



City of Westminster

# Cabinet Member Report

<b>Decision Maker:</b>	Cllr Liza Begum Cabinet Member for Housing Services
<b>Date:</b>	19 <sup>th</sup> March 2024
<b>Classification:</b>	General release with confidential appendices  Partly Exempt  Appendix A is exempt, on the grounds that it contains confidential business information. "Information relating to the financial or business affairs of any particular person (including the authority holding that information" under para. 3 of Sch.12A of the Local Government Act 1972).
<b>Title:</b>	Lease renewal of Joels & Son 73-83 and 85-87 Church Street, London, NW8 8ET
<b>Wards Affected:</b>	Church Street Ward
<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**

The purpose of this report is to provide a recommendation to implement a lease renewal for 73-83 and 85-87 Church Street (Joel and Sons) Church Street, London, NW8. The tenant has had regular leaks within their demise due to the nature of the building which has had implications on the operation of their store. It is recommended that the lease renewal will remain at the passing rent but there is a rent reduction noted in a side note. The lease renewal ensures a continued and growing income stream to the Council's HRA.

## **2. Recommendations**

The Cabinet Member:

2.1 approves the principle of the Council conducting a lease renewal for new lease between H Bull and Son (Textiles) Ltd and the Mayor and the Citizens of the City of Westminster and entering into an Agreement For Lease ("AFL") between the same parties, 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 Housing, to approve the Council entering into two new leases and any ancillary legal agreements there to.

## **3. Reasons for Decision**

Subject to approval, the lease renewal together with the side letter enables the Council to retain an anchor tenant on Church Street with a strong rental payment history and ensures the unit is let producing an income stream until Site B is ready for demolition. This arrangement also limits the Council's liability regarding future leaks.

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

Westminster owns the freehold of 73-83 and 85-87 Church Street, London, NW8 8ET. The property is part of Site B of Church Street which along with Site A and Site C of Church Street is part of the Church Street regeneration scheme.

The Joel and Sons is a large retail unit. The premises is arranged over ground, lower ground floor and mezzanine with residential flats above. It extends to approximately 8,540 sq. ft NIA. The total site area extends to 9,490 sq. ft GIA. The premises comprises of a series of adjoining retail units merged into a single large retail shop.

Joels & Sons is a reliable tenant with no arrears. They have held a lease with Westminster for over 40 years and are an anchor tenant as they are a destination fabric retailer.

The premises are held under two leases one of which is holding over under the Landlord and Tenant Act 1954 and the other currently held under a Tenancy at Will. The first for 73-83 Church Street and the second being for 85-87 Church Street. The new leases will be for a term of 5 years backdated from the 24th of December 2023 and will expire on 23<sup>rd</sup> December 2028.

The subject premises has suffered significant regular leaks. The leaks are damaging their stock and have been disruptive to the operations of the store. The tenant also has in turn found it challenging to obtain contents insurance. The predominant water ingress sources are likely from the penetrating damp from the flat roof area to the front elevation, from the flats above and from pipework within the basement that only serve the housing block above and do not benefit Joels & Sons. The building age and condition of the building is prone to leaks and despite substantial repairs and investigations, these measures appear to not always prove sufficient and leaks continue to occur on occasion. The building is due to demolished within several years as part of the regeneration plans for Site B, Church Street.

Officers have explored potential relocation opportunities within the but with the unit being so vast, the tenant's preference is to stay in situ and come to an reasonable arrangement to ensure they remain a tenant of WCC but are compensated for the disruption and costs associated with the deteriorating condition of their unit until WCC secure vacant possession of the unit ready for Site B demolition.

## **5. Financial Implications**

Refer to Appendices.

## **6. Legal Implications**

6.1 The report author has confirmed the land is in the Housing Revenue Account (HRA). Under section 32 of the Housing Act 1985, the Secretary of State's consent is required in respect of a disposal of land held for the purposes of Part II of that Act (subject to limited exceptions such as a letting on a secure or introductory tenancy which do not apply here). Under the General Housing Consent 2013 a local authority may, subject to certain exception under paragraph 3.1.2, dispose of land for a consideration equal to its market value.

6.2 A disposal as defined in the General Housing Consent 2013 inter alia means a grant of a lease for any duration and market value is defined as meaning the amount for which a property would realise on the date of the valuation on a disposal between a willing buyer and a willing seller in an arm's-length transaction after proper marketing where the parties had each acted knowledgeably, prudently, and without compulsion and where the market value is assessed not earlier than 3 months before the buyer applies or agrees to an offer in writing. Thus, Council should satisfy that the consideration is equal to its market value.

6.3. Conversely there are a number of general consents known as the General Housing Consents 2013 (referred to below as “the General Consents”) have been issued by the Secretary of State to facilitate the disposal, by local authorities, of property vested in the HRA if those disposals fall within the criteria set out in the General Consents.

6.4 The General Consents confirm at A3.2 that a local authority may dispose of vacant land. Vacant land is defined as land where (a) no dwelling-houses have been built or (b) where dwelling-houses have been built, such dwelling-houses have been demolished or are no longer capable of human habitation and are due to be demolished. Dwelling -houses means a house or flat or part of a building occupied or intended to be occupied as a separate dwelling, including any yard, garden, out-houses and appurtenances belonging to or usually enjoyed with it, held for the purposes of Part II.

6.5 This is a commercial asset within the HRA, as opposed to a ‘dwelling’ for the purposes of Part II. Therefore, paragraph A3.2 permits local authorities to dispose of vacant land and assets that are not dwellings at any price determined by the local authority.

6.6 If Sections 24-28 of the Landlord and Tenant Act 1954 i.e., security of tenure is excluded. Essentially, this means is that the tenant will not have the right to request a new lease after the original term of their lease has expired, on the same terms as it had before. This right is known as a statutory right (Part II of the Landlord and Tenant Act 1954). The exclusion of this provision will give the flexibility to the Council to review the market and the needs of the area at the end of the term, without the obligation to renew the lease.

6.7 Where a lease is granted within the security of tenure provisions of Part II of the Landlord and Tenant Act 1954 (the 1954 Act), a landlord may only bring the lease to an end at the end of the term by serving a notice under section 25 of the 1954 Act and only if certain statutorily limited grounds for doing so can be proven to apply. Otherwise, at the end of the term, the tenant will be able to hold over on the terms of the lease regardless of expiry of the term granted. Furthermore, the tenant will have the right under section 26 of the 1954 Act to request a new lease on similar terms (apart from the rent) and the landlord will be obliged to renew the lease.

6.8 Conversely, if security of tenure were to be excluded, then the lease will determine on expiry of the term granted. However, it would be advisable to liaise with the Tenant before the expiry of the term to ensure that the property is vacated upon expiry, or it may be that the Landlord is content for the Tenant to remain and negotiate the grant of a new lease. Otherwise, a new secure tenancy could be established if the Tenant is allowed to remain in occupation and continue to pay rent.

6.9 It appears one of the leases is within the Landlord and Tenant Act 1954 and the other lease is excluded.

6.10 The Council has power to enter into further legal documents under section 111 of the Local Government Act 1972, a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

## **7. Carbon Impact**

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

## **8. Consultation**

A briefing was circulated to the Cabinet Member and Ward members have been consulted.

## **9. Equalities**

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.

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:**

Fiona Allison [fallison@westminster.gov.uk](mailto:fallison@westminster.gov.uk)

## APPENDICES

### Appendix A- Financial Implications

The current leases currently generate £182,500 per annum in total.

Lease	Rent	Total rent
73-83 Church Street	£141,195	
85-87 Church Street	£41,305	
		£182,500

Following the lease renewal there will be a reduction in rent of £36,000 per annum resulting in a total annual rent of £146,500. This rent reduction allows the majority of the income to be maintained and avoids costs associated with a void property.

### Appendix B - Summary of the current lease and Agreement for Lease of 73-83 & 85-87 Church Street London, NW8.

- 1 Date of Lease Current lease is dated December 2018.
- 2 Parties:
  - (1) The Mayor and the Citizens of the City of Westminster
  - (2) H Bull & Son (Textiles) Ltd

The current lease is in the name H Bull & Son (Textiles) Ltd and the new lease in 2023 will be the same party.
- 3 Premises: Joel & Sons 85-87 Church Street, London, NW8 8ET
- 4 Term: Current lease is 5 years from December 2018. The proposed leases are for a term of 5 years, expiring on 23<sup>rd</sup> of December 2028.

Tenant break clause: There will be a tenant option to determine the lease should a feasible relocation option

arise (this is based on planned regeneration of this section of Church Street up to year 2028)

5 Rent: The current rent is £182,500 p.a. for the two leases combined. The rent for 73-83 Church Street lease is £141,195 p.a. and the 85-87 Church Street lease is £41,305.

There will be a rent reduction of £36,000.

6 Lease expiry date: 23<sup>rd</sup> of December 2028

7 Security of Tenure: The Tenant's statutory rights of renewal of this lease is excluded for 85-87 Church Street under the current terms and the proposal. However, the tenant's statutory rights of renewal of this Lease is included for 73-83 Church Street.







## BACKGROUND PAPERS

*NB: For individual Cabinet Member reports only*

For completion by the **Cabinet Member for Housing Services**

### Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed:  Date: 16/04/24

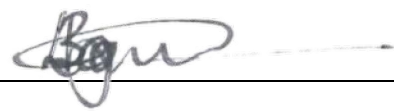
NAME: **Councillor Liza Begum**

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 lease renewal at 73-83 and 85-87 Church Street NW8.

Signed: 

Cabinet Member for Housing Services

Date: 16/04/2024

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:

\_\_\_\_\_  
\_\_\_\_\_

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.