

<b>Cabinet</b>  19 December 2017	
<b>Report of:</b> Ann Sutcliffe, Acting Corporate Director, Place	<b>Classification:</b> Unrestricted
<b>Sonali Gardens Day Centre</b>	

<b>Lead Member</b>	<b>Councillor David Edgar, Cabinet Member for Resources</b>
<b>Originating Officer(s)</b>	Richard Chilcott, Acting Divisional Director
<b>Wards affected</b>	Shadwell
<b>Key Decision?</b>	No
<b>Community Plan Theme</b>	<b>A great place to live</b>

### Executive Summary

This report seeks authority for the Council to enter into a 25 year lease for the ground floor of the building at 79 Tarling Street, London E1 0AT which is used as a day centre for older people 65+, known as Sonali Gardens Day Centre. The rent has been agreed at £13,325 p.a. subject to index linked rent reviews. In accordance with para 14.1 of the constitution, (which sets out the delegated authority to take decisions in relation to Acquisitions and Disposals at full market value, the purchase or sale of land up to £250,000 in value) the authority of the Mayor in Cabinet is required.

It is proposed that the Council enters into a simultaneous sub-lease to the existing occupier, St Hilda's East (who are the contracted service provider of adult services), on terms mirroring the head lease. The sub-lease will be for a maximum term of 18 months pending re-tendering of the day care service.

### Recommendations:

The Mayor in Cabinet is recommended to:

1. Agree to enter into a 25 year lease for the ground floor of the building 79 Tarling Street, London E1 0AT.
2. Agree that the Council may grant a simultaneous sub-lease to St Hilda's East of the whole building, to continue running the provision of an adult day care centre, on the terms mirroring the head lease.

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

- 1.1 The property comprises a purpose built day centre occupying part of the Ground Floor of a modern 4 storey brick built part residential building. St Hilda's East is the current occupier of the building as a commissioned service provider, running the provision of an adult day care service to older people aged 65+.
- 1.2 The Council wishes to retain an interest in the building so that it can offer this as a resource base when the current service is re-commissioned and it is accepted by all parties that it is appropriate for the Council to take a head lease of the property and grant a sub-lease to the commissioned service provider, which for the time being will remain as St Hilda's.
- 1.3 Terms were agreed early in 2016 between the Landlord and the Council for a new 25 year lease at a very advantageous rent based on the community use of the property. The estimated full rental value of the property is in the order of £125,000 p.a. but terms have been negotiated at £13,325 p.a. subject to RPI linked rent reviews. In addition to this the Council will make a payment of circa £100,000 to the landlord to reflect the arrears of rent since 2002 as detailed in the heads of terms.
- 1.4 The intention is for the Council to take the head lease and then grant a sublease to the occupying service provider on terms mirroring those of the head lease. The provider would take account of the need to meet these rental payments in its tender to the council. Thus in rental terms, the lease is cost neutral to the council.

## **2. ALTERNATIVE OPTIONS**

- 2.1 If the Council chooses not to enter into the head lease then the Landlord could decide to recover possession of the property. In this case the Council would need to decide whether to lose this day care centre or whether to relocate. This is a purpose built centre therefore the chance of finding a suitable replacement is remote. In view of the advantageous rent agreed any such replacement is likely to be more expensive and/or of inferior quality.
- 2.2 If the Council decides not to enter into the sublease then St Hilda's will not withdraw their application to the court and if they choose will be granted a lease directly from the landlord. In this case the council will lose control of the day centre. If St Hilda's choose not to take a lease there is no obligation on the landlord to allow the day centre to remain in occupation

## **3. DETAILS OF REPORT**

- 3.1 The property comprises a purpose built day centre occupying part of the Ground Floor of a modern 4 storey brick built part residential building.
- 3.2 The property was originally owned by the Council and was transferred to Circle 33 on 2<sup>nd</sup> August 2002 for the sum of £1. The Freehold is now

controlled by Clarion, which is the parent company that includes Circle 33, the name change happened after Circle Housing Group merged with Affinity Sutton Housing Group.

- 3.3 The property is occupied by St Hilda's East, a Company Limited by Guarantee (no. 52880) and a Registered Charity (no. 212208). As such its property dealings are regulated and it is under similar obligations relating to best value as the Council.
- 3.4 There is a long and complex history between the Council and the landlord regarding the occupation and use of this property.
- 3.5 A draft lease was issued to the Council in 2004 for a term of 5 years and at a rent of £10,000 p.a. The lease was never completed by the Council; reasons given include incomplete repairing and tenant's obligations.
- 3.6 However the Council was able to allow occupation and a commissioned service was delivered from the building from 2005 by St Hilda's who have been providing day care services to Bangladeshi and other Asian elders. The service contract term formally expired in 2011/12 and it has been extended on a year by year basis since.
- 3.7 There was more recent correspondence between the Landlord, St Hilda's and the Council's Adult Services Department in an effort to try to regularise the occupation of the property. These efforts did not result in agreement and therefore the Landlord began proceedings against St Hilda's sometime in 2015 under S25 of the Landlord and Tenant Act 1954 terminating the existing lease. St Hilda's made an application to the court in order protect their occupation and the matter was adjourned generally.
- 3.8 The Council wishes to retain control of the building service commissioned, but does need to regularise the occupation by St Hilda's in the short term.
- 3.9 Full rental value of the property is in the order of £125,000 p.a. but with a rental at £13,325 p.a. subject to RPI linked rent reviews. In addition to this the Council will make a payment of circa £100,000 to reflect the arrears of rent since 2002 when the property was originally first occupied.
- 3.10 The service contract was due to be re-tendered but this delayed because of the need to wait for the landlords to issue a draft lease, however this has now been received and agreed.
- 3.11 It is therefore proposed to issue a short term lease to St Hilda's whilst a new tender process for this service is followed. The sub lease will contain a break clause in order that the Council may terminate the lease on notice to St Hilda's, which will allow the successful tenderer to enter into a new sub lease.
- 3.12 However in order to complete the lease to the Council it is necessary for St Hilda's to withdraw their application to the court under the original S25 proceedings. In order to protect their own position they are not prepared to do

this unless they have the security of a simultaneous exchange of the sub-lease.

- 3.13 St Hilda's have indicated that they would be unable to fund the proposed level of rent under their existing agreement as a requirement to pay rent was not part of the original tender; however Adult Services have indicated that they will fund the short term deficit from their own budget.
- 3.14 This is an acquisition where, in addition to the 'one-off' backdated rent payment, the total rental payable by the Council over 25 years will exceed £250,000 ( $£13,325 \times 25 = £333,125$ ). Approval by the Mayor in Cabinet is therefore required before the matter can be completed by legal colleagues.

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

- 4.1 This report seeks the approval of the Mayor in Cabinet for the Council to enter into a 25 year head lease for an area of the ground floor of 79 Tarling Street to enable its continued use as a day care centre. Agreement is also sought to grant a simultaneous sub-lease of the building to the current service provider.
- 4.2 The centre is used to provide commissioned day care services on behalf of the Council, with the service currently being provided by St Hilda's East. Following acquisition of the head lease, the Council will retender the provision of this service which will include the requirement for the successful bidder to sub-lease the accommodation from the Council. Future tenders received are therefore likely to be higher than in previous years to reflect the fact that the bidders will be operating from Council buildings for which they will be liable to pay rental charges. The revenue implications of this will need to be absorbed within Health, Adults and Communities (HAC) directorate revenue budgets.
- 4.3 The proposed lease terms and annual rental charges have been assessed and negotiated by the Council's Asset Management section. The annual lease charges payable by the Council (£13,325 per annum) will be fully recovered from the income generated from sub-leasing the property to the successful service provider.
- 4.4 To acquire the lease, an initial payment of £100,000 will be made to reflect the fact that the lease arrangements have remained unconcluded for many years and that the freeholder has received no rental income for the building's use over a thirteen year period (see paragraphs 3.5 to 3.8). The contract arrangements for the building mean that no rent is paid by the service provider however, if that requirement had been in place, the bidders would have increased their submission prices to include these costs, meaning that the Council would have incurred increased historic annual payments. These higher costs are effectively represented by the proposed 'one-off' backdated rent payment which will be a call on HAC directorate revenue resources.
- 4.5 The current service supplier will be granted a short term sub-lease for the period until the new service contract comes into effect. The short term

revenue effects of these arrangements will be met by revenue budgets within the HAC directorate (paragraph 3.13).

## **5. LEGAL COMMENTS**

5.1 The report seeks approval for:

- a) the acquisition of a 25 year lease from Clarion; and
- b) the granting of a maximum 18 month sublease to St Hilda's East over the same property for the purposes of continuation of running the provision of an adult day care centre.

### Power to acquire the property

5.2 The Council has various power and duties relating to the provision of adult day care services. The Care Act 2014 places on the Council the duty to improve people's independence and wellbeing and, in so doing, requires that it provide or arrange services that help prevent people developing needs for care and support such that they would need ongoing care and support. One such way of discharging this duty is the commission on adult day care services.

5.3 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.

### Power to dispose of the property

5.4 The report seeks the decision to simultaneously dispose of the Council's leasehold interest by way of sublease to St Hilda's East for a maximum term of 18 months.

5.5 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. As the term of the sublease is less than 7 years, s.123(2) and (7) confirm that the requirement to obtain best consideration for such a disposal does not apply.

5.6 The land is being disposed of by direct negotiation with St Hilda's East, rather than on the open market for the reasons set out in the report. The Council's Disposal Policy, agreed by Cabinet in April 2015, permits such a transaction in circumstances where the disposal is to a sitting tenant, as is the case here.

5.7 The Council's best value duty requires it to manage its asset portfolio in an efficient and effective way. Disposing of property for the best consideration obtainable together with reducing revenue expenditure discharges this duty.

5.8 The Council is required when exercising its functions to comply with the duty set out in section 149 of the Equality Act 2010. There are no direct equality considerations arising from this decision, though these will be relevant for the purposes of the ancillary decision relating to the provision of the adult day care services.

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

6.1 The proposals set out in this report sits within the Council's One Tower Hamlets Values in providing an essential service to older people. By entering into a lease the Council can ensure the continuation of Adult Day Care Service.

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

7.1 The arrangements proposed in this report support the council's best value duty. The proposed transactions represent an efficient and effective use of the council's estate.

## **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 Failure to enter into the leases set out in the report will bring to an end the essential service to older people being provided by St Hilda's East Community Centre.

## **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 The safeguarding implications arising from this service are managed by the commissioning department.

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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:**

Steve Cooper, Interim Asset Manager