

City Of Westminster ~~-DRAFT REPORT~~

<u>Cabinet Member</u> <u>Report to Cabinet</u> <u>Urgency</u> <u>Committee</u> FINANCE AND CONTRACTS <u>Urgent Action</u>	Date 6 June 20023	Title of Report 196a Piccadilly - <u>proposed settlement of dilapidations claim.</u>
Classification	Report of	
* Not for publication. (Exempt information under Paragraph 9 of Section 12A of the Local Government Act 1972. Terms for the disposal of property.)	Director of Environment and Leisure	
Wards Involves	Churchill	
Policy Context	A business like approach approach. Rationalisation of under utilised properties.	
Financial Summary	The acceptance of the offer will generate a <u>gross receipt of £452,500 from which build costs, legal and other professional fees need to be deducted.</u> Acceptance will also avoid the need to incur expenses on an Appeal Court hearing and a 3 week trial. amendment to the sale agreement of Grosvenor Dock will result in a re-phasing of capital receipts.	

1 SUMMARY

~~1.1 1.1 — Contracts were exchanged with St James Homes Limited (St. James) for the disposal of Grosvenor Dock on 29 December 2000. St James has approached the City Council to change the dates of the payments due for the second and third instalments. These payments will still be made in the tax years due under the terms of the contract. However to allow these changes to take~~
The City Council is the freehold owner of 196a Piccadilly. This is a property leased to HSBC in the 1920's. Their lease expired in 2002. A schedule of ~~dila~~dilapidations was served on HSBC. Two court hearings have since taken place – both won by the City Council, an Appeal Court hearing is set for 18th June 2003. After extensive negotiations HSBC have made an all-inclusive offer of £452,500 to settle the matter. The City Council has been advised to accept this by its professional advisors. Current delegated authority allows for the Director of Environment and Leisure to settle dilapidation claims up to £100,000. ~~place the City Council has requested that a contribution of £500,000 be brought forward from the second payment, originally proposed in March 2003 to June 2002.~~

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4.11.2 This matter is urgent in that it is the subject of a hearing at the Court of Appeal on 18th June 2003.

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2 RECOMMENDATIONS PROPOSED DECISION

2.1 That approval is granted to ~~the amendment to the disposal agreement~~ accept the all inclusive dilapidations offer of £452,500 from HSBC.

3 DETAILS

3.1 ~~3.1~~ In the 1920s the City Council granted a lease to the predecessors of HSBC to build a bank on the site of 196a Piccadilly – The bank was designed by Sir Edwin Lutyens and is now a Grade II* Listed building. The lease term was for 80 years and came to an end last year. Following HSBC's vacation of the site a schedule of dilapidations was served on them. Due to vintage and nature of the lease a number of heads of dispute arose which resulted in preliminary Court hearings. WCC was successful on all heads. HSBC has appealed the decision and the Appeal Court hearing is set for 18th June 2003. Extensive negotiations have taken place between WCC and HSBC both at advisor and principal level. HSBC have now proposed an all-inclusive settlement of this matter at £452,500. The Council's retained legal advisors Howes Percival and retained property advisors Nelson Bakewell recommend accepting this offer.

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3.2 The extensive technical details in respect of the schedule of dilapidations are contained in the background reports and are available for inspection. In summary the work required include the follow. External repairs and redecoration, internal reinstatement works to the ground and first floor levels in order to bring the building back to its original condition, general internal repairs and redecoration, removal of asbestos and removal of air conditioning. Repairs and reinstatement of original mechanical and electrical systems. These works are already under way and approximately £300,000 of the settlement figure will be contributed to the actual reinstatement works themselves. Further work is required to meet current market demands. This is also being undertaken.

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3.3 At the same time as pursuing the dilapidations, the City Council marketed the property and has agreed a new ten-year lease with a 'headline' rent of £177, 500. The property will now be used as an art gallery. Completion of the ~~An agreement for lease~~ ~~The new~~ is expected imminently. ~~completed exchanged very soon~~ ~~shortly~~

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3.4 The matter becomes urgent in that on 18th June 2003 when an appeal from an early Court hearing will be made. ~~This~~ ~~ere~~ is a considerable risk

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that the Court of Appeal will decide against the Council. It is therefore in the Council's interest to settle the matter before the hearing. Should the matter proceed to appeal there will be a subsequent trial of the substantive issues, which is expected to last for three weeks.

~~disposed of the Grosvenor Dock site in March 2001. A summary of the main terms of the disposal is contained within the report to the Finance and Support Services Committee of 29 January 2001 at Appendix 1. St James has subsequently approached the City Council to seek to amend some of the terms of the principal payment structure. The amendments are contained within the legal section of the report. The overall effect of the proposal is neutral on the Council. However to obtain the Council's agreement to the amendment St. James have moved forward to June 2002 a payment of £500,000 which was due to be paid as part of the second instalment.~~

4 LEGAL IMPLICATIONS

4.1 The Council's retained legal advisors, Howes Percival advise as follows. The settlement would release HSBC from all liability arising from the condition in which they left the building, even in respect of matters that (for whatever reason) have not yet been discovered. Andrew Myers to comment~~The proposed supplemental agreement is attached to this report at Appendix 2. The principal terms of the agreement are:-~~

~~(i) Variation — A payment of £18,050,000 was payable in September 2002 (18 months after the stage 1 payment date)~~

~~(ii) — The balance of £18,050,000 was payable in March 2004.~~

~~This has been varied to provide for:~~

~~(1) — a payment of £500,000 on 30 June 2002 or as soon thereafter on completion of the agreement~~

~~(2) — a payment of £8,525,000 on 30 March 2003 (together with interest on that sum from 20 September 2002 to 30 March 2003)~~

~~(3) a payment of £17,042,000 on 30 March 2004 (together with interest on the sum of £9,025,000 for the period from 20 September 2002 to 30 March 2004); and~~

~~(4) a payment of £10,033,000 on 30 March 2005 (together with interest on that sum for the period from 30 March 2004 to 30 March 2005).~~

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~~4.2 4.2 The £452,500 is inclusive of costs: i.e. Time is of the essence for each of these payments, which means the purchaser would be in default of the contract if monies are not received within the stated time apart from the £26,500 contribution towards WCC's costs received following an order on 2222 January 204-03, all legal and surveyors' costs arising out of the court claim must be paid for out of this figure.~~

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~~4.3 See the attached letter from Howes Percival. Whilst it is possible that continuing with the claim would result in an even greater recovery, the considerable risk of WCC ending up worse off do not in Howes Percival's view justify continuing the claim. See Appendix 1. Interest on the payments are payable at 1% over base rate of the Royal Bank of Scotland.~~

~~Save for these variations the principal agreement continues.~~

56 FINANCIAL IMPLICATIONS

The financial implications arising from this report are that:

- ~~6.1 The contract for the sale of Grosvenor Dock to St. James Homes Ltd., was signed in December 2000 and the stage 1 payments (£23 million) have been received.~~
- ~~6.2 The stage 2 payment (£18 million) was originally due 18 months after completion i.e. September 2002 and the stage 3 payment (£18 million) after a further 18 months i.e. March 2004. However, these payment dates were subject to St. James obtaining consent to the scheme method statement/specification from LUL by a critical date, namely 31 May 2001. This consent was not issued by that date and St. James claimed the benefit of the provisions in the contract allowing for delayed payments for stages 2 and 3. The latest dates for payments are June 2003 for stage 2 and December 2004 for stage 3. These revised payment dates have been assumed in the schedule of capital receipts available to fund the Council's capital programme.~~
- ~~6.3 Negotiations have been undertaken with St. James and the current proposals for earlier payments are shown below, and compared with the original terms and contract terms:~~

Stage 2 and 3 payments	Original Terms (Dec. 2000)	Contract Terms (May 2001)	Current Proposals (March 2002)
	£'000	£'000	£'000
<u>2002/03</u>			
April 2002	0	0	500
September 2002	18,050	0	0
March 2003	0	0	8,525

<u>2003/04</u>	18,050	0	9,025
June 2003	0	18,050	0
March 2004	18,050	0	17,042
	18,050	18,050	17,042
<u>2004/05</u>	0	18,050	0
December 2004	0	0	10,033
March 2005	0	18,050	10,033
TOTALS	36,100	36,100	36,100

6.4 St. James will pay net interest on deferred amounts at bank rate plus 1%.

6.5 In addition to the land value totaling £59 million (i.e. stage 1 received £23 million and stages 2 and 3 £36 million), St. James may be liable to make additional payments in future years for planning overage and sales overage. These sums are dependent upon the extent of private development and actual sales values, neither of which can be quantified with any certainty at this stage.

5.1.1.1 — 5.1 The receipt of £452,500 would be treated as capital income in the Council's accounts and would thus be available to fund dilapidations or other expenditure within the Council's capital programme. Until utilised in funding capital expenditure, at current interest rates, interest income of some £16,000 pa would be earned.

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6.7 Crime and Disorder Act

6.7.1 There are no crime or disorder issues affecting this report.

7.8 WARD MEMBER CONSULTATION

7.8.1. There has been no Ward Member consultation.

8.9 REASONS FOR RECOMMENDATION

8.9.1 Approval can be granted, as the proposed changes are financially neutral. The settlement of this action at this stage is felt to be in the benefit of the City Council. Whilst the City council has been successful at the previous hearings it is at risk that the Court of Appeal may

reverse or change the early judgments. In addition there is a further three-week trial on this matter due later this year. Whilst the Council should not profit from any dilapidations action, the current offer is viewed as being favourable.

9 For Completion by Chief Officer

Signed:.....

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Designation:.....

Decision:.....

Date:.....

Time:.....

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Appendix 1 ~~*Finance Urgency Committee Report 29 January 2001~~Howes
Percival advice June 2003

Appendix 2 Nelson Bakewell advice of 4 June 2003

~~Appendix 2 *Draft Agreement June 2002~~

BACKGROUND PAPERS

1. Nelson Bakewell - Schedule of Dilapidations and Reinstatement dated May 2002

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4-2. Nelson Bakewell – Factual Statement dated March 2003

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~~*: Finance Urgency Committee Report 2 October 2000~~

~~*: Finance Urgency Committee Report 18 December 2000~~

~~*: Finance Urgency Committee Report 29 December 2000 Nelson Bakewell
schedule of condition 196a Piccadilly W1 etc~~

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3. Nelson Bakewell – Expert Report dated April 2003

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***THESE DOCUMENTS ARE NOT AVAILABLE FOR PUBLIC INSPECTION
AS THEY CONTAINS INFORMATION WHICH IS EXEMPT UNDER
PARAGRAPH 9 OF SCHEDULE 12A TO THE LOCAL GOVERNMENT ACT
1972. BECAUSE THEY REFERS TO TERMS FOR THE DISPOSAL OF
PROPERTY.**

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY BACKGROUND PAPERS, PLEASE CONTACT ALASTAIR RUDD ON 7641 2699 or by email arudd@westminster.gov.uk

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~~For completion by Cabinet Member~~

~~Declaration of Interest~~

~~I have no interest to declare in respect of this report~~

.....Signed.....Date

~~I have to declare an interest~~

~~State nature of interest~~

.....
.....
.....Signed
ed.....Date

~~(NB: 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 and reject any alternative options which are referred to but not recommended.~~

Signed.....

Cabinet Member for

Date.....

~~Note if you do not wish to approve the recommendation, or wish to make an alternative decision, it is important that you consult the report author, the Director of Legal and Administrative Services, the Director of Finance and, if there are staffing implications, the Head of Personnel (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: The decision will now be published and copied to the Members of the relevant Overview & Scrutiny Committee and may**~~

~~not be implemented until five working days have elapsed from publication to allow the Overview and Scrutiny Committee to decide whether it wishes to call it in.~~