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## Property Investment – Supporting Information

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### 1. Introduction/Background

- 1.1 Traditionally local authority property acquisition has been for the direct purpose of operational delivery of services. However, as a result of the increasing financial challenges facing local government it was considered that the Council should consider the potential opportunities available to it to generate new revenue income streams through property investment.
- 1.2 West Berkshire Council through its Corporate Programme Board resolved to examine in detail the opportunities available to it through a programme of strategic property purchases enacted through a Property Investment Strategy.
- 1.3 This report outlines the Property Investment Strategy which it is recommended that the Council adopt.
- 1.4 The Strategy focuses on the outright acquisition of Commercial Property by West Berkshire Council for the direct benefit of bringing increased revenue streams from these properties over the long term.
- 1.5 West Berkshire Council may also engage in the acquisition of property for operational uses, for example to deliver housing need or through joint ventures. However such acquisitions do not form part of this Property Investment Strategy.
- 1.6 The Capital Programme refresh and Investment and Borrowing Strategy 2017/18 expressed a recommended increase in borrowing limit to accommodate an increase in the capital programme of £50m to enable property acquisition through this investment strategy (note – there may be additional capital allocation for investments outside of this strategy).
- 1.7 The Property Investment Strategy will be structured to invest a minimum of £25m rising to £50m.
- 1.8 To progress toward the creation and implementation of a Property Investment Strategy, WBC has appointed Jones Lang LaSalle (JLL) to offer professional advice on the content, form and structure of a suitable investment strategy.
- 1.9 The proposed strategy by JLL is attached with this report in Appendix C. Additionally a JLL report on the background to the content of the Strategy is in Appendix D.

### 2. Supporting Information

#### **Business Case**

- 2.1 The proposal for the acquisition of commercial property for purposes of revenue income is based on the following key Business Case principles:

(1) Financial benefits through competitive borrowing available to LA's

WBC Medium Term Financial Strategy states the need for WBC to close the gap between expenditure and income including by means of income generation.

It is expected the management of a balanced commercial property portfolio, acquired through affordable, sustainable and value for money means from capital borrowed through the Public Works Loans Board (PWLB), will meet the objectives of WBC.

With the acquisition of property investments set against the level of borrowing WBC benefits from (being favourable compared with the private sector financing rates), it is expected that the investment return will be in excess of the opportunity cost of capital and thus profitable.

Appendix E of this report offers financial information on the expected rate of return on the investment.

(2) Long term performance of property when compared with other forms of investment.

Over time, commercial real estate has produced strong returns with low volatility compared to other investment classes and has generated consistent income returns.

This is supported by examples of Local Authorities which have already approved formal commercial property acquisition strategies and are currently benefitting from incomes streams from these investments. A few examples include:

- Bracknell Forest Council
- Surrey County Council
- Portsmouth City Council
- Epsom & Ewell Borough Council
- Hampshire County Council
- Sevenoaks District Council

The level of investment and strategy adopted by the different local authorities is determined by factors such as the size of the organisation and financial capacity to invest.

For example Portsmouth City Council has invested a total of £117,500,000 in the space of a calendar year, mainly in industrial and retail property.

More aligned with WBC's proposed strategy, Bracknell Forest Council has invested £40m. £15m has been invested this calendar year. These investments are purchased through delegated authority to the Chief Executive upon the approval of an investment board. Investments are made directly by the Council.

(3) Powers within Legislation

Powers within legislation affording local authorities the opportunity to borrow and invest for the prudent management of the Council's financial affairs and in this context acquisition of property for investment purposes.

The legal implications are discussed in more detail later in this document in sections 2.27 to 2.30

### Return on Investment

- 2.2 Appendix E of this report indicates the estimated annualised cost of borrowing and return on investment for an investment of both £25m and £50m.
- 2.3 The return on investment is based on Public Works Loan Board 50 year Maturity Certainty Rates at 2.53% (taken at 23 February 2017).
- 2.4 Once fully invested (twelve to eighteen months) from a yield of 6% this offers a potential surplus income of £463,997 (1.86%) on £25m and £954,280 (1.91%) on £50m invested.
- 2.5 The acquisition of investment properties is intended to be made directly by West Berkshire Council, which offers financial benefit in terms of:
- (1) The property acquired is the Transfer Of a Going Concern (TOGC) and thus no VAT arises for the purchase. There may be cases where the Seller elects VAT then the Council would be able to recoup it.
  - (2) No capital gains tax is payable on the capital increase in value;
  - (3) No corporation tax is payable.

The acquisition will be subject to Stamp Duty Land Tax (SDLT) and fees associated with the consultants acting for WBC in the acquisition process.

### Investment criteria

The JLL strategy proposes the following key investment criteria:

- 2.6 It is proposed to invest up to a total of £50m of capital, in commercial property with a minimum individual property value of £3m and maximum value of £10m spread across core, core plus and opportunistic asset types and spread across the different sectors (eg: retail, office, and industrial) from anywhere within the United Kingdom.
- 2.7 Investment is proposed UK wide including within West Berkshire Council's own area. No more than 35% will be in any single region and limited to no more than 25% in any single town/city (once fully invested).
- 2.8 The proposed strategy further balances the risks by ensuring investment in sector and lot size are within a limited percentage of the overall investment.
- 2.9 In addition to meeting the above key criteria a number of other considerations will be used in the selection of a property including building condition, lease terms and rent reviews.

### Acquisition process

- 2.10 When considering the acquisition process, the following options have been considered:
- (1) By way of delegated authority resting entirely with an external organisation/consultant acting for the Client, determining how the investment is made and completing acquisitions without further input of the Client.

This is not proposed owing to increased cost for professional fees as well as lack of control by WBC as client particularly with property investment being a new activity for WBC.

- (2) All activity being conducted entirely in house without the input of any specialist professional external support.

This is not proposed as WBC does not currently have the detailed expertise or market knowledge. Additionally this option would impact on time and resource.

- (3) Further option is to act as an ‘informed client’ with overall responsibility in-house but utilising specialist property consultants, with acquisition decisions signed off entirely through the Delegated Authority of an individual within WBC.

This is not proposed owing to the individual risk of significant investments and the lack of Member involvement in the investments.

- (4) The preferred option is for WBC to act as an ‘informed client’ with overseeing the acquisition process being internal, utilising specialist property consultants. The decision process would be by way of Delegated Authority, following the full involvement and approval of a Property Investment Board (see Governance)

2.11 Through discussion within WBC and consultation with JLL on acquisition processes, a flowchart is attached as appendix F to this report showing the stages within the acquisition process. In summary the key elements are:

- (1) The WBC appointed property agent will conduct an assessment of the property for compliance with the WBC Strategy and issue to WBC Property Services;
- (2) If recommended for approval, a report with recommendation will be issued by the WBC Property Services Manager to the members of the Property Investment Board (PIB). If satisfied to progress the PIB will approve the acquisition of the individual property. Upon approval Property Services will instruct the property agent to carry out formal negotiations with the sellers agent and if successful offer final acquisition report;
- (3) Final Delegated Authority will then be sought from the Head of Legal Services.
- (4) The sale will proceed to completion.

2.12 It is expected that, based on an investment of £50m and subject to property availability WBC would be fully invested in approximately 12 to 18 months from commencement.

### **Governance and Reporting**

2.13 Formal governance of both the acquisition process and the ongoing management of the invested commercial property portfolio is to be through a Property Investment Board (PIB).

2.14 The PIB terms of reference will include the following:

- (1) To make recommendation to approve or reject the proposal to progress with the acquisition of an individual property;
- (2) To make the recommendation to approve or reject the proposal to progress with the disposal of an individual property;

- (3) To receive quarterly performance reports (including an Annual Review report) conveying information on acquisitions, costs, total capital commitment and performance of the investment;
- (4) To make decisions having received recommendations in quarterly or annual review reports.

2.15 The PIB is to be a joint Officer and Member board formed from the following:

- (1) The Corporate Director – Economy and Environment (Chair) (or substitute)
- (2) The Head of Finance and Property (or substitute)
- (3) The Head of Legal Services (or substitute)
- (4) Executive Portfolio Holder for Finance (or alternative Executive member)
- (5) Executive Portfolio Holder for Property & Assets (or alternative Executive member)

Reporting Officers to the PIB will be the Property Services Manager and the external consultant property agent.

2.16 The members of the PIB or their substitute will collectively be responsible for the recommendations made by them having received reports.

2.17 By preference the PIB would meet to consider reports but where circumstances require it, the PIB can meet 'virtually' to consider reports and make recommendations.

2.18 The annual review of the investment property portfolio is to align with the annual reporting for the capital programme and capital programme refresh.

2.19 The budget manager allocated to the capital budget for property acquisition will report to the Capital Strategy Group in accordance with established reporting processes (quarterly budget monitoring and Corporate Directors Reports).

2.20 It is further proposed that following the submission of quarterly reports to the PIB, a report is to be offered to Corporate Board for information.

### **The Client role**

2.21 WBC Property Services Team will oversee the acquisition process and acquired assets as an *informed client*, drawing on both its own internal knowledge and resources supplemented with external advisers offering specialist services for activities that are outside of WBC area of expertise.

2.22 Duties of the Property Services Team will include:

- (1) Recording and maintaining property data;
- (2) Appointing and performance managing external consultants;
- (3) Preparing written reports for the Property Investment Board;
- (4) Attending Property Investment Board meetings;
- (5) Liaising with WBC colleagues within Finance and Legal Services.

2.23 The WBC Property Services Team will be responsible for the acquisition process and ongoing responsibility for the portfolio once invested.

2.24 The Property Services Manager will be the Officer with principle responsibility for offering internal resource/services and for the appointment and performance

management of the agreed external specialist consultants, necessary to manage the acquisition process and long term ongoing management of the assets.

- 2.25 The acquisition, disposal and management of the invested portfolio will also require additional service input from other WBC teams, principally that of legal services and financial services.
- 2.26 In both the acquisition of properties and ongoing management of the investment property portfolio, Property Services will appoint an external agent to:
- Seek property opportunities, initial scrutiny and recommendation;
  - Carry out negotiations and bidding for individual properties;
  - Conduct the acquisition process to completion;
  - Independent valuations and rent reviews.
- 2.27 With strong governance from the PIB, it is expected that sufficient levels of Client input and control will be in place to make informed decisions for WBC.

### Legal implications

- 2.28 Specific powers relating to setup of the Property Investment Strategy:
- (1) Sections 1 and 12 of the Local Government Act 2003 affords the Council broad powers allowing it to invest and to borrow, in each case either for purposes relevant to the performance of any of their functions or generally for the prudent management of their financial affairs.
  - (2) Under Section 120 of the Local Government Act 1972 the Council may also acquire property by agreement located either inside or outside of their district for the purposes of any of their functions, including their investment functions, or otherwise for the benefit, improvement or development of their area.
  - (3) Under section 111 of the Local Government Act 1972 the Council may also take any action (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, which would again include their investment functions.
  - (4) Under section 1 of the Localism Act 2011, the General Power of Competence (GPC) the Council is allowed to invest in property or to hold property assets for a return and if this is essentially an activity for a commercial purpose then it cannot be undertaken directly by the Council under section 4 of the Localism Act 2011 but would need to be carried out through a company.
- 2.29 In exercising its powers under Section 1 and 12 of the Local Government Act 2003 the Council should have regard to DCLG Guidance on Local Government Investments (Guidance). The Guidance advocates the preparation of a prudent investment policy which the Council will be expected to follow in its decision making process unless a sensible and cogent reason is articulated for departing from it. The Guidance defines a prudent investment policy as having two objectives: achieving first of all **security** (protecting the capital sum from loss) and then **liquidity** (keeping the money readily available for expenditure when needed) followed by **yield**.

2.30 In relation to investment and borrowing functions (see 2.22(1) above) the Council needs to ensure that any actions in connection with the property investment are reasonable and proportionate and for proper purposes consistent with the Council's prudential regime and its investment strategy. Investment decisions also need to be taken mindful at all times the Council's fiduciary duties to ensure the sound management of public finances.

2.31 Post implementation of the Property Investment Policy

- (1) Legal due diligence will be required on all property acquisitions to include a review of title and ownership and searches and enquiries of the vendor in order to ascertain relevant liabilities and restrictions connected with the subject property.

The results of the legal enquiries and any associated risks should be considered prior to any decision to enter into contract.

- (2) On any sale of an investment property the Council will be required to obtain best consideration in accordance with s123 of the Local Government Act 1972. Usually this will be achieved by placing the property onto the open market or otherwise in respect of a sale agreed off market, demonstrating by way of professional valuation that it is achieving no less than market value for the property.

### **3. Proposals**

3.1 It is proposed to implement the Property Investment Strategy to enable the progression with the acquisition of commercial properties.

3.2 It is proposed to conduct the acquisition of property in accordance with the delegated authority process detailed within the Strategy (having consulted and received the approval of the Property Investment Board) and within the Scheme of Delegation as set out in the recommendation of the report.

3.3 It is proposed to delegate to the Head of Finance and Property in consultation with the Portfolio Holder for Property authority to appoint suitable consultants in accordance with the Contract Rules of Procedure (Part 11 of the Constitution).

3.4 It is proposed to manage any acquired investment properties within the property portfolio, managed by the Assets team, Property Services.

### **4. Conclusion**

4.1 Based on the business case for the acquisition of commercial property as a long term revenue income stream, it is recommended that WBC proceed with such acquisition of a balanced investment property portfolio (giving regard to minimising risk) in accordance with the Property Investment Strategy.

### **5. Consultation and Engagement**

5.1 Professional input has been received from Jones Lang LaSalle (JLL), professional property consultants in preparing this report and the Property Investment Strategy.

5.2 The content of this report has involved consultation with WBC officers including from Finance and Legal Services.

**Subject to Call-In:**

Yes:  No:

The item is due to be referred to Council for final approval   
Delays in implementation could have serious financial implications for the Council   
Delays in implementation could compromise the Council's position   
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months   
Item is Urgent Key Decision   
Report is to note only

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**Wards affected:**

No specific ward is impacted by this report

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**Strategic Aims and Priorities Supported:**

The proposals will help achieve the following Council Strategy aim:

**MEC – Become an even more effective Council**

The proposals contained in this report will help to achieve the following Council Strategy priority:

**MEC1 – Become an even more effective Council**

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**Officer details:**

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### Equality Impact Assessment - Stage One

We need to ensure that our strategies, policies, functions and services, current and proposed have given due regard to equality and diversity as set out in the Public Sector Equality Duty (Section 149 of the Equality Act), which states:

- “(1) A public authority must, in the exercise of its functions, have due regard to the need to:**
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;**
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; This includes the need to:**
    - (i) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;**
    - (ii) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;**
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with due regard, in particular, to the need to be aware that compliance with the duties in this section may involve treating some persons more favourably than others.**
- (2) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.**
- (3) Compliance with the duties in this section may involve treating some persons more favourably than others.”**

The following list of questions may help to establish whether the decision is relevant to equality:

- Does the decision affect service users, employees or the wider community?
- (The relevance of a decision to equality depends not just on the number of those affected but on the significance of the impact on them)
- Is it likely to affect people with particular protected characteristics differently?
- Is it a major policy, or a major change to an existing policy, significantly affecting how functions are delivered?
- Will the decision have a significant impact on how other organisations operate in terms of equality?
- Does the decision relate to functions that engagement has identified as being important to people with particular protected characteristics?
- Does the decision relate to an area with known inequalities?
- Does the decision relate to any equality objectives that have been set by the council?

Please complete the following questions to determine whether a full Stage Two, Equality Impact Assessment is required.

<b>What is the proposed decision that you are asking the Executive to make:</b>	To approve the Property Investment Strategy.
<b>Summary of relevant legislation:</b>	Local Government Act 1972 Local Government Act 2003 Localism Act 2011
<b>Does the proposed decision conflict with any of the Council’s key strategy priorities?</b>	No
<b>Name of assessor:</b>	Richard Turner
<b>Date of assessment:</b>	20 March 2017

Is this a:		Is this:	
Policy	Yes/No	New or proposed	Yes/No
Strategy	Yes/No	Already exists and is being reviewed	Yes/No
Function	Yes/No	Is changing	Yes/No
Service	Yes/No		

<b>1. What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?</b>	
<b>Aims:</b>	To generate new long term revenue income streams
<b>Objectives:</b>	To purchase investment properties and manage those properties to achieve the aims.
<b>Outcomes:</b>	To achieve new revenue income for the benefit of operational services of WBC.
<b>Benefits:</b>	To bring more certainty of budget and self sufficiency for the benefit of West Berkshire residents.

**2. Note which groups may be affected by the proposed decision. Consider how they may be affected, whether it is positively or negatively and what sources of information have been used to determine this.**

(Please demonstrate consideration of all strands – Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.)

Group Affected	What might be the effect?	Information to support this
Age	None	
Disability	None	
Gender Reassignment	None	
Marriage and Civil Partnership	None	
Pregnancy and Maternity	None	
Race	None	
Religion or Belief	None	
Sex	None	
Sexual Orientation	None	
<b>Further Comments relating to the item:</b>		

<b>3. Result</b>	
<b>Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?</b>	<b>Yes/No</b>
<b>Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?</b>	<b>Yes/No</b>

If your answers to question 2 have identified potential adverse impacts and you have answered ‘yes’ to either of the sections at question 3, or you are unsure about the impact, then you should carry out a Stage Two Equality Impact Assessment.

If a Stage Two Equality Impact Assessment is required, before proceeding you should discuss the scope of the Assessment with service managers in your area. You will also need to refer to the [Equality Impact Assessment guidance and Stage Two template](#).

<b>4. Identify next steps as appropriate:</b>	
<b>Stage Two required</b>	No
<b>Owner of Stage Two assessment:</b>	
<b>Timescale for Stage Two assessment:</b>	

Name: Richard Turner

Date: 20 March 2017

Please now forward this completed form to Rachel Craggs, Principal Policy Officer (Equality and Diversity) ([rachel.craggs@westberks.gov.uk](mailto:rachel.craggs@westberks.gov.uk)), for publication on the WBC website.