



City of Westminster Cabinet Member Report

Decision Makers:	Cabinet Member for Finance and Council Reform
Date:	15 March 2024
Classification:	General Release
Title:	Historic agreement to transfer of land as part of s106 agreement for Bishops Bridge, Paddington
Wards Affected:	Hyde Park Ward
Key Decision:	Yes: Decision is likely to result in significant expenditure or savings
Financial Summary:	Under these two transactions, two parcels of land will be acquired for £1 each and, as a result, the council will gain a one-off contribution of £257,000 towards the maintenance of Bishops Bridge in Paddington. HMRC have confirmed no stamp duty or stamp duty land tax is applicable.
Report of:	Gerald Almeroth, Executive Director, Finance and Resources

1. Executive Summary

- 1.1 As part of an historic s106 agreement (a copy of part of this is attached at Appendix A of this report) dating back to 2000, the Council should have acquired two parcels of land (the "Properties") on Bishops Bridge Road, from Paddington Central I (GP) Limited (British Land). The consideration for both transfers is £1.
- 1.2 The s106 agreement relates to the redevelopment of the former Paddington Goods Yard by British Land. As part of the development, the bridge element of Bishops Bridge Road was widened, and the Council, as Highways Authority, was contracted via the s106 Agreement to take ownership of a section of the completed bridge and maintain it in accordance with a maintenance agreement.
- 1.3 The Council will simultaneously complete the transfers of the 2 parcels of land and enter into the maintenance agreement. The Council will receive a one-off maintenance contribution of £257,000 from the vendors upon completion of the maintenance agreement. The Council's City Highways will take responsibility for the future maintenance of the transferred land.

- 1.4 The contribution to maintenance and the agreement of the maintenance agreement will be subject to a separate decision by the Cabinet Member for City Management and Air Quality.

2. Recommendations

- 2.1 That the Cabinet Member for Finance and Council Reform:

- 2.1.1 Approves in principle the acquisition of two parcels of land on Bishops Bridge Road (the Properties).

- 2.1.2 Delegates authority to the Executive Director of Finance and Resources to:

- a) finalise the legal documentation as required (including the two land transfer deeds and the maintenance agreement); and
- b) approve the Council entering into the legal documentation as required in association with the acquisition of the Properties and related matters.

3. Reasons for Decision

- 3.1 In respect of the recommendation to purchase the Properties, the May 2000 s106 agreement contained a requirement for the Council to serve notice on the developer (British Land) to acquire the land following completion of the bridge which occurred in 2006. The Council served the notice on the Developer on 5 February 2007 however the transfer was not enacted. Despite the transfer not occurring, the Council have taken responsibility for the management and maintenance of the bridge/land since its completion. The (now two) owners of the land are seeking to regularise matters and transfer the land parcels in accordance with the terms of the S106 Agreement. This will enable them to release the maintenance contribution to the Council, which they have been holding in reserve since 2006.

4. Background

- 4.1 The subject land transfers arise from a Section 106 Agreement entered into in May 2000, in relation to a planning permission for the redevelopment of the former Paddington Goods Yard by developer British Land. To facilitate the development, the Council, as Highways Authority, were obligated to undertake various highway improvement works at the expense of the developer. One element of the highway works was the construction of a new bridge over the canal and railway lines to the immediate west of Paddington Station.
- 4.2 Under the terms of the Section 106 Agreement (First Schedule, Paragraph 15.8), upon completion of the new bridge, the Council was required to serve a notice on the developer that would trigger the transfer of the developer's freehold interest. The Council also became responsible for the maintenance of the new bridge and the developer was required to enter into a maintenance agreement under which they were

obligated to make a one-off contribution of £257,000 to the Council's future maintenance costs (First Schedule, Paragraph 15.11).

- 4.3 The new bridge was completed in 2006. Whilst the Council has taken responsibility for its maintenance since completion, the transfer of the bridge and completion of the maintenance agreement have not been actioned.
- 4.4 Since 2006, part of the bridge has been acquired by Transport for London (TfL) under statute. All parties (the Council, TfL and British Land subsidiary, Paddington Central I (GP) Ltd) now wish to regularise the contractual position by completing the transfers and the maintenance agreement (nb these contractual obligations still endure under the Section 106 Agreement).

5. Financial Implications

- 5.1 Under these two transactions, two parcels of land will be acquired for £1 each and, as a result, the council will gain a one-off contribution of £257,000 towards the maintenance of the bridge.
- 5.2 HMRC have confirmed that the transactions are not subject to Stamp Duty Land Tax (SDLT) because the S106 agreement from May 2000 was entered into before SDLT was introduced and no Stamp Duty is payable because the consideration is £1.

6. Legal Implications

- 6.1 The Council has the power to undertake a transfer of land under the Localism Act which includes a '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 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 The s106 Agreement contains at the First Schedule, Paragraph 15.8, provisions around the transfer of the new bridge land. Paragraph 15.8 (i) sets out that the Council shall serve the transfer notice on the Owner within 20 days of completion of the scheme and the Owner shall within 30 days of receipt of the notice transfer the full title to the Council for consideration of £1. The s106 also sets out at the First Schedule, Paragraph 15.11 that the Council and the Owner should agree to enter into a maintenance agreement and that from the date of completion the Council shall be responsible for the maintenance of the New Bridge at all times. It is in the interests of the Council legally formalise the transfer and enter into the maintenance agreement in accordance with the s106 because it has already spent funds undertaking the works and taken responsibility for the maintenance of part of the bridge.

6.4 The Cabinet Member Terms of Reference delegate the powers of this decision to the Cabinet Member. In accordance with Paragraph 33.12 of the Council's Access to Information Procedure, this proposed key decision was entered in the Forward Plan on 03 February 2023 and the necessary 28 clear days' notice has been given. A period of five clear days - the call-in period – must elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

7. Equality Act 2010

7.1 There are no equality impacts from this decision.

8. Ward Member Consultation

8.1 The ward Councillors have been consulted on this report on 21 February 2024.

If you have any queries about this report or wish to inspect any of the background papers, please contact Rupert Grass rgrass@westminster.gov.uk or Andrew Foster afoster1@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: 15 March 2024

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 recommendations in the report entitled **Historic agreement to transfer of land as part of s106 agreement for Bishops Bridge, Paddington** and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Finance and Council Reform

Date ... 15 March 2024.....

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, the 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.