



Decision Maker: Cllr Geoff Barraclough, Cabinet Member for Planning and Economic Development

Date: 23 April 2024

Classification: Part Exempt

The accompanying part B report is exempt from disclosure by virtue of the following Paragraphs of schedule 12A to the Local Government Act 1972:

Paragraph Three: Information relating to the financial or business affairs of a particular person (including the authority holding that information).

Paragraph Five: Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Title: Lisson Arches Enterprise Space (LAES) – Contract award and grant of Lease to the selected workspace operator partner

Wards Affected: Church Street

Policy Context: Fairer Economy

Key Decision: Yes

Financial Summary: The Council has allocated £200,000 of available Strategic Investment Pot (SIP) funding to the project as contribution towards fit-out works. As this expenditure will be fully funded and limited to £200,000 there is zero expenditure pressure on the Council. The Council will not be paying for any services delivered across the 15-year contract term.

There will be rental income payable by the operator to the Council over the 15-year lease period. This represents a new income stream for the Council, which will help offset borrowing pressures.

Report of: Debbie Jackson, Executive Director – Regeneration, Economy and Planning

1. Executive Summary

- 1.1 This report seeks Cabinet Member approval to proceed to award a concession contract and the grant of the lease for the Lisson Arches Enterprise Space (LAES) to the recommended workspace operator partner.
- 1.2 Upon approval of this report, the concession contract and lease will be executed resulting in the appointment of Arbeit Project Studios Limited (Companies House registration no. 07075487) as a workspace operator partner for the LAES.
- 1.3 The asset is held in and will be disposed of from the Council's Housing Revenue Account (HRA).

2. Recommendation

- 2.1 That the Cabinet Member for Planning and Economic Development:
 - Approves the award of a concession contract to Arbeit Project Studios Limited to deliver services from LAES;
 - Approve the grant of a lease to Arbeit Project Studios Limited on commercial arrangements as set out in Part B of this report;
 - Authorises the use of grant funding from the Strategic Investment Pot (SIP) Fund in the sum of £200,000 to Arbeit Project Studios Limited to undertake CAT B fit out works to LAES;
 - Authorises Legal Services to execute the Lisson Arches Enterprise Space concession contract and lease for a period of 15 years.

3. Reasons for Decision

- 3.1 The Council has a planning obligation to lease the space to a workspace operator, who in turn will facilitate the use of the space as affordable workspace. To fulfil the requirements of the planning commitments and support regeneration and economic development in Church Street area, the Council tendered the LAES opportunity to workspace operators, with the intention to grant a lease for a period of up to 15 years and an associated service concession contract to deliver specific economic and social outputs.

4. Background

The Project

- 4.1 The Council is currently in the process of discharging planning obligations for the new Lisson Arches mixed-use development. The building comprises of accommodation for seniors and an enterprise space. The enterprise space has potential to support at least 100 new and existing jobs, support businesses to start, grow and be resilient, contribute to the Church Street regeneration programme and add to the vitality of the Church Street shopping area.
- 4.2 The enterprise space will have a creative focus to reflect the characteristics of the Church Street area. Catalysed by the establishment of Alfies antiques market in 1976, a deeply rooted arts, antiques, and creative sector calls Church Street their home. Building on the Antiques, Arts and Design Quarter, LAES will provide approximately 11,000 sq. ft of high quality, flexible, creative production space. This offer would align well with the course offering of WAES as well as institutions in the borough such as London School of Fashion, University of Westminster, Royal College of Art, Chelsea College of Art and City of Westminster College.

- 4.3 Planning obligations as set out in a Unilateral Undertaking Agreement (2016) for the development require the Council to provide the enterprise space as affordable workspace. The space has a restricted use of B1(b)/(c)¹ planning use class which is research and development of products or processes and, light industrial processes (such as some forms of creative production workspace) appropriate in a residential area. The Council is required to lease the space to a workspace operator at a 70% discount from market rates, which in turn will facilitate the use of the space as affordable workspace².
- 4.4 To fulfil the requirements of the planning commitments and support regeneration and economic development in Church Street, the Council tendered the LAES opportunity to workspace operators.
- 4.5 The selected operator will be granted a lease for a period of 15 years with the option to break the term in the fifth and tenth year, and an associated service concession contract to deliver specific outputs. The lease and service contract will be co-terminus. The service concession contract will set out committed activities that the operator must carry out alongside fulfilling the terms of the lease. If there is a material breach of either the service contract or lease, the Council will be able to terminate both the lease and the service concession contract with the operator and look to find an alternative suitable operator.
- 4.6 The project also benefits from a successful bid for grant funding from the City of London Corporation Strategic Investment Pot. As a result, the Council will be able to offer £200,000 to the selected workspace operator as a contribution towards the final fit out works for enterprise space.

Procurement Update

- 4.7 Following a competitive tender process, it is proposed to award the contract and grant the lease of the LAES to Arbeit Project Studios Limited (Companies House registration no. 07075487). Their bid demonstrated a strong understanding of the project and that they have experience of establishing and managing creative workspaces of this kind. Their proposal includes a comprehensive package of business support and a robust approach to building a supportive environment for businesses to establish and thrive whilst providing wider social and economic value through events, training, employment, procurements, support and more. Should the recommendation be endorsed, the Council will enter into a 15-year lease with Arbeit, which will have a break clause at Year 5 and Year 10. The concession contract and lease will be co-terminus.
- 4.8 Arbeit are a mixed-use workspace provider, catering to a wide range of industries and sectors with approximately 80% of users from the creative industries. They specialize in providing affordable creative studio spaces for artists, designers, small businesses, and start-ups. They began in 2010 and are currently managing 15 sites across London with approximately 250 tenants, with an average of 97% occupancy. They have experience of managing sites ranging from small 750 sq. ft buildings to 15,000 sq. ft spaces – which they transform into studio spaces for artists, designers, makers, start-ups, and small businesses.
- 4.9 The Evaluation Panel were impressed with Arbeit's approach which is built around developing a strong partnership with the Council to create a community focused workspace, and their understanding and experience of working with and curating

¹ The equivalent planning use class in the new planning use class order would be E(g)(ii) and E(g)(iii)

² In assessing the scheme, planners noted that such businesses have high start-up and ongoing costs, and therefore in order to make the proposed enterprise space viable to the end user, the rent levels would have to be substantially discounted below the market rate for such floorspace.

programmes for the creative industries. They have recently won a Creative Placemaking Award from the Hackney Wick & Fish Island community for their work in Trowbridge Gardens, which highlighted their contribution to using arts, live experiences, and creative expression to transform public spaces for customers and communities.

- 4.10 Arbeit have committed to a comprehensive business support programme aimed at fostering a thriving business ecosystem. The programme focuses on several key areas:
- a. Jobs and employment – support local employment opportunities, and other opportunities through their expansive network.
 - b. Training and skill share - 24 workshops annually to provide businesses essential skills that range from accountancy to e-commerce to digital marketing.
 - c. Resource hub for end users – to provide information about opportunities for funds and grants tailored to diverse projects and entrepreneurial endeavours.
 - d. Event hosting and collaboration – regularly curate on-site events, such as exhibitions, insightful talks, hands-on workshops, networking sessions.
 - e. Measuring and reporting – measure success of activities quantitatively and qualitatively using tools such as surveys and questionnaires.
 - f. Workspace solutions: Creating 800m² of commercial space for 80 businesses, with flexible contracts, affordability, and workspace diversity.
 - g. Empowerment through employment - Championing London Living Wage, having a Local Site Manager, recruiting local cafe staff, facilitating internships, supporting and encouraging onsite businesses to generate employment opportunities.
 - h. Arts, culture and creative endeavours - Commissioning local artists, executing artistic programmes, implementing the "Creative in Residence" (CiR) programme, and organising artistic and creative workshops.
 - i. Community engagement and sustaining the circular economy - Supporting the local circular economy, involving local F&B suppliers, organising public activities in collaboration with the Council, and cultivating relationships with diverse community groups.
 - j. Business acumen, skills development, and educational pursuits - Delivering business-centric activities, hosting selling and networking events, collaborating with local entities and Council initiatives, and offering educational outreach in various domains.
- 4.11 Overall, the programme aims to create a supportive environment for businesses, fostering collaboration, skills development, and community engagement.

5. Financial Implications

Capital Expenditure

- 5.1 Within the Capital programme there is an expenditure allocation for Strategic Infrastructure Pot (SIP) which is fully funded by the City of London Corporation (CLC). The ambition of the project is to collaboratively deliver affordable workspace across London with the CLC working in partnership with several London Local Authorities.

- 5.2 Westminster Council have a dual role within the existing agreement. Firstly, the Council will deliver its own projects as set out in the agreement and secondly it will act as the financial custodians of the overall budget and distribute the funds to other partnering London Local Authorities once they meet the milestones set out in the SIP agreement.
- 5.3 Westminster Council, in agreement with CLC, have allocated £200,000 of available SIP funding to the Lisson Arches Enterprise Space which can be used for fit-out works. Any additional fit-out costs will be met by the selected operator.
- 5.4 As this expenditure will be fully funded and limited to £200,000 there is zero expenditure pressure on the council. The Council will also not be paying for any services delivered across the 15-year contract term.

Revenue Implications

- 5.5 In line with the stipulations of the s106 agreement the lease with the space operator will be at a discount to the market amounting to 70%, this discount has been determined in relation to the social and economic value expected to be derived.
- 5.6 There will be rental income payable by the operator to the Council over the 15-year contract period, forecasted by the operator to be £1,673,750. As the site is in the HRA, they will retain any commercial income generated. This represents a new income stream within the Business Plan, which will help offset borrowing pressures.
- 5.7 The lease will restrict the amount the space operator will be able to sublet the workspace at a range of 50%-80% of market value. All ongoing operating costs will be met by the space operator.

6. Legal Implications

The Lease

- 6.1 Paragraph 1.3 above confirms that the property is currently held in the HRA, and it is proposed that the lease will be granted to the operator when the property is still in the HRA.
- 6.2 Local authorities are given powers under section 123 of The Government Act 1972 to dispose of land in any manner they wish, including the sale of their freehold interest, granting a lease or assigning any unexpired term on a lease, and the granting of easements. However, if the land is held within the Housing Revenue Account for the purposes of Part II Housing Act 1985 then s.32(2) of the Housing Act 1985 (1985 Act) states that 'A disposal under this section may be effected in any manner but, subject to subsection (3), shall not be made without the consent of the Secretary of State'. However, the Secretary of State (SoS) has issued a number of general consents known as the General Housing Consents 2013 ("the General Consents") in order to facilitate the disposal of property vested in the HRA by local authorities if those disposals fall within the criteria set out in the General Consents. If the disposal of property held in the HRA does not fall within the criteria set out in the General Consents, then the specific consent of the SoS will be required for the particular disposal that is being considered before the disposal can proceed.
- 6.3 The General Consents provide consent for the disposal of property vested in the HRA for a consideration equal to market value without the need for the SoS's specific consent. However, this report confirms that the proposed disposal is not regarded as being a disposal at market value, as it will be for a rental that is at least 70% less

than market value. However, part A3.2 of the General Consents states that a local authority may dispose of 'vacant land'. It also goes on to say at paragraph 8 of the Commentary that local authorities are in fact permitted to dispose of 'vacant land and assets that are not dwellings' at any price determined by the local authority. The definition of 'vacant land' means land on which 'a) no dwelling-houses have been built or where dwelling-houses have been built, such dwelling-houses have been demolished or b) are no longer capable of human habitation and are due to be demolished.' It is therefore widely accepted that anything that falls outside of this definition, including commercial premises, are not subject to requiring SoS consent and can therefore be disposed of at any price determined by the local authority, and so not necessarily for a consideration equal to market value.

- 6.4 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. Conversely, if security of tenure were to be excluded, a lease will determine on expiry of the term granted. The Confidential Part B Appendix of this report indicates whether this lease is to be granted with security of tenure or whether the security of tenure provisions of the Landlord and Tenant Act 1954 are to be excluded.
- 6.5 The Equality Act 2010 requires public authorities to have due regard to the need to eliminate discrimination and advance equality of opportunity. The Council must further take into account its wider Public Sector Equality Duty (PSED) under s.149 of the Equality Act 2010 when making its' decisions. The public sector equality duty (s.149, Equality Act 2010) requires the Council, when exercising its functions, to have "due regard" to the need to: eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited under the Act, advance equality of opportunity between those who share a "protected characteristic" and those who do not share that protected characteristic and foster good relations between persons who share a relevant protected characteristic and persons who do not share it (this involves having due regard, in particular, to the need to (a) tackle prejudice, and (b) promote understanding). Part 8 below confirms whether there are any equalities implications.
- 6.6 The recommendation in this report is seeking approval to grant a lease at below market rent and service concession contract award to Arbeit Project Studios Limited ("the Operator") to manage the Lisson Arches Enterprise Space located at Lisson Grove, London, NW8 8FT to deliver services to the local community (the Services).
- 6.7 The grant of the lease is for a term of 15 years with break clause(s) at year 5 of the lease term. The lease has been granted to provide affordable workspaces at the Lisson Arches Enterprise Space. The Greater London Authority (GLA) has encouraged local authorities to provide sufficient supply of 'affordable' workspace to create an economic, social and community value in their local area. In summary, the London Plan 2021 (LP 2021), the GLA states that affordable workspace is to be provided at a rate which is below market rent for a specific social, cultural, or economic development purpose which can be provided by a public body (or other organisations or supporting body) through a grant and management arrangements. Affordable workspaces are intended to deliver specific outcomes that are considered positive for the Council and London city.
- 6.8 Under LP 2021, policy E3 in respect of affordable workspace states that planning obligations may be used by local authorities to secure affordable workspaces at rents

maintained below the market rate for social, cultural or economic development purposes such as those for specific sectors that have social value for example social enterprises or community organisations and for providing support for start-up and early-stage businesses or regeneration.

- 6.9 Policy E3 under LP 2021 encourages local authorities to include in their Development Plans the provision for affordable workspace that would be necessary or desirable to sustain a mix of business or cultural uses which will contribute to the character of a particular area within their local area. As such, to support the implementation of affordable workspace planning obligations, the Council considered a suitable workspace policy which is included as part of its Planning Obligations and Affordable Housing Supplementary Planning Document (latest adoption March 2024) under section 4.2 (Affordable workspace) along with the Affordable Workspace Informal Planning Guidance Note (latest update February 2024).
- 6.10 The Council has the power to grant the subsidised lease and any associated grant funding (for works to be carried out) under section 1 of the Localism Act 2011, subject to sections 2-4, which permits the Council to do anything that individuals generally may do. Such powers are conferred to be exercised in any way whatsoever, which include to do so for the benefit of the Council, its area or for persons resident or present in its local area.
- 6.11 The lease will be granted at a subsidised rent below market value to the Operator who must also charge end users occupiers of units within the Enterprise Space subsidised at a rate of at least 50% below market rent with at least 30% of the space to be let to end users that fulfil the criteria of being both a) local residents/businesses and b) start-ups and early-stage businesses, and a tiered range of between 50% and 80% of the market rent for the remaining 70% of the space.
- 6.12 Given the grant of the lease to the Operator is below market rent, the Council must consider compliance with the Subsidy Control Act 2022 (the Act). As the subsidised lease this is considered to be a financial assistance under section 2(2) of the Act. The Council has a duty to consider the subsidy control principles before granting the subsidised lease as set out under section 12(1) of the SCA.
- 6.13 The Act's four-limb subsidy control test has been applied in respect of the subsidised lease to be granted for the Services to be delivered and it has been determined that the subsidy is not exempt from compliance with the Act. A subsidy may be considered lawful if it satisfies the Act's Principles, meets any specific requirements applying to that type of subsidy and does not fall within a prohibited category. Officers' assessment has concluded that the subsidy relating to the grant of the recommended subsidised lease support and relate to the delivery of Services of Public Economic Interest (SPEI) in response to community need within the Council's local area. As required by section 29 of the Act, the Council's Services under the service concession contract is to be provided for the benefit of the public and if not for the subsidised lease, the services would not be provided on the Council's terms by the Operator under normal market conditions. The terms of service contract include review clauses to monitor the operation of the services and related subsidised lease.
- 6.14 Where the amount of a SPEI subsidy is granted for a period of three (3) financial years or more and exceeds the value £725,000, the Council must comply with the Act by ensuring that the subsidy granted in respect of the lease is limited to what is necessary to deliver the Services, provided in a transparent manner and is regularly reviewed. The Council must publish the details of the subsidy on the Subsidy Control Database within three (3) months of the formal decision of granting the subsidised lease.

The Service Concession Contract

- 6.15 The service concession contract will be for a term of fifteen (15) years with the associated co-terminus lease (incorporating 5-year break clauses) that will be awarded to the Operator to deliver the Services.
- 6.16 A concession contract is one where the Operator has the right to exploit the services where there is an operating risk of an economic nature with the possibility that the operator will not recoup investments made or costs incurred whilst operating and delivering the services. The risk to the Operator is that there is no guarantee of breaking even on investments made and costs incurred. However, it is understood from officers that the recommended Operator is very experienced in delivering services in operation for enterprise spaces.
- 6.17 The regulated financial threshold for procuring a concession contract is £5,372,609. The Operator has forecasted an estimated total turnover income above the regulated sum over the 15 years' service concession contract and the lease to be granted. The tender submission from the Operator includes the provision to operate a public café which is subject to the planning permission by the Council as the Local Planning Authority. It is envisaged that planning permission for the café will be granted as such the Operator's turnover sum includes an additional income in respect of revenue generated from the café for the term of the concession contract. The financial commercial arrangements are set out in Part B of this report.
- 6.18 The grant of £200,000 towards fit-out works for the enterprise space will be awarded under a Grant Funding Agreement for the appointment of a suitable contractor under a works contract to deliver the refurbishment works. This grant in respect of the works to also be awarded to the Operator must also be included as subsidy (along with subsidy related to the lease) granted to the Operator must also comply with the requirements of the Act.

7. Carbon Impact

- 7.1 The Council has committed to achieve net zero carbon emissions from operations by 2030 and across the city by 2040.
- 7.2 The scheme aligns with Westminster's City Plan – objective 7 which outlines WCC's commitment to reduce carbon by minimising detrimental impacts from developments.
- 7.3 The operator has proposed to use their award-winning fit-out design solution, using sustainable, eco-friendly, and non-toxic materials for partitions and furniture. The solution is intended to minimise wastage of materials, maximise the use of space using reusable structures, put together with simple design and easy installation process. The operator will prioritise environmental sustainability in their operations and outreach efforts. Below are some key initiatives they would promote:
- Using renewable energy providers and holding a 100% Renewable Electricity Certificate.
 - Work with local waste companies, provide recycling facilities on-site, and use sustainable and eco-friendly cleaning products.
 - Implement measures such as installing eco-friendly hand dryers instead of paper towels and using reusable cloths.
 - Workshops and Events: Organise workshops and activities promoting recycling, upcycling, and reusing objects.
 - Hosting events such as second-hand markets, repair clubs, and fabric recycling events.

- Promote biking as a commuting option and support initiatives like Bikeworks hosting bike repair workshops.
- Sponsorship of local green community projects in the Borough as part of their events programme.

8. Equalities Implications

- 8.1 As a public sector organisation, the Council has a duty under the Equality Act 2010 and the associated Public Sector Equality Duty (PSED) to ensure that the proposals do not lead to unlawful discrimination (direct and indirect), and that they advance equality of opportunity and foster good relations between those with a protected characteristic and all others.
- 8.2 The LAES will contribute to improvements for the Church Street area through access to affordable workspace, new employment opportunities and business support offered by the operator.

9. Ward Member Consultation

- 9.1 N/A

If you have any queries about this report, please contact:

Gaurav Choksi, Enterprise Space Programme Manager

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For completion by the **Cabinet Member for Planning and Economic Development**

Declaration of Interest

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

Signed: _____ Date: _____

NAME: **Councillor Geoff Barraclough** _____

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 recommendation(s) in the report entitled

Lisson Arches Enterprise Space (LAES) – Contract award and grant of Lease to the selected workspace operator partner

and reject any alternative options which are referred to but not recommended.

Signed

Cabinet Member for Planning and Economic Development

Date

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 Head of Legal & Democratic Services, Chief Operating Officer and, if there are resources implications, the Director of Human Resources (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.