

Report for: Cabinet 12 December 2017

Item number: 11

Title: Freehold Disposal of the property known as Kurdish Community Centre, Fairfax Hall, 11 Portland Gardens, London N4 1HU– a Disposal under section 123 Local Government Act 1972 and under the General Disposal Consent (England) 2003.

Report authorised by: Lyn Garner – Strategic Director of Regeneration, Planning and Development

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Ward(s) affected: St Ann's.

**Report for Key/
Non Key Decision:** Key Decision.

1. Describe the issue under consideration

- 1.1 The Kurdish Community Centre (“KCC”) (Company No. 04046072) have made a written request to acquire the freehold interest of the Kurdish Community Centre, Fairfax Hall (shown edged red on the Site Plan attached at Appendix 1) (“Kurdish Community Centre site”), The site is occupied by KCC but will be acquired by the newly formed entity called Yek-Kurd Community Interest Company (Yek-Kurd CIC) company no: 10221323. The company is owned by a number of shareholders.
- 1.2 This Report seeks approval to dispose of the Council’s freehold interest in the Kurdish Community Centre site for a sum below the open market value as set out in paragraph 3.2 of this Report and that such disposal be guided by the principles of the Council’s Community Asset Transfer (CAT) policy, safeguarding the building for future community use.

2. Cabinet Member Introduction

- 2.1 This Report seeks approval for the disposal of the Council’s freehold interest at an undervalue of the Kurdish Community Centre (KCC) located in the St Ann’s ward of the Borough to the new Community Interest Company (CIC).
- 2.2 The voluntary and community sector activities undertaken at the Kurdish Community Centre helps to secure the promotion and improvement of the economic, social and environmental well-being of this area of the Borough. The rationale to justify the undervalue by taking into account the tenant improvements made to the building are reasonable and acceptable.
- 2.3 The asset will be protected for community use by ensuring that the freehold title contains certain restrictions that prevents the asset from being used for any other purpose other than a Community Centre.

3. Recommendations

- 3.1 To declare the Kurdish Community Centre site (as shown in the red line Plan in **Appendix 1**) surplus to requirements.
- 3.2 To authorise the disposal of the Council's freehold interest in the Kurdish Community Centre site to Yek-Kurd CIC for a sum of £593,000 (Five Hundred and Ninety-Three Thousand Pounds) for the reasons set out paragraph 4 of this Report and on the terms and conditions set out in Appendix 2 of this Report.

4. Reasons for decision

- 4.1 The Kurdish Community Centre have long expressed a desire to acquire the freehold of the Kurdish Community Centre site. In the event that the council would support such a position the organisation has systematically fundraised to enable them to purchase the building with the aim of continuing to provide social and economically beneficial services to the Kurdish Community and run the Centre for general Community Wellbeing.
- 4.2 The Cabinet on 3rd July 2017 approved a Community Asset Transfer (CAT) Policy which generally supports the transfer of Community Buildings on a leasehold basis where it can be shown that:
- a) there is a social and economic benefit,
 - b) where communities can be enabled to take a long term interest in the building
 - c) organisations can be better enabled to take attract long term funding
- 4.3 In preparation for the acquisition, a separate community asset company, Yek-Kurd CIC has been set up KCC. The Community Interest Statement states that:
"the company will carry on its activities for the benefit of the community, or a section of the community. The company's activities will provide benefit to Kurdish people living in London and the United Kingdom. Yek-Kurd aims to provide services to meet the social, cultural and legal needs of Kurdish people. These services also include working with other organisations in the UK to build a greater network to support its activities for helping people in difficulty in the UK."
- 4.4 Freehold disposal
KCC have requested the acquisition be agreed on a freehold basis in the light of the significant improvements they have made to the building; they are however very willing to accept restrictive covenants to ensure that that the building remains in community use.
- 4.5 The Council has the powers under section 123 of the Local Government Act 1972 to dispose of land in any manner it wishes, including sale of its freehold interest. The only constraint is that a disposal must be for the best consideration reasonably obtainable, otherwise the Council must obtain the consent of the Secretary of State.
- 4.6 The Kurdish Community Centre have demonstrated a significant contribution to social and economic outcomes in the borough (as set out in paragraph 4.9) and have secured external funding from the National Lotteries Board to enlarge and improve the condition of the building for the benefit of the community. In 2015 KCC fundraised to refurbish the canteen/kitchen area which is being used by a local women's Kurdish group who provide meals on wheels' services.
- 4.7 It is proposed that in this case the Council transfers the freehold interest to KCC's newly formed Community Interest Company. To safeguard the continued community

use of the building in the context of the freehold transfer it is proposed to impose conditions on the sale in line with those set out in the CAT Policy which will include:

- a) A covenant to ensure that no redevelopment of the site and building can take place.
- b) A covenant restricting use of the site and building to community use only.
- c) An option that the Council would have first right of refusal to re-purchase the site if the organisation is no longer able to manage or maintain the condition of the site and building. If this happens at any point in time in the future, then the re-purchase price will be at the same consideration sum that Yek-Kurd CIC paid the Council plus an on a RPI increase.

4.8 Community Benefits:

KCC provides significant socio-economic benefits to the Borough. The site is identified as a key area of community space in the Borough and the terms of the transfer will safeguard this use. The aims and objectives of KCC is to:

- To relieve poverty and have provisions to provide advice in areas such as immigration, welfare rights, housing, health and education.
- To work towards the preservation and promotion of Kurdish language, art, literature and cultural heritage.
- To assist Kurdish children in their mainstream education by running a supplementary school to develop their core subjects.
- To encourage adult education, increase access to employment and enable Kurdish people to gain confidence by providing language courses and information technology training.
- To improve the social and cultural lives of the Kurdish community by organising entertainment events.
- To divert the Kurdish youth from crime by providing social, cultural and educational activities for them.
- To provide advice & advocacy, educational, and cultural activities for adults and children throughout London.

4.9. Below briefly describes the social and economic benefits KCC provides to the community in line with the Council's Corporate Plan and Priorities:

4.9.1 For Community Resilience - KCC provide:

- Sources of general information, advice and guidance to the Kurdish and wider local communities on benefits, immigration, employment, and housing – this project supported 650 clients between September 2016 to July 2017.
- Housing related support and interpreting services is available free to local residents
- Access to free English classes/courses – approx. 200 clients
- Kurdish language classes are offered – approx. 55 children attending

4.9.2 For Community Participation - KCC work with a wide network of members offering peer support and engagement in community activities.

4.9.3 For Community Health and Wellbeing - KCC provides:

- Free nutritious meals are available in a community setting to improve health and reduce social isolation for older and disabled community members
- Turkish and Kurdish talking therapy sessions for those suffering with mental ill health

4.9.4 For Community Identity and Cohesion - KCC is a base for Kurdish cultural events and lessons i.e. folk dance classes which has 45 community members

- 4.9.5 For Community Asset - KCC provides free access to small local community groups to use meeting spaces in the Centre and to local residents to host family events at an affordable cost.
- 4.10 KCC's Improvements
Historically, the Kurdish Community Centre (KCC) occupied the site (being the former Fairfax Hall building) under a Tenancy at Will (TAW) from 31st December 1997. On 20th August 1998 the main hall of the building was severely damaged by fire and the cost of the reinstatement works for the building were recoverable under the Council's Building Insurance policy.
- 4.11 As the building had to be largely rebuilt, KCC wanted to take the opportunity to carry out improvement and refurbishment works to the building in parallel to the insurance works.
- 4.12 During 1999, KCC had in principle secured funding in the sum of £180k from the National Lottery for the planned improvements works. It was a requirement of the community fund that the organisation had a formal lease in place for the building for a term of 25 years. As a result, a full repairing lease dated 20th December 2001 was entered into with KCC for a term of 25 years from 20 December 2001 at an initial annual rent of £22,000 exclusive (current rent payable is £32,200 per annum). In addition, the Council entered into a Collateral Agreement with the National Lotteries Board which covered repaying back the community fund in case the Council exercised the Landlord's option to break the Lease within the duration of the lease term.
- 4.13 Landlord's formal consent was granted and documented under a Licence to Alterations dated 18th July 2003 to enable KCC to undertake the improvement works. Essentially, the works included extending the first floor to create more teaching classrooms, library space and a new roof. KCC also appear to have invested some funds raised directly by the community into improving the ground floor space.
- 4.14 The Lease states that the cost of improvements is not to be reimbursed to KCC if the lease terminates, therefore, any increase in capital value as a result of the KCC's improvements made to the building is to the benefit of the Council as the landlord. Nonetheless, KCC also benefits as under the Landlord and Tenant Act 1927 tenant's improvements are to be disregarded upon rent review for a period of 21 years, during which time the newly assessed rent per annum should reflect the value of the unimproved building.
- 4.15 Valuation of the site
The Council instructed Property Consultants GL Hearn to value the building based on its existing use. The main factor affecting value is that the property must only be used as a D1 Community Centre.
- 4.16 The market valuation for the Kurdish Community Centre site is £829,000 (Eight Hundred and Twenty-Nine Thousands Pounds). The valuation remains the same whether the transfer is freehold or leasehold because the use will remain restricted to D1 – Community Centre.
- 4.17 The current rental value payable for the building excluding the tenant's improvements is £32,200k per annum. This rent was being supported through circular funding, a policy which is now being phased out across Haringey's community buildings, meaning KCC would have to pay the rent from 1st April 2019.

- 4.18 The rental value of the improved space (tenant's improvements) has been assessed at £33,750 per annum but this is currently disregarded as set out in para 4.14 above.
- 4.19 Sale value
Notwithstanding the provisions of Section 123 of the Local Government Act 1972 (see para 4.5) the Council may, under the General Disposals Consent Order (England) 2003, dispose of assets for less than market value where it considers that the disposal would help secure the promotion or improvement of the economic, social or environmental well-being of the area.
- 4.20 It is recommended that the site is offered to KCC at an undervalue as it fully meets the requirement of providing a significant contribution to the promotion and improvement of the area in socio-economic terms as set out in paragraph 4.8 of this Report.
- 4.21 In order to calculate the value of any discount applied to the market price, account is taken of the substantial investment secured and made by KCC in the fabric of the building. The methodology for the discount calculation is to capitalise the annual rental disregard to which KCC would have otherwise been entitled if they had continued to rent the building.
- 4.22 There are seven years remaining of the disregard period. The aggregation of the rental discount over seven years of the current lease is £236k (£33,750 per annum x 7 years = £236k). The net present value (NPV) of the discount sum in seven years' time has been calculated at £121,105. For the purpose of this report, it is recommended that the sum of £236k is reflected and reduced from the capital valuation (i.e. £829k - £236k = £593k).
- 4.23 It is recommended that KCC is offered the Council's freehold interest of the site at an undervalue in a sum of £593,000 (Five Hundred and Ninety-Three Thousand Pounds).
- 4.24 Where the council decides to dispose of an asset at undervalue a clear rationale must be evident. In this instance the rationale for the undervalue is the socio economic contribution made by the organisation in question.

The undervaluation calculation is made possible by a fairly unique set of circumstances in the borough in that this organisation has carried out improvements by investing a significant amount of money, effectively increasing the floor space of the building by 100%.

5. Alternative options considered

5.1 The following alternative options have been considered:

- 5.1.1 Do nothing: under this option the KCC would pay the phased community market rent then move onto full lease terms upon lease renewal;
- 5.1.2 Disposal via a 125 lease as per the CAT policy at market value;
- 5.1.3 Disposal via a 125 lease at an undervalue;
- 5.1.4 Disposal via freehold at full market;
- 5.1.5 Disposal via freehold at an undervalue value (CAB report of July 3rd July 2016 states that there can be a freehold disposal but certain conditions must be met such as investment not being available unless there is a freehold transfer).

5.2 Given the significant improvements KCC have made to the building and having regard to the organisation's social and economic impact, it is considered appropriate to dispose of the freehold interest rather than a leasehold interest, therefore 5.1.1, 5.1.2 and 5.1.3 are not suitable options. Freehold disposal at market value has been considered however

given the reasons as set out in section 4.20 above option 5.1.5 is considered to be appropriate. KCC have stated that they are able to fundraise better and leverage more community funds if the building is freehold. They have already raised the capital funds from the Kurdish community to purchase the building freehold.

- 5.3 In order to safeguard the Asset for community use and purpose the freehold disposal will also contain restrictive covenants and conditions as per the CAT Policy. The main covenants being that a) no redevelopment of the site and building is permitted, b) the site to be used for community use only and c) a requirement that the Council would have first right of refusal on the site if the organisation is no longer able to manage and maintain the condition of the building and site.
- 5.4 If the freehold disposal does not proceed then KCC will remain a tenant under the terms of the existing lease. The rental value of the tenant's improvements would only be taken into account after year 2025 which would be upon the next rent review or lease renewal date. The current Lease expires on 31 March 2027 and KCC have security of tenure giving them a legal right to renew the lease.

6. Background information

- 6.1 Haringey has one of the largest Kurdish communities in London and KCC provide key vital services not only to its own community members but the to the wider community of Haringey.
- 6.2 The local Kurdish community of Haringey have for a long time been connected to the Kurdish Community Centre premises at Fairfax Hall. KCC was initially set-up to facilitate integration and to empower Kurdish refugees who sought refuge in the United Kingdom. The aim of the organisation was to improve the quality of Kurdish lives by providing services designed to advance their education, relieve poverty, promote health and well-being as well as supporting recreational activities.
- 6.3 The main aim and objective of the KCC is to provides advice & advocacy support to Kurdish people on matters such as housing, health, education, employment, legal concerns; Kurdish and English language, IT skills classes.
- 6.4 The advice and advocacy service is reported to be the most highly demanded service since the formation of the organisation, and has been very effective. KCC is a Centre dedicated to help and assist those members of the community who are considered to be the most in need. KCC also has supported local communities by providing assistance on a wide range of issues including advice on welfare benefit, immigration, general disputes, and housing issues.

7. Contribution to strategic outcomes

- 7.1 The KCC contributes to the promotion and improvement of the social and economic well-being of the area and contributing specifically to the Corporate Plan:
- 7.1.1 **Priority 2:** Enable all adults to live healthy, long and fulfilling lives
- 7.1.2 **Priority 3:** Create a clean and safe borough where people are proud to live, with stronger communities and partnerships.

**Statutory Officers comments (Chief Finance Officer (including procurement),
Assistant Director of Corporate Governance, Equalities)**

Finance

- 8.4 The KCC has expressed an interest in acquiring the Kurdish Community Centre, Fairfax Hall and this report responds to that expression of interest. The recommendations of this report are to declare the property Kurdish Community Centre, Fairfax Hall surplus to requirements and to dispose to the Yek-Kurd Community Interest Company (Yek-Kurd CIC) company no: 10221323 for £593,000 which represents a discount of £236,000 to the full open market value. The reasons for the discounted price and the methodology for calculating the discount are set out in the report.
- 8.5 The report identifies a number of options open to the Council in responding to the KCC expression of interest in acquiring the freehold interest in the property.
- 8.5.1 Do nothing. Under this option the KCC would pay the phased community market rent then move onto full lease rental terms upon lease renewal. The value to the Council of this option after June 2025 is estimated at £65k per annum exclusive.
- 8.5.2 Disposal via a 125 lease as per the CAT policy at market value. The value to the Council of this option is £829k
- 8.5.3 Disposal via a 125 lease at an undervalue. The value to the Council of this option is £593k.
- 8.5.4 Disposal via freehold at full market £829k.
- 8.5.5 Disposal via freehold at an undervalue £593k.
- 8.6 It can be seen that in financial terms that the disposal via a 125-year lease and a freehold disposal are identical.
- 8.7 The freehold disposal will be subject to provisions that:
- 8.7.1 restrict the use of that building to community use;
- 8.7.2 restrict the redevelopment of the site; and
- 8.7.3 provide for the Council to re-purchase the property at the sale price should the organisation not be able to manage the site.
- 8.8 The conditions attached to the freehold disposal seek to protect the Council's interest in the property's continued community use and to restrict development gain. It needs to be recognised that these protections are not as strong as those afforded through the granting of a lease and as such there is a risk that the Council's objectives may not be met.
- 9.0 Procurement
- Procurement Team have been consulted and they have confirmed that they have no comments to add as this is a Disposal.

10.0 Legal Services

- 10.1 The Kurdish Community Centre site is on non-housing land, therefore the Council powers to dispose of such land is under Section 123 of the Local Government Act 1972. The Council can dispose this land in any manner it wishes, but it must obtain best consideration that can reasonably be obtained otherwise, it must obtain the consent of the Secretary of State.
- 10.2 The proposed disposal is at an undervalue. However, the Council will have the power to dispose of the land at an undervalue providing it meets the requirements of the General Disposal Consent 2003, where the undervalue is less than £2m and where it considers that the disposal would help secure the promotion or improvement of the economic, social or environmental well-being of its area.
- 10.3 Members should be satisfied that this report demonstrates that the disposal will help secure the promotion or improvement of the economic, social or environmental well-being of its area.
- 10.4 As the Council is seeking to dispose of its freehold interest prior to the expiry of the lease, the Council would also need to obtain a release from the National Lotteries Board from its obligations in the Collateral Agreement referred to in paragraph 6.3. The release must be a condition of the transfer.

11.0 Equality

- 11.1 The **Equality Act 2010** places a '**General Duty**' on all public bodies to have '**due regard**' to the need to:
- Eliminating discrimination, harassment and victimisation and any other conduct prohibited under the Act
 - Advancing equality of opportunity for those with 'protected characteristics' and those without them
 - Fostering good relations between those with 'protected characteristics' and those without them.
- 11.2 As set out above, the Kurdish Community Centre (KCC) plays an important role in advancing equality of opportunity for the Kurdish Community, providing support including legal and housing advice and ESOL. Even more importantly it provides a community hub, and a place of welcome and friendship for members of this community, who have often arrived as refugees and experience a number of disadvantages. The Centre is a hub for the Kurdish community both in the local area and for London as a whole.
- 11.3 The KCC also fosters good relationships between the Kurdish and wider communities in the local area. It hosts a number of wider groups and community events.
- 11.4 The transfer of this community asset as a freehold to the Yek-Kurd Community Interest Company, as opposed to a leasehold has been agreed in accordance with particular cultural sensitivities within this community about permanent ownership. There are exceptional reasons why this particular community feels strongly about having a permanent home, in the form of a freehold transfer. A leasehold transfer was rejected by the community. The decision to offer the Yek-Kurd CIC a freehold transfer has been taken in order to prevent them being discriminated against on the basis of these strong cultural preferences.

11.5 Mitigating actions have been put in place, in the form of a covenant, to ensure that the centre remains in community use for perpetuity, or to guarantee that the Council is able to buy back the asset, if community use is no longer viable. There is no potential for the CIC to gain financially from the decision and it has been made purely on cultural grounds. Therefore, it is not felt that the decision will unfairly advantage this community, over other communities who will be offered leasehold transfers in accordance with the Community Asset Transfer policy.

12. **Use of Appendices**

Appendix 1- Site Plan

Appendix 2 – Heads of Terms for Disposal of Freehold

Appendix 3 – Equalities Impact Assessment

13. **Local Government (Access to Information) Act 1985**

13.1 Background Documents:

1. Lease dated 22 December 2001 to Kurdish Community Centre
2. Companies House Website
3. Kurdish Community Centre's Memorandum and Articles of Association

