



City of Westminster Cabinet Member Report

Decision Maker:	Cabinet for Finance & Council Reform
Date:	18 January 2023
Classification:	Part exempt - the confidential Appendix under Schedule 12A Part 1 Local Government Act 1972 (as amended) contains information relating to an individual and to the financial or business affairs of the Council
Title:	Disposal of Flat 3, 204 Bravington Road W9 3AP
Wards Affected:	Queens Park
Key Decision:	Non-key
Financial Summary:	The sale of the property will generate income to settle an unpaid council tax debt and other liabilities incurred and settled. The surplus funds will be held as a debtor on our balance sheet, until this money is claimed back by the owner or their next of kin
Report of:	Gerald Almeroth, Executive Director of Finance and Resources

1. Executive Summary

- 1.1 The Council is owed Council Tax arrears (as per the confidential appendix) covering the period 1st April 2016 to 25th October 2018 for Flat 3, 204 Bravington Road (“the Property”). The Council has sought and obtained Liability Orders covering the debt and has subsequently applied for, and been granted, a Charging Order on the property and an Order for Sale.
- 1.2 The Council now proposes to implement the Order for Sale at a public auction.

2. Recommendations

That the Cabinet Member for Finance and Council Reform

- 2.1 Approve the disposal of Flat 3, 204 Bravington Road, London W9 3AP for not less than the minimum value confirmed in the Order for Sale for this Property (or any subsequent revised Order for Sale).

- 2.2 Delegate authority to the Executive Director of Finance and Resource to approve the total amount to be deducted from the proceeds of sale from the disposal of the property in 2.1 above, which is owed and has been incurred by the Council, in respect of council tax arrears and other liabilities settled and/or other reasonable Council costs.

3. Reasons for Decision

- 3.1 The sale of the Property is the only remaining option for the Council to obtain the arrears of Council Tax and an Order of Sale for the disposal of the Property by the Council, has been granted in our favour, by the Court.

4. Background

- 4.1 Flat 3, 204 Bravington Road is the second floor flat (leasehold) in a terrace property within Queens Park ward. The Property is not Listed.
- 4.2 The current owner of the Property owes Council tax for the period 1 April 2006 to 25 October 2018 totalling the sum within the confidential appendix. The Council has obtained Liability Orders from Westminster Magistrates Court covering all years of debt. Unfortunately, the Council has been unable to obtain payment from the owner, or indeed contact him or trace his current whereabouts.
- 4.3 The Council Tax (Administration and Enforcement) Regulations 1992 allow a Billing Authority, where a Liability Order has been obtained from the Magistrates Court and where at least £1000 is owed, to make an application to an appropriate Court for a charge securing the amount due on a relevant property. The appropriate Court for Charging orders is the County Court at Central London.
- 4.4 The Council obtained Interim Charging Orders on 8 January 2013, 20 May 2015, 19 April 2017 and 6 September 2019, all of which were made final by the County Court, and an Order for Sale on 12 January 2018
- 4.5 The Council has not been able to contact the owner of the relevant Property. The managing agent for the freeholder of the Property is in a similar position. The County Court has accepted the evidence that the owner cannot be located.
- 4.6 The Council secured the unpaid Council Tax via Charging Orders for the arrears as stated within Confidential Appendix A.
- 4.7 The Charging Orders have been enforced by way of an application in the County Court for an Order of Possession. The Order for Possession was made by the County Court on 6 February 2018 allowing a sale for not less than £495,000.00. This aligned with the two professional valuations of the property by Lambert Smith Hampton and G R Hunt MRICS (The Bowen Partnership) as per the confidential appendix.

- 4.8 The Council subsequently obtained possession and has cleared the property ready for the proposed sale of the empty property.
- 4.9 When the Council officers entered the property it became clear from the internal condition of the property that the external valuations were overstated. A further Valuation by G R Hunt MRICS (The Bowen Partnership) was carried out on 27 October 2021 which provided a revised valuation as stated in the confidential appendix.
- 4.10 Due to the terms of the Order for Possession it was necessary for the Council to go back to Court with the revised valuation to seek permission to sell for not less than the revised valuation. This permission was granted on 13 September 2022 and new Order of Sale was granted to the Council.

5. Legal Implications

- 5.1 Section 1 of the Localism Act 2011 gives the Council the 'general power of competence'. It gives local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited by law.
- 5.2 Local authorities are given powers under the s.123 Local Government Act 1972 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. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of short tenancies), unless the Secretary of State (SoS) consents to the disposal.
- 5.3 Although the asset is not owned by the Council, and the Council are not the freeholders of the Property. The Order for Sale gives the Council the legal right to sell the Property (in absence of the owner) and as such, the Council will need to comply with the best consideration criteria as above.
- 5.4 It is noted that a more recent valuation has been carried out which demonstrate the appropriate market value of the Property. As such, the Court Order for Sale has been amended to reflect that the Property should not be disposed of less than the revised market value.
- 5.5 The Council wishes to dispose of the Property at auction which is possible, as long as the reserve price at auction is not less than the minimum market value assessed by the revised valuation and the new Order for Sale. Disposing of the Property at auction will enable the Council to obtain the best consideration possible, but without going below the minimum valuation figure.

6. Property Implications

- 6.1 The Council's Senior Asset Manager in Corporate Property has arranged for the property to be secured and cleared.

- 6.2 Allsopp Ltd has been approached by officers in Corporate Property to conduct the sale for not less than minimum value as per the Order for Sale.
- 6.3 It is understood that public auction will achieve the best price possibly, subject to the minimum reserve price being met. However, should the Property not sell, it will be necessary for the Council to seek a further variation of the Order for Possession, to further reduce the minimum sale price.

7. Financial Implications

- 7.1 In addition to the council tax arrears, an estimate of the costs associated with the possession of the property and sale, as per the confidential appendix, will be deducted from the sale receipt. This may subject to change subject to when and how the property sells.
- 7.2 While the Council has been in possession of the Property it has settled the Council Tax falling due for the period 25th October 2018 to 31st March 2023 and the service charges and annual ground rent imposed by the freeholder up to December 2022. These are recoverable from the proceeds of the sale.
- 7.3 Any surplus funds will be held as a debtor on our balance sheet, until this money is claimed back by the owner or his next of kin.

8. Carbon Impact

- 8.1 As the property is unused and not in operation, there is currently considered no carbon impact and nor would the proposed sale affect the Council's commitment to becoming a carbon neutral Council by 2030 and a carbon neutral City by 2040.

9. Equalities

- 9.1 The Equality Act 2010 requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. The Council must further take into account its wider public sector equality duty under section 149 of the Equality Act 2010 when making decisions.
- 9.2 There are no direct equalities implications on this asset sale, and the report confirms that due consideration has been given in progressing the proposals.

10. Consultation

- 10.1 Before commencing any legal action or process, reasonable endeavours have been taken to locate the owner of the property and any next of kin.

- 10.2 Neither the Council, the freeholder nor their previous or current managing agents have had any contact with the owner for many years. Enquiries have been made and on-going with Enforcement Agents, Experian searches, Mental Health and Adult Social care but these enquiries have all been unsuccessful. Further enquiries have been carried out to see if the owner had passed away in our area or our neighbouring boroughs, but this came back negative. The owner has not responded to any Notices issued at any of the stages of proceedings through the Magistrates court (liability order proceedings) nor the County Court (charging order and order of possession proceedings).
- 10.3 The owner, having been registered for Council Tax since 1993 (when Council Tax came into being), initially paid their council tax in instalments. They then changed to paying council tax in lumpsums for the years 1999/0 through to 2005/6 – tending to pay in the first few months of the year. However, no payment has been made since June 2005. The single persons discount review forms were not returned so that reduction was removed from the account in 2007. The neighbours within the building have changed over the years, a file note made in November 2012 states the Neighbour hasn't seen the owner for a while.
- 10.4 In summary the following is noted;
- a. The flat is currently empty. It is in a poor state of repair.
 - b. Every effort has been made to find the owner.
 - c. The land registry does not show any solicitors or any other correspondence address, other than the property address.
 - d. Colleagues in property have visited the property periodically since the Council took possession. Details of the last visit including images are available on requests and have been provided to Members.
 - e. There is currently no benefit claim in payment for this address.

11. Outstanding Issues

- 11.1 There are no outstanding issues.

If you have any queries about this Report or wish to inspect any of the Background Papers, please contact:


Susan Bush sbush@westminster.gov.uk or

Martin Hinckley mhinckley@westminster.gov.uk

For completion by the **Cabinet Member for Finance and Council Reform**

Declaration of Interest

I have no interest to declare in respect of this report

Signed:  Date: 18 January 2023

NAME: **Cllr David Boothroyd**

State nature of interest if any

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(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendation(s) in the report entitled

Disposal of flat 3, 204 Bravington Road W9 3AP

Signed 

Cabinet Member for Finance & Council Reform

Date ...18 January 2023.....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Head of Legal & Democratic Services, Chief Operating Officer and, if there are resources implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.