

Report to:	EXECUTIVE CABINET
Date:	25 November 2020
Executive Member:	Councillor Oliver Ryan (Executive Member Finance and Economic Growth)
Reporting Officer:	Jayne Traverse (Director of Growth), Paul Smith (Assistant Director Strategic Property)
Subject:	ENVILLE HOUSE, RICHMOND STREET, ASHTON
Report Summary:	This report concerns the assignment of the leasehold interest between The Guinness Partnership and Ashton Pioneer Homes.
Recommendations:	That Executive Cabinet be recommended to agree to; <ul style="list-style-type: none"> (i) Provide consent to an assignment of the leasehold interest between The Guinness Partnership and Ashton Pioneer Homes. (ii) Regear the lease upon assignment to reflect the current market value, to extend the term and to widen the user clause for a total premium of £47,500 payable to the Council.
Corporate Plan:	The proposed transactions shall deliver corporate priorities – housing, economic growth and employment opportunities.
Policy Implications:	Consideration shall be given to the Corporate Policy; Disposal of Council Owned Land due to the long lease.
Financial Implications: (Authorised by the statutory Section 151 Officer & Chief Finance Officer)	<p>The report requests consent to an assignment of the leasehold interest between The Guinness Partnership and Ashton Pioneer Homes and then regear the lease upon assignment to reflect the current market value, to extend the term and to widen the user clause for a total premium of £47,500 payable to the Council.</p> <p>This sum will be a non-recurrent capital receipt for the Council, which may be reduced by any associated costs incurred, to enable this assignment and regearing to take place. There is an agreement for reasonable fees. This relates to transaction costs up to £2,000. Costs above this will reduce the net capital receipt.</p> <p>Members should be satisfied that this is the most appropriate course of action for the Council as section 2.3 of the report presents alternative options one of which is an open market sale that could generate a receipt in excess of £ 200,000. However, section 3.2 of the report aims to explain the rationale for the proposed lease option.</p>
Legal Implications: (Authorised by the Borough Solicitor)	<p>The Council must ensure that it complies with its Disposal Policy to ensure that there is transparency in dealings and that all relevant laws are complied with.</p> <p>Section 123 of the Local Government Act 1972 imposes a duty to achieve a particular outcome namely the best price reasonably obtainable.</p> <p>Further the R v Darlington BC ex parte Indescon [1990] 1 EGLR 278 (Kennedy J) set out some principles known as the "Indescon principles":</p>

"...a court is only likely to find a breach or an intended breach by a council of the provisions of section 123(2) of the [LGA]1972 if the council has (a) failed to take proper advice or (b) failed to follow proper advice for reasons which cannot be justified or (c) although following proper advice, followed advice which was so plainly erroneous that in accepting it the council must have known, or at least ought to have known, that it was acting unreasonably"(282H)

(1)...the public authority may pray in aid "the common-sense rule underlying the old proverb: "A bird in the hand is worth two in the bush" ":Indescon (see also R(Lidl(UK)GmbH) v Swale Borough Council [2001]EWHCAdmin405(MorisonJ))

Public authority was therefore entitled to conclude sale notwithstanding possibility arising at a later stage of higher offer.

(2)...the public authority does not enjoy the benefit of hindsight, thus: "although there is a duty to probe and to explore any offer that may be made there may also be a danger that too much probing or indecisiveness may lead to the loss of a bargain..."

For the purposes of section 123, the only consideration to which regard maybe had is that which consists of those elements of the transaction of commercial or monetary value, capable of being assessed by valuers: R v Pembrokeshire CC exp Coker [1999] 4AllER1007;RvHackney LBC exp Lemon Land [2001] EWHCAdmin346 [2002] JPL405

Although there is no particular prescribed route to achieve the best price reasonably obtainable, there may be circumstances in which an actual sale to the market is the only way to achieve it as opposed to one particular sale at a price according to an independent valuation. In considering what is an appropriate valuation HM Treasury guidelines: "Managing Public Money" recommend seeking "Value assets at market prices using Royal Institute of Chartered Surveyors 'Red Book". Clearly the test of what any land is worth is selling it and seeing the highest price that can be obtained.


Risk Management:

In proceeding with the recommended course of action, there are limited risks to the Council:

- it mitigates against the further deterioration of a vacant property and it supports the Council Housing Strategy
- Alternate courses of action carry financial, legal and reputational risks to the Council

Background Information:

The background papers relating to this report can be inspected by contacting Mathew Chetwynd – Estates Business Manager

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1. INTRODUCTION

- 1.1 The Council entered into a lease agreement for nil consideration with Northern Counties Housing Association Limited (now The Guinness Partnership) on 15 February 1999 in respect to the subject property, Enville House. The property was initially used as a 'Single Men's' Hostel and the Council limited the user clause as per the lease agreement.
- 1.2 The Guinness Partnership discontinued use of the property in 2017 and it has been vacant since with areas falling into disrepair. There are no existing Council files to indicate why the Guinness Partnership did not surrender the lease to the Authority as per the terms of the agreement, or records to indicate what discussions may have taken place between the Council Estates team or Homeless Service and The Guinness Partnership, however it is assumed to be related to the Supporting People revenue grant cut previously provided by the Council which made the arrangement viable.
- 1.3 The lease is for a term of 99 years from the date of the agreement and expires on 14 February 2098 with 78 years remaining. The Guinness Partnership secured funding (via the Housing Corporation at the time) and used this together with their own capital monies to convert and refurbish the property to ensure that it was fit for purpose in accordance with the terms of the lease.
- 1.4 In accordance with the lease, the Guinness Partnership agreed a number of user clauses and agreed the following as summarised, which have been in breach since the property has been vacant:
 - a) To keep open and occupy for the restricted use of a Single Men's Hostel.
 - b) To repair and maintain The Demised Premises in accordance with the repairing clause.
 - c) To maintain The Demised Premises in good decorative order and condition.
 - d) To keep the hedges fences gardens yard grounds and paths generally in proper and neat order.
 - e) Not allow more than ten single men and one warden to reside at The Demised Premises.
 - f) If the Lessee no longer uses The Demised Premises for the defined use then following service of at least 28 days' notice the Council can take possession of the property.
 - g) The authorised use to be as a Temporary Housing Hostel for homeless single men.
- 1.5 The Council were contacted by Ashton Pioneer Homes ('APH') in 2017 to advise that the property was vacant and that they are seeking to take an assignment of the lease from the Guinness Partnership with a view to convert the property into 8 self-contained flats that would be available for affordable rent. APH advised that they had agreed to acquire the leasehold interest held by the Guinness Partnership for the equivalent of £335,000 (three hundred and thirty five thousand pounds).
- 1.6 This sum is understood to consist of the following;
 - £200,000 Homes England grant liability relating to the initial refurbishment and;
 - A direct payment of £135,000 from APH to The Guinness Partnership representing a proportion of their outstanding book value after the Homes England grant liability.
- 1.7 In addition, APH have advised that they would intend to invest a further £483,839 in converting and refurbishing the property. The conversion costs would be funded using APH's own resources as the Homes England subsidy would not be available for the project.
- 1.8 In order to support the transaction in addition to providing consent to the assignment, the Council have been asked to accept a surrender of the remaining 78 year lease term and grant a new lease term of 125 years. Furthermore, as the current lease restricts the use of the property to a 'Temporary Housing Hostel for homeless single men', it would be necessary for the Council to widen the user clause to permit the property to be used for affordable rent.

2. CURRENT POSITION

2.1 APH have suggested that in January 2018 that they engaged with the Council and that they believed that the Council would consent to the assignment and similarly allow a surrender and renewal to take place subject to legal and financial due diligence. Whilst any positive feedback provided by the Council was without prejudice, and required Council Governance it has become apparent that APH have spent a considerable amount of time and resource in progressing the transaction at their own risk. Their work to date includes securing:

- A structural survey in March 2018.
- Planning permission (18/00737/FUL) in October 2018.
- Building Regs approval in April 2019.
- Competitive tenders and contractor appointed in July 2019.

2.2 Following review of the proposed transaction, the Estates Service agree that whilst the principles of the proposed transaction are practical in respect to restoring use of a vacant property, there are several complex matters that were not considered or had been discussed between the parties:

- a) The Council granted a long-lease to The Guinness Partnership in 1999 at nil consideration to enable refurbishment of the property and The Guinness Partnership invested a significant capital sum in return, therefore The Guinness Partnership hold a financial interest to the property irrespective of its usage and the principles related to the former service.
- b) The Guinness Partnership have not provided homeless accommodation from the property since late 2017. As a consequence, the building has been vacant since the service stopped, areas have fallen into disrepair and The Guinness Partnership are in breach of their user clauses to the Council.
- c) Whilst discussion may have taken place between the Council and The Guinness Partnership in respect to the continuation and use of the property following discontinuation of the service and grant, there are no records held by the Council, or have been provided by The Guinness Partnership in respect to the property interests. In view of the user clause breaches as summarised in section 1.4 of this report, the Estates Service has investigated further and considered the proposed transaction to APH in further detail, in addition to other unrelated options that the Council could take such as utilising the property for its own purposes or disposing of the property on an open market basis.

2.3 In order to assist the Council in making a decision, a Red Book valuation has been commissioned, which presents the following valuation scenarios and appraisals for the Council to consider:

- a) £245,000 as an open market unrestricted sale.
- b) £210,000 with a user clause restricting to affordable rent.
- c) £170,000 with a user clause restricting to its current use as a homeless hostel for single men
- d) £8,350 for the Council's freehold interest based on the remaining lease term of 78 years
- e) £850 for the difference in the Council's freehold interest to increase the remaining 78 year lease term to 125 years.
- f) £70,000 open market value for a cleared site
- g) Any dilapidations notices served on to The Guinness Partnership are likely to be limited to a maximum of £25,000

3. TRANSACTION OPTIONS APPRAISAL

3.1 APH have constructed a proposed transaction to which the Council have agreed to in principle, however the following options also need to be considered and agreed in order ensure that the options are properly considered and a decision is made in the best interests of the Council,

considering the implications extending beyond the property transaction. On the assumption that The Guinness Partnership would comply with a surrender of their lease under terms other than that proposed by APH, the Council would likely consider the following options:

a) Transfer the freehold interest in the property to APH at market value

In proceeding with this approach, the Council would generate a capital receipt of circa £245,000 in line with the independent valuation. This would likely be a more expensive option for APH who are paying a capital sum of £135,000 to The Guinness Partnership and assuming liability for £200,000 of historic grant as part of the transaction. This approach is likely to result in APH withdrawing their interest.

b) Advertise the Freehold property on the open market

As with option A, in proceeding with this approach the Council would receive a capital receipt likely in the region of £245,000. Whilst this approach would appear transparent, it is likely to cause relationship issues with APH who as a result of historic discussions with the Council, have spent considerable resources at risk towards this transaction. In the likely event that APH are not the highest bidder, this would likely cause damage to the reputation between the parties and result in a number of units available for affordable rent being lost.

c) Retain the property for operational use

Whilst the Council is accelerating the rationalisation and disposal of its operational property in light of changes relating to COVID-19, the property is residential and could be put into operational use to support the Council's Homeless Services with relative ease and with an estimated fit out cost of less than £250,000 to provide light refurbishment and adaptations. The property previously operated as a homeless shelter and its current format is conducive to this continued use with bedsit type accommodation providing private lounge / bedroom and kitchen space along with communal bathroom facilities shared across the 10 units. There is no operational need for the Council to acquire this building to meet operational needs and it would be expedient to dispose of land no longer required or needed to fund the capital programme to maintain, restore build those we do, whilst enabling much needed housing provision by APH.

d) Proceed with APH's proposal and grant consent to the assignment of the lease from The Guinness Partnership to APH with an extension to 125 years and widen the user clause with a premium payable to the Council

This proposal would be the simplest approach for the Council insofar that APH feel that the Council have previously agreed to carry out the requested range of transactions in principle. Whilst this option would proceed as APH intended, in accordance with the independent valuation advice received it would also attract a premium of £47,500 plus reasonable fees payable by APH to the Council which APH had not initially factored. The premium consists of the difference between the value (£40,000) of the lease with the user clause widened to affordable rent, and premium (£7,500 incorporating an £850 reduction for off-setting the Council's reversionary freehold interest value) for extending the lease from 78 years to 125 years. This option contributes to the Housing Strategy, providing affordable housing stock and produces income via Council Tax. This option also supports the work being carried out by a partner organisation and brings inward investment to the Borough and New Homes Bonus funds will be granted to the provider as a part of the scheme. In addition, the Council will retain the freehold interest to the property and a further benefit can be realised at the end of the 125 year term.

3.2 It is important to factor that most options considered other than APH's proposed transaction would present a risk to the Council in triggering The Guinness Partnership to surrender their lease. Furthermore upon serving notice and whilst unlikely, it is possible that The Guinness Partnership could reinstate the property within a 28 day time period and resume operations which could result in dispute. Limited direct discussions have been made with The Guinness Partnership over the situation, however it is clear that they do not wish to risk or prejudice their arrangements with APH and have limited engagement.

4. LOCAL GOVERNMENT ACT 1972 AND GENERAL CONSENT

- 4.1 In determining an outcome to the position, the Council must have consideration to section 123 of the Local Government Act 1972 where a local authority has the power to dispose of land. The premium that the Council is requesting as a part of the proposed transaction reflects best consideration, which is supported by the independent valuation commissioned.

5. RECOMMENDATIONS

- 5.1 As set out on the front of this report.