On balance they advised the Council to complete the disposal at the price agreed. In a follow up e-mail of 29th August 2014 they reported further as follows:
- "I confirm that the price originally agreed for the long leasehold interest of £210,000 reflects the special purchaser identity of Poplar Harca. As mentioned in my email yesterday, you will note that the Poplar Harca offer is £20,000 above the second highest bidder. I am therefore confident from our marketing that we have extracted maximum value for the property and the special purchaser status of Poplar Harca".*
- 3.8 The Council also commissioned a separate "Red Book" valuation from Montagu Evans in October 2014 in which they were asked to independently ratify the price as representing Market Value having regard, in particular, to any redevelopment potential. The reason for commissioning a separate report was due to Fleurets' acknowledged expertise as Leisure Agents rather than residential development consultants.

- 3.9 The revaluation assessed the Market Value of the property at £235,000 reflecting the underlying vacant possession value of the property. In assessing this valuation Montagu Evans' methodology was to consider the value of the property firstly as an investment and secondly assuming vacant possession had been obtained following a payment to the tenant with a view to residential development being undertaken.
- 3.10 The value to Poplar HARCA as a "special purchaser" was not specifically assessed because the definition of "Market Value" in the RICS "Red Book" does not take into account a special purchaser. However, the value to the buyer was referred to in the report as potentially being enhanced by virtue of any Right to Light claims over their neighbouring land being quashed. At that stage there was no development scheme for Montagu Evans to assess therefore they made assumptions as to the development potential of the site to the broader developer market. Therefore, officers consider that the test as to whether best consideration has been achieved in these circumstances is whether the bid from Poplar HARCA is the optimum price that the Council could achieve if it were to re-market the property
- 3.11 In the light of the advice received from the two sets of valuers referred to, officers consider that the offer which Poplar HARCA have accepted of £235,000 does represent the best consideration reasonably obtainable.
- 3.12 Montagu Evans confirmed by a follow-up e-mail in April 2015:

"We provided a valuation of the Property in October 2014, whereby we stated the Market Value of the Property to be £235,000 reflecting a net initial yield of 7.25%. In light of the above change in tenancy position, we are not of the opinion the value of the Property to have materially altered since the date of our valuation; certainly not sufficiently to warrant a renegotiation with the existing party or re-marketing the Property."

- 3.13 No approaches to the Council's planning department have been made by Poplar HARCA since the initial discussions in 2011 nor have Poplar HARCA undertaken significant design work. Their stated intention is to re-open the pub whilst working up any redevelopment scheme.
- 3.14 This revised price of £235,000 was accepted by Poplar HARCA.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report seeks approval to dispose of the Blue Anchor public house in Bromley High Street on a 199 year lease, following Cabinet's decision on 5 September 2012 to declare the property surplus to requirements and to authorise its open market disposal.
- 4.2 The site is held under Housing Revenue Account powers. As land or non-dwellings, any receipt will be fully usable by the Authority for any capital purpose, and if retained within the Housing Revenue Account can be applied towards the significant level of resources required to fund the Council's

contribution for the delivery of new housing supply using retained '1-4-1' Right to Buy receipts.

- 4.3 If the receipt is used to fund General Fund capital expenditure an adjustment to the HRA Capital Financing Requirement will be necessary. This would lead to a minor saving in the debt charges accruing to the HRA.
- 4.4 Ultimately the benefits of generating a "one-off" capital receipt must be weighed up against the future revenue income that retention of the property would realise. In this case, the Council receives a lease rental of £17,500 per annum, credited to the Housing Revenue Account. This would imply a return of 7.4% on an asset valued at £235,000. The lease rental charge is subject to review every five years.
- 4.5 The report indicates that, if acquired, Poplar HARCA is likely to use the site as part of its residential development proposals for the area. If this is the case, additional benefits may be generated for the borough. Although not quantifiable until a planning application is submitted, these could include contributions towards employment initiatives under Section 106 powers, as well as the tenancy nomination rights that would arise under the Common Housing Register scheme. As a social housing project it is unlikely that any redevelopment will be liable for Community Infrastructure Levy.
- 4.6 The current maintenance arrangements for the property are that the tenant is responsible for internal repairs, with the Council being liable for the structure and exterior. From records, the Council has not incurred any expenditure on the property in recent years although there is always a risk that major investment may become necessary in future.
- 4.7 Although the property has previously been earmarked for disposal, the potential receipt has not 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 Funding for capital investment is likely to be 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.
- 4.9 If disposal is agreed, it must be ensured that any rental income that is due to the Council under the current leasing arrangements is recovered.

5. LEGAL COMMENTS

- 5.1 The legal power to dispose of land is contained in section 123 of the Local Government Act 1972. The Council is required to obtain the best consideration reasonably obtainable unless the Secretary of State consents to the disposal or unless the disposal is by way of a short tenancy.

- 5.2 In the ordinary course, the Council must openly market the site to establish a competitive value. This can be achieved by a sale, by auction or by inviting bids. If bids are sought then these will need to be assessed against the valuation and tender criteria that have been identified prior to bids being sought.
- 5.3 The property was let by a lease dated 14th September 2012 and the lessee operated the premises as a public house and paid the Council an annual rent of £17,500. The lessee applied to the Council for consent to assign the lease to Poplar Housing and Regeneration Community Association Limited (“Poplar Harca”). Current legislation required the Council promptly to give its consent to the proposed assignment and this was completed in November 2014.
- 5.4 Being conscious of the necessity to obtain best consideration, the property was revalued because it was appreciated that this property would be worth more to the proposed purchaser of the long leasehold with vacant possession than subject to a lease under which the tenant enjoyed protection afforded by the Landlord and Tenant Act 1954 Part II. As stated earlier in this report the revaluation resulted in an increase in the valuation of £25,000.
- 5.5 The current position is therefore that Poplar Harca is the tenant of these premises pursuant to the terms of the lease granted on 14th September 2012. The proposal is that the Council will grant a lease to Poplar Harca for a term of 199 years which will allow the lessee flexibility as to use and future development. An agreement for lease and draft lease were submitted a considerable time ago to the purchaser’s solicitors and the conveyancing process is well advanced.
- 5.6 The Council also has a duty under section 3 Local Government Act 1999 to ‘make arrangements to secure improvement in the way its functions are exercised having regard to a combination of economy, efficiency and effectiveness’. The basis for the disposal is set out in the body of this report; a decision has previously been taken that the building is surplus to operational requirements and its disposal for the value of £235,000 as advised by independent valuers, offers a capital receipt for affordable housing or regeneration schemes.
- 5.7 The Council gave due consideration to the question of whether it should opt to tax the property for VAT purposes, since it is currently exempt for VAT purposes, but decided that there was no advantage in opting to tax the property and it therefore remains exempt.
- 5.8 In considering the 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 do not (the public sector equality duty). This requires a proportionate level of equality analysis and relevant information is provided in section 6 of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The public sector equality duty under section 149 Equality Act 2010 arises where the Council exercises its functions. The Council proposes to use the capital receipt generated by the sale for affordable housing or regeneration projects. Such schemes primarily benefit persons who are the intended beneficiaries of the equality duty.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The proposed transaction represents an efficient and effective use of the council's estate. The property was considered to be surplus to operational requirements and therefore advertised in the open market in order to secure best consideration. In addition, officers have seen indications that if disposed of as proposed in this report, Poplar HARCA is likely to use the site as part of its residential development proposals for the area. If this is the case, additional benefits may be generated for the borough. Although not quantifiable until a planning application is submitted, these could include contributions towards employment initiatives under Section 106 powers, as well as the tenancy nomination rights that would arise under the Common Housing Register scheme, therefore securing added value.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no immediate 'sustainable action for a greener environment' implications arising from this report.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 This proposal mitigates the ongoing risk associated with holding surplus assets. Whilst the pub is income producing there is the risk that the pub could trade poorly and the property becomes vacant.
- 9.2 The property is highly likely to be redeveloped by the buyer within a future regeneration scheme on adjoining land. The Council has addressed this risk by ensuring that the value of the land takes into account development potential.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 There are no immediate crime and disorder implications arising from this report.

11. SAFEGUARDING IMPLICATIONS

- 11.1 There are no immediate safeguarding implications arising from this report.

Linked Reports, Appendices and Background Documents

Linked Report

- None.

Appendices


- None

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

- None

Officer contact details for documents:

- Howard Lock, Principal Asset Manager ext 1375

Individual Commissioner Decision Decision Log No: _____	 TOWER HAMLETS
Report of: Corporate Director, Development & Renewal	Classification: Unrestricted
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Is this a Key Decision?	No
Decision Notice Publication Date:	Not required
General Exception or Urgency Notice published?	Not required
Restrictions:	None

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DECISION

The Commissioners are recommended to agree to the Council's proposed disposal of a 199 year leasehold interest in the Blue Anchor Pub, Bromley High Street to Poplar Harca for a premium payment of £235,000.

APPROVALS

- (If applicable) Corporate Director proposing the decision or his/her deputy**

I approve the attached report and proposed decision above for submission to the Commissioners.

Signed Date

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

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

4. Commissioner

I agree the decision proposed in paragraph above for the reasons set out in Section 1 in the attached report.

Name Signed

Date

Name Signed

Date

Name Signed

Date

Name Signed

Date