



Haringey Council

Report for:	Decision taken under Special Urgency Procedure	Item number	
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Title:	Hornsey Central Depot
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Report authorised by:	Director of Place and Sustainability Signed Date
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Lead Officer:	Dinesh Kotecha, Head of Corporate Property
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Ward(s) affected: All	Report for Key Decision
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1. Purpose of the report

- 1.1. Following Cabinet decision on 12 February 2013 to endorse the selection by Sainsbury's Supermarkets Limited ("SSL") of St James Group Ltd. (highest ranking under-bidder) as the preferred developer, this report summarises and seeks approval under urgency provisions to the final terms now negotiated.

2. Recommendations

- 2.1. To approve the final financial terms now reported (in the exempt part of this report) and agree to a variation of the contract based on those financial terms between the Council and SSL dated 16 September 2010. .

3. Reason(s) for Recommendation(s)

- 3.1. Having completed respective due diligence checks all three parties to the land transactions have reached agreement on the detailed terms and confirmed readiness to enter into legal binding contracts (subject to planning).

4. Options Considered

- 4.1. Reject the amendments sought by St. James. This is not recommended as there is a real likelihood that the deal will fall away leaving the council and SSL to re market the whole site and seek another developer without any certainty that the terms can be improved.
- 4.2. Resist the amendments sought by St. James and continue to negotiate – this is not recommended as it will cause further delay and increase the risk of planning not being achieved prior to the new Community Infrastructure Levy (CIL) arrangements being implemented resulting in significant increase in development costs and therefore a reduced land value.
- 4.3. Agree the changes with St. James but seek to share the financial impact with SSL – this is neither realistic nor reasonable given that the land agreement between SSL and the council provides that the whole of the sale proceeds comes to the council and therefore SSL does not share in the upside or downside.

5. Background information

- 5.1. The council entered into a Contract on 16 September 2010 to dispose of the former Hornsey Depot site to SSL subject to SSL finding a developer to redevelop the whole site and obtaining best consideration.
- 5.2. The Cabinet on 12 February 2013 resolved to authorise the Head of Corporate Property Services after consultation with the Cabinet Member for Finance and Carbon Reduction, to agree the finalised terms outlined in paragraph 5.3 below, for the sale and development of the council's land interest at the former Hornsey Depot site, jointly with Sainsbury's (SSL) to St James Group Ltd (St James).
- 5.3. **Exempt**
- 5.4. However, subsequent to the Cabinet meeting in February, issues relating to development cost pressures have been raised by St. James as detailed in section 6 of this report. As Cabinet in February could not have been made aware of these issues and the revised terms vary to a degree from those previously reported, it is now advised that the decision should be made at Cabinet level rather than through the earlier delegation. The Cabinet Member for Finance and Carbon Reduction has been consulted and concurs with this course of action and the recommendations.
- 5.5. The decision to approve final terms is now being sought under Special Urgency procedures in order not to incur delay that could jeopardise the contract and consequently the development scheme.
- 5.6. St James have carried out the necessary site investigation work and pre-application consultation with the Planning service and other stakeholders to check the feasibility for delivering the mixed use outputs proposed and test acceptability in terms of planning policies, community needs and regeneration aspirations for the area in terms of the balance of uses, densities, design concepts and environmental impacts etc.
- 5.7. Whilst further detailed work and consultations are required to enable a planning application to be submitted, St. James has confirmed readiness to enter into legal contract with SSL, subject to agreeing a number of amendments being agreed to deal with issues arising as a result of the detailed assessment of costs and risks. These are outlined in the next section.

6. Emerging Issues – development cost pressures

6.1. Having addressed the range of issues arising from their detailed assessment St James brought forward three main cost issues which they attributed to matters not allowed in their initial development appraisal which informed the offer made to the Council in February 2013. These are:-

- Cost of indemnity insurance to protect against defects in the Council's title and potential compensation payable to anyone claiming third party rights.
- Additional Stamp Duty Land Tax (SDLT) arising from the election to charge VAT on the land transaction
- Potential Rights of Light compensation.

Indemnity Insurance

6.2. As a part of the council's interest comprises land registered under possessory titles, St James has assessed the risk of compensation payable to owners emerging who may claim legitimate rights. St James has obtained an estimate to insure against this and have sought to reduce the price offered to meet these costs.

6.3. It was accepted that if the need for such insurance is deemed necessary by the developer it would be normal for the cost to be reflected in the price offered. However the council contended that guarantees to title have been given and any adjustment to the price for this cost is not acceptable at this stage.

6.4. St. James have conceded this point and agreed to absorb the cost pressure subject to reaching agreement in respect of other cost pressures.

Stamp Duty Land Tax

6.5. As a result of the detailed discussions on the legal documents to implement the three way land transaction, St. James identified an additional SDLT liability on the purchase price arising as a result of the land transaction going via SSL who elect to waive the VAT exemption on the land transaction.

6.6. The council has validated this liability and it was accepted that St. James had stated clearly in their offer that the SDLT provision was based on the assumption that no VAT would be charged on the land transaction.

6.7. **Exempt**

6.8. St James have agreed to absorb 50% of the additional costs by way of a reduction of the contribution towards the council's professional fees, subject to reaching agreement on the potential cost of rights of light compensation not previously assessed (see next paragraph).

Rights of Light (RoL)

6.9. The preliminary report from the Rights of Light study commissioned by St James has highlighted that a number of residential properties in the vicinity could be affected by the proposed development resulting in potential compensation claims being made.

6.10. St James contend that no allowance was made in their appraisal for RoL matters requiring a full assessment as communicated in their offer letter dated 30 January 2013 and are unable to take full liability for the associated compensation costs.

6.11. **Exempt**

6.12. RoL compensation is a legitimate development cost which, if included within St James's development appraisal, would reduce the land value payable to the Council. It was accepted that St. James did make it clear in their offer letter dated 30 January 2013 that no allowance had been made for RoL matters requiring a full assessment.

6.13. Unfortunately neither the council nor SSL had any information to lead us to believe this was required and it was assumed to be of low risk as the previously selected developer had never raised this as a commercial issue.

6.14. .

7. Best Consideration

7.1. If agreed, the changes negotiated will mean the developer makes a reduced amount of contribution towards the council's legal and surveyor costs and the council accepts a defined level of risk for right of light compensation payments above an agreed threshold that the developer will absorb. There will be no change to the headline price previously agreed but it will be subject to a potential downward adjustment in the event the right of light costs exceed the amount the developer has agreed to absorb.

7.2. **Exempt**

7.3. **Exempt**

7.4. Notwithstanding the potential reduction in the agreed purchase price resulting from the right of light impact of the proposed development on adjoining properties, the transaction with St James still offers best consideration for the Council.

8. Comments of the Chief Finance Officer and financial implications

8.1. Agreement of the recommendations within this report will potentially reduce the capital receipt to be received, compared to the estimate in the February 2013 Cabinet report depending on the outcome of any Rights of Light claims. This will need to be reflected in projections for capital receipts going forward.

8.2. As rights of lights issues are likely to be a factor in any commercial offer made, this amendment to the previously agreed terms is highly unlikely to impact on the decision as to which offer represents best consideration.

9. Head of Legal Services and legal implications

9.1. The Council is under contract to dispose of the land to SSL. Under the terms of this contract SSL has to obtain best consideration for the whole of the site. The price on offer is likely to be reduced by the amounts set out in the exempt part of this report. The Council's valuer must therefore be satisfied that the amount on offer still represents best consideration.

10. Equalities and Community Cohesion Comments

10.1. The capital receipts generated from the disposals will support the Council objectives benefiting the wider community.

11. Policy Implications

11.1. The proposals are consistent with the Council's Corporate Asset policy as set out in the Asset Management Plan.

12. Use of Appendices (None)

13. Local Government (Access to Information) Act 1985

13.1 The report contains exempt information and is **not for publication**. The exempt information is under the following category (identified in amended schedule 12A of the Local Government Act 1972):

S(3) Information relating to the financial or business affairs of any particular person including the authority holding the information.