



City of Westminster

Cabinet Member Report

Decision Maker:

Cllr David Boothroyd Cabinet Member
for Finance and Council Reform

Date:

10 August 2023

Classification:

General release

Title:

Granting of new lease in WC2

Wards Affected:

St James

Policy Context:

This decision supports maintaining a valuable income that supports the General Fund and supports a long-term business and tenant.

Key Decision:

No

Financial Summary:

The income received supports the General Fund

Report of:

Director of Corporate Property

1. Executive Summary

- 1.1 The purpose of this report is to provide a recommendation to surrender and grant a new lease to Q-Park Limited (“Q-Park”) at Leicester Square car park. The transaction ensures a continued and growing income stream to the Council’s General Fund. The transaction forms part of a wider agreement where the rent review provision within the leases will be changed via side agreements from RPI linked annual rent increases to fixed 4% annual rent increases in respect of 12 leases they hold with the Council.

2. Recommendations

That the Cabinet Member:

- 2.1 approves the principle of the Council accepting the surrender of the existing lease between Q Park Limited, Q Park NV and the Mayor and the Citizens of the City of Westminster and the granting a new lease between the same parties, at the Leicester Square car park on the terms set out in this report; and
- 2.2 delegates authority to the Director of Corporate Property following consultation with the Executive Director of Finance and Resources, to approve the Council entering into any necessary legal documents required to facilitate the transactions.

3. Reasons for Decision

- 3.1 Subject to approval, the agreements enable the Council to receive 4% annual growth on the rental income from the Q-Park lease. The surrender of the existing lease and granting of the new lease at Leicester Square car park for a 10-year term enables the Council to receive income from the asset for a longer term. Not proceeding the recommendation would provide a lack of support to one the Council’s largest tenant who is seeking certainty in their future rent projections.

4. Background, including Policy Context

- 4.1 Leicester Square car park sits at ground and basement levels of Huguenot House. Huguenot House is an island property, to the south west of Leicester Square. The Property is held freehold in the General Fund.
- 4.2 The car park has 247 car parking spaces and Q-Park have had the lease of the car park since it was granted in 2014. The lease that is recommended to be surrendered, is due to expire on 31 August 2024.
- 4.3 The proposed new lease would be on the same terms as the current lease, with the exception of the following terms:

- The rent review provision moves from annual RPI-linked rent reviews to 4% annual fixed rent uplifts.
 - The landlord break option has been simplified to be exercisable on 6 months' notice. The current Landlord break provision was subject to demonstrating planning permission for an alternative scheme had been received.
 - The Landlord's repairing obligation has been reduced, with the tenant picking up additional responsibilities.
- 4.4 The salient terms are summarised in Appendix A of this report. The current and new lease are contracted out of the 1954 Act.
- 4.5 Following analysis, it has been concluded the move to 4% annual uplifts represents the optimum financial scenario for the Council. Although current RPI levels in the United Kingdom increased 11.3% year-on-year in May of 2023, the last 10 years RPI figures, with the exception of the previous 2 years, has run at below the 4% level that has been negotiated. A summary of RPI figures from the previous 10-year period is also provided in Appendix B of this report.
- 4.6 The move to 4% fixed uplifts ensures strong growth levels for the remainder of the term. As mentioned, the property is held in the General Fund and income received is revenue for the General Fund.
- 4.7 The simplifying of the break option ensures future asset management opportunities can be implemented in a more straightforward manner and the reduction of the repairing obligation relates to the lifts and lights within the car park and reduces the ongoing maintenance costs for the Council.
- 4.8 As noted above, the deal forms part of a wider negotiation with Q-Park where they will move to 4% annual fixed uplifts from the current annual RPI rent review provision on 12 car parks. These 12 car parks are Leicester Square car park, Park Lane car park, St John's wood car park, Queensway car park, Harley Street car park, Oxford Street car park, Pimlico car park, Chinatown car park, Church Street car park, Broadley Street car park, Soho car park and Knightsbridge car park.

5. Financial Implications

- 5.1 The current lease is £0.672m per annum. The proposed lease will generate total income of £8.386m over 10 years and with a 4% uplift per annum. Assuming latest forecasts for RPI from the Office for Budget Responsibility (March 2023), the same lease with RPI uplifts would generate total income of £8.325m i.e., £0.060m less than under the proposed lease. The proposal has the benefit of certainty but there is a risk that if RPI continues to be above expectations that the proposed lease will not offer the best financial return.

- 5.2 Leicester Square car park is part of Huguenot House which is due to be redeveloped as part of the capital programme. The new lease will allow for a break in the lease on 6 months' notice which will facilitate the redevelopment. If the break clause was exercised at the end of 2027, the income from this lease would reduce to £3.783m; less than the £3.908m assuming current RPI forecasts. Although this is a standalone agreement, Q Parks have agreed to a 4% uplift across all their car parks so it may be difficult to agree an exception for Leicester Square car park.
- 5.3 Under terms of the new lease Q Park will be responsible for maintaining lifts and lights in the car park which will provide some minor savings over the term of the lease (less than £1,000 in 22/23).

VAT: The advice given by the external legal team is that HMRC generally do not see any deemed surrender and regrant as consideration in themselves (or a VAT barter) and take the view that there is a supply only to the extent that there is consideration in money. They advise that as the surrender of the existing lease and grant of a new lease is a standalone arrangement between the parties (for example, it is not part of the discussions in respect of the Pimlico and Church Street leases (involving the break right and the rent reduction)) and no payment is being made for the surrender or regrant (other than rent payable under the new lease) there are no VAT barter implications.

SDLT: Again, advice given is that no SDLT is payable by WCC in respect of the surrender of the existing lease on the basis that the surrender of the existing lease and grant of a new lease is a standalone arrangement and the surrender is being granted in consideration for a new lease of the same property between the same parties on the same date and so there is no chargeable consideration for SDLT purposes.

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 dispose 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 reasonably obtainable.
- 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 or redevelop the property, therefore ensuring it captures the best consideration in rental income and allows flexibility in how it manages the asset.
- 6.6 In terms of any ancillary licences and/or 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.
- 6.7 Legal advice from Trowers has been sought on the tax implications of the transaction and on the basis that the surrender of the existing lease and grant of a new lease is a standalone arrangement and as the surrender is being granted in consideration for the grant of a lease of the same property between the same parties on the same date, there is no chargeable consideration for SDLT purposes, no Stamp Duty Land Tax SDLT is payable by WCC and an SDLT return is not required[
- 6.8 As set out in paragraph 5 (Financial Implications) above, on the basis that the surrender of the existing lease and grant of a new lease is a standalone arrangement between the parties (for example, it is not part of the discussions in respect of the Pimlico and Church Street leases (involving the break right and the rent reduction)) and no payment is being made for the surrender or regrant (other than rent payable under the new lease) there are no VAT implications of the transaction.

7. Carbon Impact

- 7.1 As the property is tenanted, there is currently considered no carbon impact and nor would the proposed surrender and new lease 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 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

APPENDICES

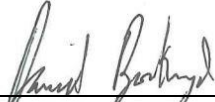
Appendix A: Summary of the current and proposed lease

Appendix B: RPI Figures 2012-23

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: 10 August 2023
NAME: Councillor David Boothroyd

State nature of interest if any:

(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 SW1 and reject any alternative options which are referred to but not recommended.

Signed: 
Cabinet Member for Cabinet Member for Finance and Council Reform

Date: 10 August 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 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.