



Decision Maker:	<i>Councillor Acton – Cabinet Member for Communities and Regeneration</i>
Date:	<i>29 March 2021</i>
Classification:	General Release
Title:	Luton Street: Request for approval to transfer headlease
Wards Affected:	Church Street
Key Decision:	No
Financial Summary:	The additional costs arising from the recommendations of this report will be recharged in full to leaseholders through a service charge and not impact the Council's financial position
Report of:	James Green, Director of Development

1. Executive Summary

- 1.1 The Council's mixed-use Luton Street Development consists of two sites at Luton Street and Fisherton Street.
- 1.2 The overall scheme provides 171 new family homes - 109 market sale developed by Westminster Builds (WB) with a further 62 affordable homes which the Council will own and are 19 intermediate and 43 social rent. In addition, a 3 court Sport England compliant sports hall with a community centre facility is provided within the market sale block.
- 1.3 The 109 market sale homes are owned and marketed by Luton Street Development LLP (the LLP) which is a 50/50 joint venture between the Council's wholly owned subsidiary Westminster Builds (WB) and the Developer Linkcity. The LLP owns a 250-year headlease to these units. The remainder of the site is freehold land owned by the Council.
- 1.4 This mixed development means this scheme has complex management arrangements. Officers have reviewed the appropriate arrangements for the Council and its tenants, prior to reaching agreement with the LLP and WB.
- 1.5 This report focuses on:
 - i. the LLP's exit from the headlease and the preferred way forward (which is for the Council to take a transfer of the headlease), and

- ii. a proposed strategy for the Council's Housing Services to provide tenancy management services to all the affordable homes within the scheme, with Corporate Property managing the sports and community centre.
- 1.6 This report excludes the 3 houses on Fisherton Street, as the properties are in the Housing Revenue Account (the HRA) and will be managed by Westminster Housing Services.

2. Recommendations

- 2.1 That the Cabinet Member to give:
- i. Approval that the Council acquires the headlease from the LLP.
 - ii. Delegated authority to the Executive Director of Growth, Planning and Housing, to agree the necessary agreements, contracts and deeds as required to effect the acquisition of the headlease from the LLP. The Cabinet Member will be updated on a regular basis.
- 2.2 That the Cabinet Member notes that the Council's Housing Services, will provide tenancy management services to all the affordable homes, including the intermediate homes within the scheme and full management services to the 3 homes at Fisherton Street and that, in consultation with Corporate Property, the Council's Corporate Property directorate is responsible for the sports and community centre.
- 2.3 That the Cabinet Member notes that upon transfer of the headlease to the Council, the Council will need to enter into a novation agreement in relation to the managing agent in order to become the client of the managing agent.

3. Reasons for Decision

- 3.1 Timing is critical for the Luton Street scheme as residential marketing is well advanced and is close to the point where in the contract documents the LLP's exit strategy needs to be set.
- 3.2 The LLP needs to exit the scheme before exchange of contracts on the 55th market sale home (i.e. more than 50% exchanged). By contracting to transfer the headlease to the Council, this issue will be resolved.
- 3.3 The LLP is understandably already putting in place arrangements to procure a managing agent for the scheme. That managing agent will be appointed this year prior to Practical Completion (PC) of the scheme, to ensure a soft landing. If the Council takes the headlease as described in this report, it will inherit the managing agent at the same time, until the term of the managing agent appointment comes to an end. Going forward, it will be open to the Council to consider the appropriate option for the future management arrangements.

4. Background, including Context

- 4.1 At completion (Financial Close) of the scheme in October 2019, the LLP was granted a headlease from the Council of that part of the Luton Street scheme which will comprise 109 private units. The LLP is currently marketing these private homes to individual purchasers.

- 4.2 The LLP in a special purpose vehicle, incorporated only to fund and sell the scheme's private homes. Once all the private homes are sold, the LLP will be wound up and Linkcity exit the scheme 2 years after PC at the end of the defects liability period, as at this point in time the LLP will purely be a 'shell'.
- 4.3 For the reasons explained in section 5.1 of this report, it is critical that the Council and Linkcity put in place arrangements for exit from the scheme before 50% of the private sales have been exchanged.
- 4.4 The LLP has now exchanged 45 homes out of 109 with a further 7 homes under reservation. As explained above, the LLP will need to exchange an agreement to transfer the headlease before exchange of contracts on the 55th private home.
- 4.5 The Council can at any point in the future, put in place a 'buffer' lease, which would be a lease interposed between the headlease and the residential plot leases with buyers. For legal reasons this would assist the Council if it ever wished to dispose of the headlease in the future.
- 4.6 In the meantime, appointing a managing agent is an important part of finalising how the estate will operate, commissioning services and facilities, including contracts for cleaning and similar services. This is an early action regardless of the management option adopted.
- 4.7 Officers have considered a range of solutions for the long-term management, ranging from a resident led Management Company (Manco), specific Mancos that deal with site wide issues and, separately, private properties and the sports hall, through to WB or the Council being responsible for the management.
- 4.8 Five options have been considered for the management arrangements:
- i. **Single management company ("Manco"):** one Manco for the whole of Luton Street site; OR
 - ii. **Two Mancos:** One for all of Luton Street plus another separate Manco specifically for that part of Luton Street comprising the private properties and the sports centre); OR
 - iii. **No Manco, WB Headlease:** WB takes on a head lease for the entire development (excluding Fisherton Street) and accepts responsibility for management of all of Luton Street, buying in services of a commercial managing agent; OR
 - iv. **No Manco, Council Headlease:** The Council takes on a head lease for the entire development and accepts responsibility for management of all of Luton Street, buying in services of a commercial managing agent; OR
 - v. **Council management:** The Council takes on responsibility for management of whole of Luton Street, using existing internal teams or contracts.
- 4.9 Note: in options (iii) and (iv) above WB will delegate tenancy management of any affordable homes it owns in Westminster to the Council's Housing Service, following the practice adopted by Westminster City Homes
- 4.10 While finalising the management arrangements, the Council should also consider the exit strategy in relation to the LLP itself, because once the market properties at Luton Street are sold, the LLP will be a "shell". A buffer lease is not required

where the Council is the landlord of the private homes because it is a local authority and therefore exempted from the relevant legislation.

- 4.11 Discussions with officers concluded that the Council is likely to be the appropriate entity to acquire the headlease from the LLP and the Council can decide whether it is likely to sell on the headlease itself and on what basis.

5. Timing Implications

- 5.1 The LLP's exit strategy needs to be in place at the point 50% of contracts have exchanged on the market sale dwellings. This requires agreement from the Council, WB and the LLP. If the LLP's exit from the headlease comprises the transfer of the headlease to a third party then this needs to be agreed before 55 units have exchanged. Currently, 50 exchanged and a further 7 offers under reservation.
- 5.2 Prospective purchasers may be interested in whether there is to be a management company. To maintain flexibility, the drafting in the plot sales pack left this open as an option.
- 5.3 As an interim measure for the first year, the LLP is procuring the estate management services provider in conjunction with WB and Council officers.
- 5.4 As a separate procurement process, the Council is also procuring a panel of estate management service providers for the Council's development schemes. The appointed interim provider(s) procured by the LLP will be invited to tender for this work through a mini competition, as is set out in the estate management service tender document. Once the managing agent is in place, the Council will inherit the arrangements and will need to enter into a deed of novation with the LLP and the managing agent, in order to ensure continuity of services.

6. Financial Implications

- 6.1 The transfer of the head lease from the LLP to the Council will be for nil consideration (a peppercorn), reflecting that the value in the head lease (individual apartments) has been sub-let to private purchasers. There are no VAT implications or Stamp Duty Land Tax payable on the transfer.
- 6.2 Following the transfer, the Council will become responsible for the management of the private block, which will be undertaken by the managing agent, appointed by the LLP and novated to the Council. The cost of managing the private block will be recharged to individual lease holders through a service charge.
- 6.3 The managing agent contract will include the affordable block at Luton Street. A portion of this cost can be recovered through a service charge on the social homes; however, it will remain a landlord cost for the intermediate rent homes. In addition, the Council will incur the cost of tenancy management, including voids and bad debts.
- 6.4 The revenue costs of the affordable homes have been reflected in the HRA budget through a management cost deduction from gross rents of 28%, effectively earmarking a portion of gross rents to pay for rental costs. This remains unchanged from the Full Business Case position.

6.5 While the recommendations transfer additional responsibilities to the Council, the costs associated with these responsibilities will remain with private purchasers.

7. Legal Implications

7.1 The Council has a general power of competence under section 1 of the Localism Act 2011; this is the power to do anything an individual can do, provided it is not prohibited by other legislation. This power can be used for the Council to agree to the acquisition of the headlease from the LLP.

7.2 The Council has the power under section 120 (1) of the Local Government Act 1972 ("LGA 1972") to acquire land, whether situated inside or outside its area, for the purposes of (a) any of their functions under the LGA 1972 or any other enactment or (b) the benefit, improvement or development of its area.

7.3 The Council also has the power under section 111 of the LGA 1972 to do anything which is calculated to facilitate or is conducive or incidental to the discharge of its functions.

7.4 Under Part I of the Landlord and Tenant Act 1987 ("LTA 1987") certain residential tenants have a statutory right of first refusal in relation to various disposals by their immediate landlord of whole or part of their building. The landlord cannot make a relevant disposal of the freehold without first offering it to qualifying tenants on the same terms as have been agreed with a prospective purchaser. To fall within the LTA 1987, the premises must consist of the whole or part of a building containing two or more flats held by qualifying tenants. The number of flats held by qualifying tenants must exceed 50% of the total number of flats. "Qualifying tenants" includes tenants with long leases. A "relevant disposal" includes all disposals by the immediate landlord; although there are some limited exceptions.

7.4.1 If the LLP does not enter into an agreement to transfer the headlease before exchange of the 55th plot sale (signifying a 50% threshold under the LTA 1987), then when the LLP later seeks to transfer the headlease, the residents will have a statutory right of first refusal. Triggering the threshold will require the LLP to go through a statutory mandated process, offering the headlease to the residents. This process takes several months, even if the residents do not wish to take up this right.

7.4.2 If the Council enters into an agreement to acquire the headlease from the LLP before the date of exchange of the 55th plot sale, the LLP and the Council shall not be subject to this process.

7.4.3 If the Council enters into an agreement to acquire the headlease from the LLP on or after the date of exchange of the 55th plot sale then the LLP will need to abide strictly with the LTA 1987. If this situation arises then there will be uncertainty around if the Council can still acquire the headlease and when.

7.5 If the Council acquires the headlease then on legal completion it is noted the Council shall be the freeholder and the leaseholder of the headlease. Future purchasers of the private units may raise a query as to why this is the case, which may require explanation as part of future conveyancing transactions. Unless the Council decides it wants to merge the interests (which would require

an application to the Land Registry) the freehold and headlease interests shall remain separate until the headlease is determined.

- 7.6 When the LLP headlease was granted, a "rentcharge deed" for the estate was also completed. This regulates the position as between the LLP's private block, and the Council's retained affordable block, in relation to provision of services for the entire estate and collection of service charge. This deed can be terminated if the headlease is transferred to the Council as in this situation it will have no relevance when the freeholder and head tenant are the same entity.

8. Next steps

- 8.1 The Council's project legal team will finalise the legal documents to take on the headlease by way of a conditional contract. The Council's officers will keep in contact with the LLP in the process and outcome of their appointment of a commercial managing agent on behalf of the LLP for the interim.

9. Consultation

- 9.1 None required, as the LLP Board and WB Board have both tabled and approved these proposals, which are minuted
- 9.2 Church Street Ward Members were consulted on the proposals contained within this report, however, no comments were received.

10. Equalities Implications

- 10.1 The Equality Act 2010 introduced a single public sector equality duty. This duty requires the Council to have due regard in its decision-making processes to the need to:
- i. eliminate discrimination, harassment, victimisation or other prohibited conduct;
 - ii. advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it, and;
 - iii. foster good relations between those who share a relevant characteristic and those that do not share it.
- 10.2 The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.
- 10.3 The Council is required to act in accordance with the equality duty and have due regard to the duty when carrying out its functions, which includes making new decisions in the current context and in relation to the proposed transaction.

APPENDICES

Appendix A: Manco Options

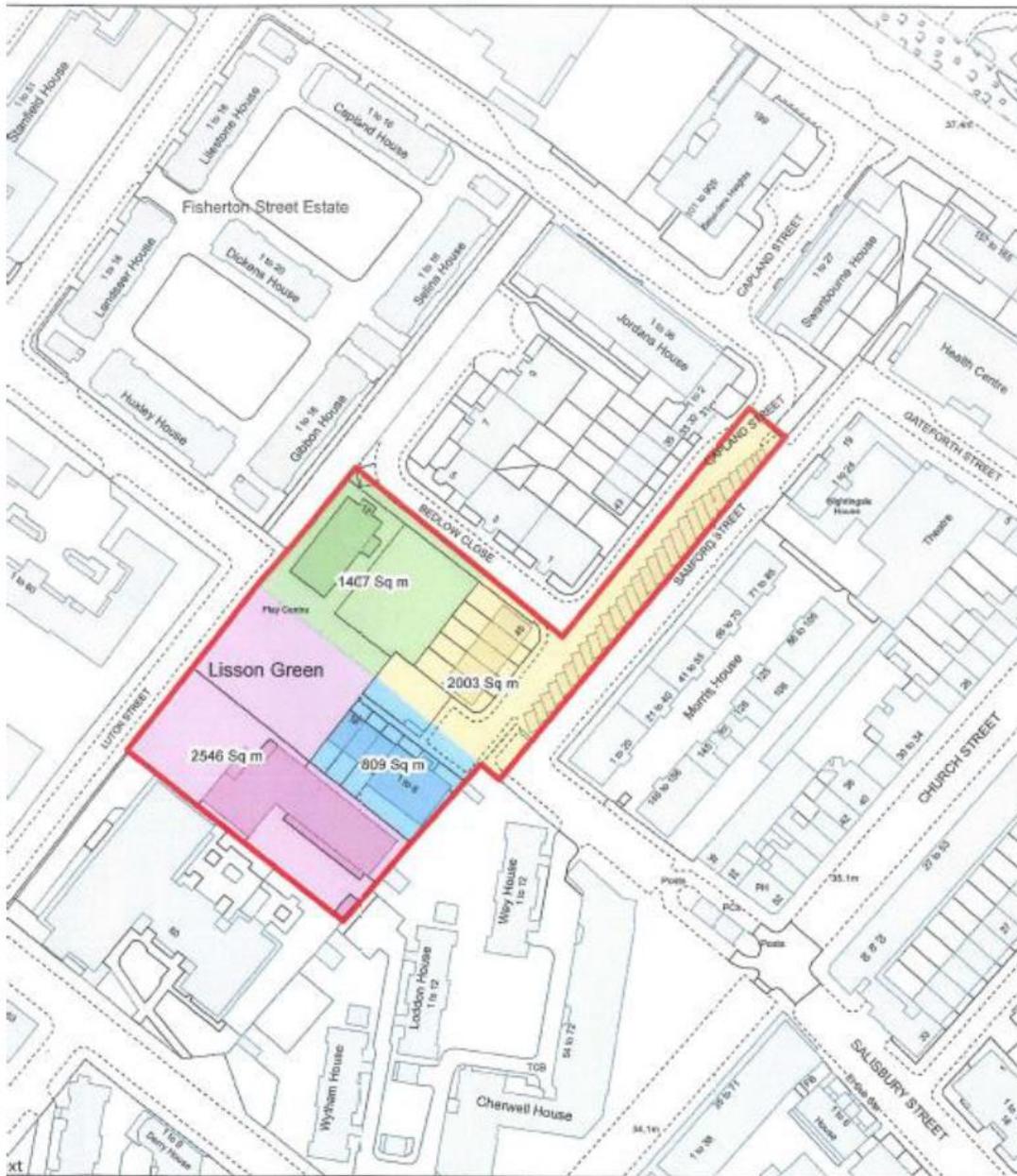
Appendix B: Luton Street Site Plan

BACKGROUND PAPERS

Appendix A: Manco Options Risk Assessment

Options	Option 1 Single management company ("Manco")	Option 2 Two Mancos	Option 3 No Manco: WB takes on head lease	Option 4 No Manco: WCC takes on head lease	Option 5 Council management
Description	Single management company ("Manco"): for the whole of Luton Street site; OR	Two Mancos: 1 for all of Luton Street plus another separate Manco for (that part of Luton Street comprising the market sale properties and the sports centre); OR	No Manco: use of private managing agent: WB takes on responsibility for management of all of Luton Street, buying in services of a commercial managing agent; OR	No Manco: use of private managing agent and WCCI takes on responsibility for management of all of Luton Street, buying in services of a commercial managing agent; OR	Council management: WB takes on responsibility for management of whole of Luton Street, buying in services from the WCC's internal team or contracts.
Consider impact on marketing	Neutral – market will not mind whether there is a manco or not but don't want the uncertainty	Negative / neutral – market may like complexity to may not mind whether there is a manco or not but don't want the uncertainty	Neutral to positive impact with managing agent and services in place	Managing agent and services in place a positive however, market perception on private units of WCC as landlord. WCC also owns the freehold. Future purchasers of private units may need an explanation as to why WCC is freeholder and also has the headlease.	Possible adverse impact upon the 'marketing' as perceptions of being managed by a 'local authority' though this is less likely recently
Financial risks on WCC & WB	Manco under leases has the primary responsibility to provide services otherwise the responsibility falls back on the LLP and therefore WB will take the risks, plus the risk of resident default falls on WB.	Manco under leases has the primary responsibility to provide services -if not the responsibility falls back on the LLP and therefore WB, plus the risk of resident default falls on WB. Potential friction between boundaries or possible perception duplication of services / costs.	This is manageable risk because the managing agent advises how to set up the estate charge to ensure no gaps and everything is covered.	This is manageable risk because the managing agent advises how to set up the estate charge to ensure no gaps and everything is covered.	WCC providing the services and bearing the risk of budgets/ costs being wrong or challenged.
Reputational risk to council	Neutral – no risk perceived, unless something goes wrong. But in the event of an issue the risk is that responsibility for a solution will fall on WCC.	Possible reputational risk of treating tenures differently or if something goes wrong – risk lower standard for affordable properties. Possible 'poor gardens' perception.	Perception of 'privatisation' scope creep by local residents	Potential reputational risk if things go wrong or levels poor.	If things go wrong Council services is the biggest reputational risk, poor service not comparable to private sector
Residual liabilities in LLP	As financial risks i.e. if a latent defect leads to costly remedial action or litigation	As financial risks.	Liabilities rest with WB when it takes on the headlease so the residual risks or liability incl defects liability rests with them	Liabilities rest with the WCC when it takes on the headlease so the residual risks or liability incl defects liability rests with them	Liabilities rest with WB when takes on the headlease so the residual risks or liability incl defects liability rests with them
Risk of residents failing to act	A residents' controlled Manco – relying on the residents to act i.e. doing what they need to do which means the liability will come back to the LLP or WCC, also risk that decisions will be interests of majority of shareholders and add cost/risk to WCC	A residents controlled Manco – relying on the residents to act i.e. doing what they need to do which means the liability will come back to the LLP or WCC, also risk that decisions will be interests of majority of shareholders and add cost/risk to WCC	This is negated as not a resident responsibility	This is negated as not a resident responsibility	This is negated as not a resident responsibility
Protect WCC interests from unfair services or restrictions of the asset	Risk that leaseholder led manco decisions adversely affect social / affordable tenants and users of the Sports Hall	Less risk as WCC only affected by estate wide manco not the market sale block manco, unless there were emerging issues on the sports & community centre, wear and tear and cleaning on curtilage.	WCC has the ability to maintain control of how WB set services charges to ensure fair controls are in place for residents/ service users.	WCC has the ability to set services charges to ensure fair controls are in place for residents/ service users.	WCC in a position to ensure all services are managed fairly as BAU.
Houses in Fisherton St	Under WB as the headlease self-contained as likely to be treated distinctly by block.	Not applicable as not full schedule services required	WCC has the ability to maintain control of how WB set services charges to ensure fair controls are in place for residents/ service users.	WCC has the ability to set services charges to ensure fair controls are in place for residents/ service users.	WCC in a position to ensure all services are managed fairly as BAU.

APPENDIX D LUTON STREET SITE PLAN



Luton Street Appropriations Boundary

Luton Street Appropriations - Funding

- GF
- HRA
- Transfer from GF to HRA
- Transfer from HRA to GF



City of Westminster



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