



Decision Maker:	Cllr David Boothroyd – Cabinet Member for Finance and Council Reform
Date:	8 July 2022
Classification:	General Release
Title:	Exercise of an option to acquire the freehold interest in a WCC leased site at Mandela Way, London, SE1 5SS for £1
Wards Affected:	All – site is out of Westminster City area
Key Decision:	No
Financial Summary	The freehold interest is to be acquired for £1. There are no capital or revenue implications from this decision. The purpose is to improve the Council’s title from long leasehold to unencumbered freehold.
Report of:	Claire Barrett – Director of Property and Strategic Asset Management

1.0 Executive Summary

1.1 WCC own a long leasehold interest in a circa 5.5 acre distribution warehouse site on Mandela Way in the London Borough of Southwark. The lease contains an option for WCC to acquire the freehold interest in the site for £1.

2.0 Recommendation

2.1 Officers recommend that the option to acquire the freehold interest in the WCC leased site at Mandela Way for £1 is exercised.

3.0 Reason for the decision

3.1 Under the WCC constitution, Cabinet Member approval is required to acquire a freehold interest in land.

4.0 Background

- 4.1 WCC acquired a leasehold interest in the subject site in 2001. The site extends to circa 5.5 acres and was a former distribution depot for the current landlord, Office Depot International. WCC acquired the site as a possible depot for its waste collection service. The site is currently leased to third party tenants and generates a significant income for the WCC property investment portfolio.
- 4.2 The WCC lease is for a term of 999 years expiring 23 June 3000. A peppercorn rent is payable. The lease contains an option for WCC to acquire the freehold interest for a sum of £1. Under the terms of the lease the option is exercisable anytime from 24 September 2021 until the end of the lease. The Perpetuities and Accumulations Act 2009 which came into force on 6 April 2010 is the current law relating to property transactions. This lease was entered into on 24th September 2001 which means the old perpetuity rules still apply to property transactions. Thus, this lease is governed the Perpetuities and Accumulations Act 1964 which modified the common rules. Since there is no valuable consideration (i.e. nominal £1 only), the current legal opinion is that the period for exercise of the option is likely to be 80 years from 24 September 2001 (i.e 60 years from 24th September 2001). Legal do however caution that under a less plausible interpretation of the Act, it could be deemed to be 12 months from 24 September 2021, requiring the option to be exercised no later than 23 September 2022.
- 4.3 It is clearly preferable for WCC to own this site on a freehold basis, unencumbered by any of the covenants in the lease. As the freehold title can be acquired at £1 premium, officers recommend that the option is exercised at the earliest opportunity and certainly before 23 September 2022, after which there is a very low chance the validity of the option could be challenged.

5.0 Financial Implications

- 5.1 Currently WCC pays a peppercorn rent. If WCC purchases the freehold interest, the cost will be £1 and the peppercorn rent will no longer be payable. The purchase of the freehold also allows potentially more flexibility on the use of the site and this opportunity may be of financial benefit.

6.0 Legal Implications

- 6.1 The Localism Act includes a 'general power of competence'. It gives local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited. The Council has the power to enter into the proposed arrangements under Section 1 of the Localism Act 2011 (the "General Power of This states that a local authority may do anything that a person generally may do).
- 6.2 Under s120 of the Local Government Act 1972 For the purposes of (a) any of their functions under this or any other enactment, or (b) the benefit, improvement or development of their area, a principal council may acquire by agreement any land, whether situated inside or outside their area. 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
- 6.3 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
- 6.4 The lease was entered into prior to 6 April 2010. Thus, this lease is governed the Perpetuities and Accumulations Act 1964 which modified the common rules. An option for a tenant to acquire the reversionary interest to its lease, is exempt from the perpetuity rules (section 9(1), PAA 1964) provided that the option satisfies some specific requirements being (a) The option is exercisable only by the tenant to which it is granted, or its successors in title (assignees of the lease but not a third party). If the wording of the option permits its assignment separately from the lease, then the option will fall outside section 9 of the PAA 1964. (b)The option is exercisable for valuable consideration. The conventional definition of valuable consideration comes from section 205 of the Law of Property Act 1925, where it includes money (so long as the amount is more than nominal), money's worth (such as stocks and shares, or other land, or services, again so long as the amount is more than nominal), and marriage. (c) The option cannot be exercised more than one year after the end of the lease. This exemption applies regardless of the length of the lease term. Under s205 of the Law of Property Act 1925 valuable consideration includes marriage but does not include a nominal consideration in money. The consideration appears to be nominal since its £1. Thus, the rules appears to apply. A call option which fails to satisfy the tests imposed by section 9(1) PAA 1964 will instead be governed by the normal perpetuity rules. If the option is exercisable for valuable consideration, then the option period is 21 years. If no valuable consideration is required, then the common law rules will apply, and the perpetuity period will either be a specified fixed period (up to a maximum of 80 years under section 1 of the PAA 1964) or a period by reference to a life in being. Legal would recommend proceeding sooner rather than later to avoid possible difference in the interpretation of the law.
- 6.5 Once the option is exercised it creates a binding contract and the Council will be obliged to proceed with the purchase of the freehold.

7.0 Carbon Impact

7.1 This decision has no impact from a carbon emissions perspective.

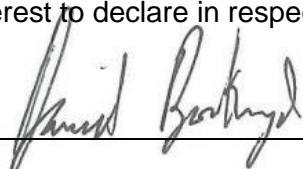
8.0 Consultation

8.1 **If you have any queries about this report or wish to inspect any of the background papers, please contact:**

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: 08 July 2022

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 **Exercise of an option to acquire the freehold interest in a WCC leased site at Mandela Way, London, SE1 5SS for £1** and reject any alternative options which are referred to but not recommended.

Signed 

Councillor David Boothroyd

Date ...08 July 2022.....

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.