

<b>Cabinet Decision</b>  26 July 2016	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Aman Dalvi, Corporate Director, Development & Renewal	<b>Classification:</b> Unrestricted
<b>Osmani Centre Lease</b>	

<b>Lead Member</b>	Councillor David Edgar, Cabinet Member for Resources
<b>Originating Officer(s)</b>	Ann Sutcliffe, Service Head, Corporate Property & Capital Delivery
<b>Wards affected</b>	Whitechapel
<b>Key Decision?</b>	No
<b>Community Plan Theme</b>	One Tower Hamlets

### Executive Summary

Cabinet considered a report in April 2010 and authorised officers to negotiate terms and conditions for a 25-year lease. The Cabinet resolution stipulated that the rent would be the market rent for community use but with a four-year rent-free period, followed by a reduced rent in the fifth year, in recognition of the tenant's contribution to the fit-out of the building.

The report sets out the proposed terms and conditions for that 25-year lease and seeks Cabinet authority to enter into that lease.

### Recommendations:

The Mayor in Cabinet is recommended to:

1. Authorise the Corporate Director, Development & Renewal, to conclude a lease of the site known as the Osmani Centre, 58 Underwood Road, London, E1 5AW to the Osmani Trust;
2. Agree that the lease will be for a 25-year term, commencing 1<sup>st</sup> August 2011;
3. Agree that the lease will incorporate a four-year rent free period from commencement and the rent in the fifth year will be £46,000;
4. Agree that the rent from 1<sup>st</sup> August 2016 should be the open market rental value for community use;
5. Agree that the lease should incorporate a landlord's (and tenant's, if

requested) option to break by giving to the tenant (or landlord) not less than 12 months' notice in writing;

6. Agree that the lease is to be excluded from the security of tenure provisions of the Landlord and Tenant Act 1954 at the end of the 25-year term;
7. In the event of failure to conclude the lease on the above terms by 31<sup>st</sup> August 2016, authorise the Corporate Director, Development & Renewal, to seek to recover possession of the property on behalf of the Council; and
8. Note the under the Directions issued to the Council by the Secretary of State for Communities and Local Government in 2014, the Council will need to secure the prior written agreement of the DCLG-appointed Commissioners before entering into the lease.

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

- 1.1 In April 2010, Cabinet authorised officers to negotiate the terms and conditions of the lease for the Osmani Centre. This report sets out the outcomes of those negotiations and the proposed lease terms.
- 1.2 The Osmani Trust is currently occupying the Osmani Centre by virtue of a tenancy-at-will. It is appropriate to conclude the lease in order to provide security to the trust and regularise their occupation of the building.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The council could choose not to conclude the lease to the trust. However, the trust has been in occupation of the building since August 2011 under a tenancy-at-will. This is an unsecure form of tenancy, leading to uncertainty on the part of both the landlord and tenant.

## **3. DETAILS OF REPORT**

- 3.1 In April 2010, Cabinet authorised officers to negotiate the terms and conditions of a new lease to be based on a 25-year term. There was to be a rent-free period to reflect the tenant's contribution of £500,000 to fitting out works in the new building.
- 3.2 The rental profile was to be rent free for 4 years, a rent of £46,000 in the 5<sup>th</sup> year followed by the full market rent for community use at the end of the 5<sup>th</sup> year. This full market rent was assessed at £114,500 p.a. This was then to be followed by 5-yearly rent reviews. The rent was to be assessed by reference to rental values of similar buildings having regard to the restricted community use of the property.

- 3.3 The tenant entered into occupation on completion of the building in August 2011 and has remained there as a tenant-at-will. No rent has been paid to date.
- 3.4 Although negotiations were started and regularly revisited they were not concluded and whilst several versions of a draft lease have been prepared, none have been engrossed or legally completed.
- 3.5 Authority is now sought to conclude a lease with the trust on terms broadly in line with the council's original proposals, specifically:
- 25-year term commencing 1<sup>st</sup> August 2011;
  - Rent for initial 4 years – nil;
  - Rent from 1<sup>st</sup> August 2015 until 31<sup>st</sup> July 2016 – £46,000 p.a.;
  - Rent from 1<sup>st</sup> August 2016 – open market rental value for community use, subject to a minimum rental of £114,500 p.a.;
  - Upward-only rent reviews every five years (with next review to take place in 2021);
  - Landlord's (and tenant's, if requested) option to break by giving to the tenant (or landlord) not less than 12 months' notice in writing; and
  - Lease to be excluded from security of tenure provisions of the Landlord and Tenant Act 1954 at the end of the term.
- 3.6 In the event that the tenant is unable to clear the arrears in one payment on completion of the lease then an arrangement to clear these within a reasonable period will be concluded.
- 3.7 If the tenant still refuses to complete the lease by the end of August then officers are to be authorised to take the necessary steps to recover possession of the property on behalf of the Council.
- 3.8 As part of the 2015/18 Mainstream Grant Programme, the Osmani Trust was awarded grants for a number of projects. The payments of those grants are currently suspended until the Osmani Trust concludes the lease.
- 3.9 The Commissioners have stated, at the Commissioners' Decision Making Meeting on 24<sup>th</sup> May 2016, that the lease must be completed by 31<sup>st</sup> August 2016.
- 3.10 Failure to complete the lease by this deadline may result in the trust's grants being withdrawn. The council would also seek to recover possession of the building.

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

- 4.1 This report seeks the agreement of the Mayor in Cabinet to conclude the arrangements for a twenty-five year lease to be granted to the Osmani Trust for the building at 58 Underwood Road, known as the Osmani Centre.

- 4.2 The market rent for the property has previously been assessed at £114,500 per annum, but to reflect the Trust's obligation to 'fit out' the centre at an estimated cost of £500,000, the proposal for an initial rent free period of four years, followed by a fifth year at a reduced rent of £46,000, was agreed by Cabinet in April 2010. Although the works have been undertaken, the lease has not yet been legally completed and the Trust currently occupies the property on a tenancy at will basis.
- 4.3 The lease will be backdated to take effect from 1<sup>st</sup> August 2011, meaning that the four year rent free period would have ended on 31<sup>st</sup> July 2015. When the lease is formally entered into, the Trust will therefore owe the Council the rental income of £46,000 which is due for the period from 1<sup>st</sup> August 2015 to 31<sup>st</sup> July 2016. If these arrears are not paid on completion of the lease, they should be recovered from any accrued Mainstream Grant payments that the Council is due to pay to the Trust (see paragraph 4.4 below). Future advance rental payments will be billed to the Trust at the start of each quarter. Rental payments will be credited to the General Fund, with upward-only rent reviews taking place every five years from 2021.
- 4.4 The Osmani Trust was awarded three grants totalling £234,000 from the Mainstream Grants Programme for the three year period from 1<sup>st</sup> October 2015 to 30<sup>th</sup> September 2018. The payment of these grants to the Trust is currently suspended until the lease arrangements in relation to the Osmani Centre have been agreed. If agreement is not reached the grant allocations will be reviewed and may be withdrawn.

## **5. LEGAL COMMENTS**

### **5.1 Disposal Powers**

- 5.2 The specific power to dispose of the land depends upon whether or not it is held for housing purposes. Whenever a local authority disposes of land held by it for housing purposes it has to have regard to section 32 of the Housing Act 1985. Section 32 states that a local authority may not dispose of any land held by them without the consent of the Secretary of State. In order to facilitate the disposal of land held for housing purposes the Secretary of State has issued a series of general consents, which permit the disposal of land held for housing purposes without the need to obtain express consent. The consents are collectively known as The General Housing Consents 2013.
- 5.3 In accordance with paragraph A2.2 of the General Housing Consents a disposal includes the grant of a lease of any duration.
- 5.4 If the land is not held by the Council for housing purposes and by virtue of section 123 of the Local Government Act 1972 ('the 1972 Act'), the Council may dispose of its land in any manner that it may wish. However, except in the case of a short tenancy (i.e. leases of less than 7 years), the consideration for such disposal must be the best that can reasonably be obtained.

Otherwise the Council requires consent of the Secretary of State for the disposal.

#### 5.5 **The Council's procedure for disposals and lettings**

5.6 The Council's procedure for disposals and lettings, adopted at Cabinet on 8<sup>th</sup> April 2015, specify that disposals may be by one of the following means: (a) informal tender; (b) formal tender; (c) auction; and (d) sale by negotiation. The procedures provide that the Service Head, Corporate Property and Capital Delivery will determine the most appropriate method of disposal, 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 sale is by negotiation.

#### 5.7 **The Direction**

5.8 The Direction issued by the Minister on 17th December 2014 requires the Council, until 31<sup>st</sup> March 2017, to “..... *obtain the prior written agreement of the Commissioners **before** [emphasis added] entering into any commitment to dispose of, or otherwise transfer to third parties, any real property other than existing single dwellings for the purposes of residential occupation.*”

5.9 This report involves the disposal of land through the sale of a lease and accordingly written consent will be required before any commitment to dispose takes place.

#### 5.10 **Best Value Obligation**

5.11 The Council is obliged as a best value authority under section 3 of the Local Government Act 1999 to “make arrangements to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness’. In this case, there is a backdated four (4) year rent free period and then an annual rental in the fifth year of £46,000. It is only after year 5 that the full annual rental income of £114,500 (subject to 5 yearly rent reviews) is then charged. This however reflects that the Osmani Trust has already contributed £500,000 to fitting out works in the new building. It is considered that recognising this initial contribution and therefore only seeking the full rental value after year 5 represents obtaining best consideration by market values and which contributes towards this Best Value Duty. The fulfilment of this duty is further addressed in paragraph 7 below.

#### 5.12 **Equality Duty**

5.13 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. There are no direct equality implications arising from the proposed transactions.

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

6.1 There are no immediate One Tower Hamlets considerations.

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

7.1 There are no immediate best value implications arising from this report. The disposal of property is a matter that falls within the Directions issued to the Council of the London Borough of Tower Hamlets by the Secretary of State for Communities and Local Government.

7.2 The council's best value duty is satisfied by ensuring the rental on the property is the open market rental value, having regard to the restricted community use.

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

8.1 There are no immediate environmental implications arising from the recommendations in this report.

## **9. RISK MANAGEMENT IMPLICATIONS**

9.1 If the trust does not complete the lease within the stipulated deadline, the council will terminate the existing tenancy-at-will and seek to recover possession of the building.

9.2 If the trust is not able to clear the arrears in one payment on completion of the lease, then an arrangement to clear these within a reasonable period will be concluded.

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

10.1 There are no immediate crime and disorder implications arising from the recommendations in this report.

## **11. SAFEGUARDING IMPLICATIONS**

11.1 There are no immediate safeguarding implications arising from the recommendations in this report.

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## **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:**

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