



City of Westminster

# Cabinet Member Report

<b>Decision Maker:</b>	Cllr David Boothroyd Cabinet Member for Finance & Council Reform
<b>Date:</b>	05 April 2023
<b>Classification:</b>	General release
<b>Title:</b>	Regearing of lease in SW1
<b>Wards Affected:</b>	Pimlico North
<b>Policy Context:</b>	This decision supports maintaining a valuable income that supports the General Fund and supports a long-term business and tenant.
<b>Key Decision:</b>	No
<b>Financial Summary:</b>	The income received supports the General Fund
<b>Report of:</b>	Director of Corporate Property

## 1. Executive Summary

- 1.1 The purpose of this report is to provide a recommendation to regear First Base's lease at 231 Vauxhall Bridge Road, SW1 to maintain their occupation and to ensure a continued income stream to the General Fund. This will involve a surrender of the current lease and a granting of a new lease on more favourable terms.
- 1.2 Analysis has been undertaken and concluded that a regear with the current tenant provides the optimum financial outcome for the Council, as opposed to alternative asset management initiatives. The regear also supports a long-term office tenant with the recovery of their serviced-office business.

## 2. Recommendations

- 2.1 The Cabinet Member approves the principle of the lease surrender and grant of a new lease on the terms set out in Appendix A of this report, and

delegates authority to the Director of Corporate Property following consultation with the Executive Director of Finance, to approve the Council entering into any necessary legal documents required to facilitate the surrender of the current lease, the grant of a new lease and any ancillary legal agreements thereto.

### **3. Reasons for Decision**

- 3.1 The lease regear is recommended to maintain the occupation of the building and an income stream to the Council's General Fund.

### **4. Background, including Policy Context**

- 4.1 231 Vauxhall Bridge Road is a purpose-built, four-storey office building which was constructed in 1980s. It extends to approximately 8,000 sq. ft and is let to serviced office operator, First Base Victoria Ltd, with a 10-year lease expiring 08 December 2023.
- 4.2 The property sits adjacent to the Queen Mother Leisure Centre and is a Council freehold. The property sits within the Pimlico North ward.
- 4.3 Prior to Covid, First Base had paid their rent on time, however their serviced office operating model has been badly affected with significant downturn in demand, thus they are now in arrears.
- 4.4 Along with the majority of the Council's investment portfolio tenants, First Base was granted a covid rent-free for the March 2020 quarter. This was a gesture of goodwill as it was not a trade that was forced to close during the lockdown.
- 4.5 Other than this, First Base did not benefit from the government grant scheme as this was granted to the rate payer and as the unit is split into the individual offices, those with the short-term lease were given the grant direct from the business rate department.
- 4.6 The rent deposit held under the lease was allocated towards arrears in June 2021.
- 4.7 At the height of the Covid crisis in 2020 the government passed a raft of legislation containing wide reaching provisions protecting commercial tenants from eviction for non-payment of rent and preventing landlords from exercising other remedies against defaulting tenants.
- 4.8 These protections were extended throughout the crisis and came to an end on 25 March 2022. From 25 March 2022 the Commercial Rent (Coronavirus) Act 2022 introduced a legally binding arbitration process, which the deadline has now also passed and a ruling indicated in any event that office premises did not fall under the remit of the Act.

- 4.9 The lease for the property is with First Base Victoria Ltd - a limited company set up specifically for Vauxhall Bridge Road. There is not an Authorised Guarantee Agreement (“AGA”) or guarantors.
- 4.10 As mentioned above the rent deposit held was allocated towards arrears in June 2021. Other options have been considered but would involve claims against the company which are unlikely to be recoverable in any event and would result in the tenant exiting the property and a vacant asset, with associated costs for the Council.
- 4.11 First Base is of the view that the business can recover and its business has shown increasing improvement over the last nine months.
- 4.12 Alternative asset management options such as refurbishment and reletting have been reviewed and financially analysed and are included in Appendix B of this report. However, analysis supports the recommendation to support their business and maintain occupation of this General Fund investment asset, particularly in the context of an uncertain market.

#### First Base re-gear

- 4.13 First Base currently occupies the property under a 10-year FRI lease expiring 08 December 2023, with the passing rent being £230,000 pa. The tenant, First Base Victoria Ltd is a standalone company with just Vauxhall Bridge Road within it.
- 4.14 First Base has provided details of its income for the last two years which shows that revenue has improved from the Covid period to approximately 76% of where it was when they were paying their rent in full and on time, pre-March 2020.
- 4.15 The following terms have been negotiated and are recommended to be agreed. This would result in writing off some of the historic arrears, surrendering their current lease and granting of a new lease on more favourable terms to support the business’ recovery in the medium term.
- Surrendering of the current lease and a payment of £100,000 made towards the arrears which stand at approximately £290,000 (and therefore £190,000 of arrears would be written off.
  - A new 10-year term, remaining outside of the Act
  - A base rent would be payable at 60% of the current rent (ie £138,000, with the current rent being £230,000). A top-up rent would be payable whereby the lessee shares their monthly income figures and would pay 60% of monthly licence fee income above £38,683 (capped at a rent level of £207,000). Over this rent level they would pay 25% of any additional licence fee income up to the current rent level of £230,000. A quarterly return would be produced, and payment made within 2 weeks of the end of the quarter.

- There would be a Rent Review at year 5 but this would be to Market Rent, with a minimum rent of £230,000 pa (ie the current rent).
- Assignment is prohibited until year 5. Unless the new lessee agrees to a market rent, with a minimum of £230,000. Should this occur the rent review at year 5 will not occur for the assignee. This prohibition ensures these favourable terms are for First Base's benefit and cannot be transferred to another without the Council capturing an improved rental position.
- There will be creation of a new rent deposit. Should the licence fee level rise to above £150,000 per quarter - a maximum of £15,000 shall be such a paid per quarter this occurs to build a rent deposit. A quarterly return would be produced, and payment made. This obligation would cease once the rent deposit has reached £57,500

## 5. Financial Implications

- 5.1 The current income budget for 231 Vauxhall Bridge Road is £230,000, and there are rent arrears as at March 2023 of £290,000. Currently First Base are being invoiced £57,500 per quarter and paying 50% of this at £28,750, so the rent arrears continue to grow until this lease is agreed.
- 5.2 The proposed regearing of the lease will ensure that there is ongoing income received, with a minimum of £138,000 per annum. This is £92,000 below the budget, which will have to be managed within the Corporate Property budget. There will be an opportunity to collect more if the monthly income figures exceed £38,683, which would ease any budget pressure.
- 5.3 In assessing the options to relet the building or find a way to continue with First Base some high-level NPV analysis is provided which is appended at the end of this report. This includes a comparison of the re-gearing against options of investing capital into the building to rent out at a higher rate of £360,000 or £500,000 per annum, but there would be a period of time where no income is received while the works are completed, a new tenant found and any rent free periods. A summary of the NPV is shown below:

Option	NPV
Regearing of lease (recommended)	1,778,805
Capital Investment of £200,000, rental income of £360,000 from April 2026	1,287,496
Capital Investment of £200,000, rental income of £500,000 from April 2026	1,611,993

- 5.4 Following analysis, it has been concluded that the proposed regear with First base represents the optimum financial scenario for the Council.
- 5.5 It ensures some arrears are collected and an income stream is maintained. The terms also give the opportunity to achieve rental growth should First

base's business return to previous levels or an assignment of the lease is undertaken.

- 5.6 The property is held in the General Fund and income received is revenue for the General Fund.
- 5.7 Legal have raised whether an SDLT liability arises but finance officers have reviewed and have advised it does not.

## **6. Legal Implications**

- 6.1 The Council has the power to enter a deed of surrender under the Localism Act which includes the 'general power of competence'. Section 1 of the Localism Act 2011 gives local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited.
- 6.2 Under section 120 of the Local Government Act 1972 (the "LGA 1972") a council may acquire by agreement any land for any purpose for which they are authorised by this or any other enactment to acquire land, notwithstanding that the land is not immediately required for that purpose; (a) any of their functions under this or any other enactment, or (b) the benefit, improvement or development of their area.
- 6.3 Section 123 of the LGA 1972 gives the Council the power to dispose of property. The grant of a new lease would be a 'disposal' for these purposes.
- 6.4 Section 123 of the LGA 1972 goes on to provide that except with the consent of the Secretary of State, a Council shall not dispose of land otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained. Under the Local Government Act General Consent (England) 2003 the Council can disposal of land for less than the market value reasonably obtainable without the consent of the Secretary of State if the authority considers it will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. In all cases, disposal at less than best consideration is subject to the condition that the undervalue does not exceed £2,000,000 (two million pounds). The report author is satisfied the proposal is for the best consideration that could be obtained.
- 6.5 The report author has confirmed that the lease will be contracted out the provisions of Sections 24-28 of the Landlord and Tenant Act 1954. Essentially, this means that the tenant will not have a statutory right to return to the property on expiry of the term. This gives the Council the flexibility to re-market the property at the end of the lease term therefore ensuring it captures the best consideration in rental income and allows the Council to re-assess the market at that time. There will be a notice and (statutory) declaration process that the Council and its legal advisors shall need to undertake before the agreement for lease or lease is entered into, to contract out of these provisions.

6.6 In terms of any ancillary licences and/or rent deposit deeds that may be required as part of the arrangements, the Council can rely on the power in section 111 of the LGA 1972 in this regard. This section provides that a local authority shall have power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

## **7. Carbon Impact**

7.1 As the property is tenanted, there is currently considered no carbon impact and nor would the proposed regear affect the Council's commitment to becoming a carbon neutral Council by 2030 and a carbon neutral City by 2040.

## **8. Consultation**

8.1 A briefing was circulated to the Cabinet Member in November 2022 and Ward members have been consulted.

## **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 equalities implications on this asset regear, and the report author confirms that due consideration has been given in progressing the proposals.

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

Sarah-Jayne Steer [ssteer@westminster.gov.uk](mailto:ssteer@westminster.gov.uk)

## **APPENDICES**

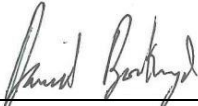
Appendix A – Draft Heads of Terms (exempt under Paragraph 3, Schedule 12A of the Local Government Act 1972)

Appendix B – Deal analysis (exempt under Paragraph 3, Schedule 12A of the Local Government Act 1972)

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: 05 April 2023  
NAME: **Councillor 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 Regearing of lease in SW1and reject any alternative options which are referred to but not recommended.

Signed: 

Cabinet Member for Cabinet Member for Finance and Council Reform

Date: 05 April 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:

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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 Director of Law, City Treasurer and, if there are resources implications, the Director of People Services (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.