
4 The Sector – new lease

Committee considering report:	Executive
Date of Committee:	16 th December 2021
Portfolio Member:	Councillor Ross Mackinnon
Date Head of Service agreed report: <i>(for Corporate Board)</i>	27 th October 2021
Date Portfolio Member agreed report:	Report agreed 17th November 2021
Report Author:	Ann McManners
Forward Plan Ref:	

1 Purpose of the Report

- 1.1 West Berkshire Council has freehold ownership of an office building in Newbury, 4 The Sector, which forms part of the council’s commercial property portfolio. The building comprises approximately 27,500 square feet lettable area of high grade office space of which 8,230 sq.ft. is leased out to a tenant.
- 1.2 The purpose of this report is to recommend the creation of a new lease for the remaining unlet areas of the building. The lease will be for 10 years (with a tenant option to break at 5 years). WBC Property Investment Board has seen and agreed this proposal.

2 Recommendation(s)

- 2.1 That the Executive resolves:
- 2.2 To grant the lease on the remaining parts of the property known as 4 The Sector Newbury, on the terms outlined in this report provided that the:
 - (a) Head of Finance and Property, in consultation with the Portfolio Member for Finance and Property will have delegated authority for the form of lease and associated agreements; and
 - (b) Service Lead for Legal and Democratic Services shall have the delegated authority to enter into the lease and associated agreements in this connection.

3 Implications and Impact Assessment

Implication	Commentary

<p>Financial:</p>	<p>The lease is for a ten year period, with a 5 year break (this being a tenant break at the end of the fifth year, on giving six months’ notice, subject to up to date payment of the principle rent and service charges, and providing the demise free from third party occupation).</p> <p>The lease is subject to no rent free period because WBC wishes to receive income straight away.</p> <p>The rent at review will be based on the Consumer Price Index but with a minimum and maximum uplift per annum.</p> <p>At present, the building is part vacant and this costs the council approximately £206,000 per annum for business rates, service charges, repairs and insurance. This is on top of management and borrowing costs of £293,675 per annum. Once the tenant takes occupation, the full £206,000 of costs will be paid by the them.</p> <p>Once this lease is signed and assuming this takes place early in January, we expect the 4 The Sector to cover its own costs within the first year and to make a surplus of £95,000 in year 2 and increasing surpluses in the following years.</p> <p>The whole commercial portfolio will make a profit of £500,000 this financial year rising to £1M next year. The Heads of Terms agreed currently does not expect WBC to make a capital contribution towards fitting out.</p> <p>Consultees:</p> <p>Andy Walker, Head of Finance and Property</p> <p>Date report agreed 27th October 2021</p> <p>Joseph Holmes, Executive Director of Resources and s.151 Officer</p> <p>Date report agreed 28th October 2021</p>
<p>Human Resource:</p>	<p>No impact identified</p>
<p>Legal:</p>	<p>The council’s internal Legal Services team has been appointed to provide the services to create the new lease.</p> <p>Shiraz Sheikh, Service Lead – Legal and Democratic Services</p> <p>Date report agreed 28th October 2021</p>

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Risk Management:	<p>At present, part of the building is vacant and the additional costs to the council are approximately £206,000 per annum for insurance, rates, service charges and repairs. Once the building is fully let, the costs and risks attached to the occupation of the building will fall to our tenants and not the council.</p> <p>The Heads of Terms includes the provision for a lease within the Landlord & Tenant Act 1954, and tenant only break. This affords the tenant the potential to remain in the building for as long a period as they wish.</p> <p>Although this offers less control by the landlord, the covenants provided by both tenants are very strong. The credit rating for the new tenant from Dun & Bradstreet is 5A1, and this is the best possible credit rating.</p>			
Property:	<p>Once the building is fully let, the property will form part of the council's commercial portfolio and there will be ongoing management of the tenants.</p>			
Policy:	<p>The lease will be held within the commercial property portfolio, in accordance with the council's Property Investment Strategy.</p>			
	Positive	Neutral	Negative	Commentary
Equalities Impact:		√		
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		√		

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B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		√		
Environmental Impact:		√		
Health Impact:		√		
ICT Impact:		√		
Digital Services Impact:		√		
Council Strategy Priorities:	√			This letting will ensure that a blue chip company and local employer retains office space in Newbury and this will positively support the priority of supporting businesses to thrive in West Berkshire. The tenant would otherwise have to consider moving away to Theale or Reading.
Core Business:		√		
Data Impact:		√		
Consultation and Engagement:	<p>Jon Varney, Deal Varney Commercial Property Agents, Jeremy Metcalfe, Hollis Hockley Commercial Property Agents Kevin White, Montagu Evans Property Investment Advisers West Berkshire Council Property Investment Board Andy Walker, Head of Finance and Property Joseph Holmes, Executive Director, Resources Shiraz Sheikh, Service Lead - Legal and Democratic Services</p>			

4 Executive Summary

- 4.1 The property was purchased by WBC with completion on 27th April 2018.
- 4.2 The property although vacant, benefitted from a twenty four month ‘escrow’ agreement for the payment of rent, rates, and service charges by the vendor until April 2020.
- 4.3 On the expiry of the escrow payments, the building remained vacant with cost liabilities falling to the council. For 2020/21 the cost pressure has been minimised by the final escrow payment and use of the risk fund which has accumulated within the portfolio during 2018/19 and 2019/20.
- 4.4 The lease will let the remaining parts of the building on a full repairing and insuring terms. WBC will no longer have to pay vacant building costs of approximately £206,000 for this financial year once this lease has commenced.
- 4.5 The tenant will carry out their own specific fit-out works funded themselves. There is no expected landlord capital expenditure.
- 4.6 The tenant has an excellent covenant and is a blue chip company with a Dun & Bradstreet credit rating of 5A1, which is the best possible score.
- 4.7 Should the other tenant in the building operate a break option after 5 years, the new tenant would like to take over the entire building.
- 4.8 The new tenant is keen to progress urgently to a position where the parties can formally sign a lease.

5 Supporting Information

Introduction

- 5.1 Introduction and West Berkshire Council has freehold ownership of an office building in Newbury, 4 The Sector, which forms part of the council’s commercial property portfolio. The building comprises approximately 27,500 square feet lettable area of high grade office space of which 8,230 sq.ft. is leased out to a tenant.
- 5.2 The purpose of this report is to recommend the creation of a new lease for the remaining unlet areas of the building. The lease will be for 10 years (with a tenant option to break at 5 years). WBC Property Investment Board has seen and agreed this proposal.

Background

- (a) As part of its acquisition of commercial property in accordance with West Berkshire Council’s Property Investment Strategy, following recommendation at Property Investment Board on 15th February 2018, the council resolved at its Executive meeting on 22 February 2018 to progress with the acquisition of 4 The Sector, Newbury Business Park, Newbury.
- (b) The property was purchased by WBC with completion on 27th April 2018.

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- (c) The property sits within the invested portfolio of the Property Investment Strategy which comprises 9 individual assets spread across sectors and regions.
- (d) The property although vacant, benefitted from a twenty four month 'escrow' agreement for the payment of rent, rates, and service charges by the vendor until April 2020.
- (e) On the expiry of the escrow payments, the building remained vacant with cost liabilities falling to the council. For 2020/21 the cost pressure has been minimised by the final escrow payment and use of the risk fund which has accumulated within the portfolio during 2018/19 and 2019/20.
- (f) A tenancy was granted in April 2021 for 8,230 sq. ft. of the building.

Proposals

- 5.3 The proposed tenant has approached the council's property agents with interest in leasing the remaining parts of the building at 4 The Sector. Approval has been communicated by the tenant's board to progress. The lease will let the remaining parts of the building on a full repairing and insuring terms. WBC will no longer have to pay vacant building costs of approximately £206,000 for this financial year once this lease has commenced.
- 5.4 The tenant has provided WBC with a copy of the last three years' accounts. A Dun & Bradstreet credit report shows a rating of 5A1, which is the best possible score. Both demonstrate that the tenant has a strong covenant.
- 5.5 Although there is a tenant break in the lease at the end of the fifth year (with six months' notice), the prospective tenant has requested the option to occupy the whole building should another tenant vacate.
- 5.6 The lease is also granted within the provisions of the Landlord and Tenant Act 1954 and this allows the tenant to renew the lease at the end of the 10 year term.
- 5.7 The tenant will carry out their own specific fit-out works funded themselves.
- 5.8 The new tenant is keen to progress urgently to a position where the parties can formally sign a lease.

6 Other options considered

- 6.1 To decline the proposed lease and continue to market the vacant property on the basis of letting the property at a higher rent in the future and with an Open Market Review at the end of year 5. The vacant costs attached to the building are substantial and we consider that leaving the building part vacant is too high a risk to the council.

The office market is challenging at present given the fall-out from Covid and so it is difficult to predict how long the building would remain partially vacant.

- 6.2 To dispose of the freehold, removing the property from the portfolio. This option is available to WBC but the council will find itself in a similar situation to the previous vendor in needing to offer incentive through escrow rent payments or a reduced value.

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The market has also been impacted since the purchase in 2018 by both Brexit and more recently Covid19.

7 Conclusion

7.1 That Corporate Board recommends that a new lease should be entered into on the terms described.

8 Appendices

None

Corporate Board's recommendation

*(add text)

Background Papers:

*(add text)

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 Committee or associated Task Groups within preceding six months

Item is Urgent Key Decision

Report is to note only

Wards affected: *(add text)

Officer details:

Name: *(add text)

Job Title: *(add text)

Tel No: *(add text)

E-mail: *(add text)

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Document Control

Document Ref:		Date Created:	
Version:		Date Modified:	
Author:			
Owning Service			

Change History

Version	Date	Description	Change ID
1			
2			

Please delete guidance (blue text) once assessment is completed.

Appendix A

Equality Impact Assessment (EqIA) - 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.

What is the proposed decision that you are asking the Executive to make:	
Summary of relevant legislation:	
Does the proposed decision conflict with any of the Council's priorities for improvement? <ul style="list-style-type: none"> • Ensure our vulnerable children and adults achieve better outcomes • Support everyone to reach their full potential • Support businesses to start develop and thrive in West Berkshire • Develop local infrastructure including housing to support and grow the local economy Maintain a green district • Ensure sustainable services through innovation and partnerships 	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please indicate which priority and provide an explanation
Name of Budget Holder:	
Name of Service/Directorate:	
Name of assessor:	
Date of assessment:	
Version and release date (if applicable):	

Is this a ?		Is this policy, strategy, function or service ... ?	
Policy	Yes <input type="checkbox"/> No <input type="checkbox"/>	New or proposed	Yes <input type="checkbox"/> No <input type="checkbox"/>
Strategy	Yes <input type="checkbox"/> No <input type="checkbox"/>	Already exists and is being reviewed	Yes <input type="checkbox"/> No <input type="checkbox"/>
Function	Yes <input type="checkbox"/> No <input type="checkbox"/>	Is changing	Yes <input type="checkbox"/> No <input type="checkbox"/>
Service	Yes <input type="checkbox"/> No <input type="checkbox"/>		

(1) What are the main aims, objectives and intended outcomes of the proposed decision and who is likely to benefit from it?	
Aims:	
Objectives:	
Outcomes:	
Benefits:	

(2) Which groups might be affected and how? Is it positively or negatively and what sources of information have been used to determine this?		
<i>(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)</i>		
Group Affected	What might be the effect?	Information to support this
Age		
Disability		
Gender Reassignment		
Marriage and Civil Partnership		
Pregnancy and Maternity		
Race		
Religion or Belief		
Sex		
Sexual Orientation		
Further Comments:		

(3) Result	
Are there any aspects of the proposed decision, including how it is delivered or accessed, that could contribute to inequality?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Please provide an explanation for your answer:	
Will the proposed decision have an adverse impact upon the lives of people, including employees and service users?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Please provide an explanation for your answer:	

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 EqIA 2.

If an EqIA 2 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 EqIA guidance and template – <http://intranet/index.aspx?articleid=32255>.

(4) Identify next steps as appropriate:	
EqlA Stage 2 required	Yes <input type="checkbox"/> No <input type="checkbox"/>
Owner of EqlA Stage Two:	
Timescale for EqlA Stage Two:	

Name:

Date:

Please now forward this completed form to Pamela Voss, Equality and Diversity Officer (pamela.voss@westberks.gov.uk), for publication on the WBC website.

Appendix B

Data Protection Impact Assessment – Stage One

The General Data Protection Regulations require a Data Protection Impact Assessment (DPIA) for certain projects that have a significant impact on the rights of data subjects.

Should you require additional guidance in completing this assessment, please refer to the Information Management Officer via dp@westberks.gov.uk

Directorate:	
Service:	
Team:	
Lead Officer:	
Title of Project/System:	
Date of Assessment:	

Do you need to do a Data Protection Impact Assessment (DPIA)?

	Yes	No
<p>Will you be processing SENSITIVE or “special category” personal data?</p> <p><i>Note – sensitive personal data is described as “data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Will you be processing data on a large scale?</p> <p><i>Note – Large scale might apply to the number of individuals affected OR the volume of data you are processing OR both</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Will your project or system have a “social media” dimension?</p> <p><i>Note – will it have an interactive element which allows users to communicate directly with one another?</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Will any decisions be automated?</p> <p><i>Note – does your system or process involve circumstances where an individual’s input is “scored” or assessed without intervention/review/checking by a human being? Will there be any “profiling” of data subjects?</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

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	Yes	No
Will your project/system involve CCTV or monitoring of an area accessible to the public?	<input type="checkbox"/>	<input type="checkbox"/>
Will you be using the data you collect to match or cross-reference against another existing set of data?	<input type="checkbox"/>	<input type="checkbox"/>
Will you be using any novel, or technologically advanced systems or processes?	<input type="checkbox"/>	<input type="checkbox"/>
<small>Note – this could include biometrics, “internet of things” connectivity or anything that is currently not widely utilised</small>		

If you answer “Yes” to any of the above, you will probably need to complete [Data Protection Impact Assessment - Stage Two](#). If you are unsure, please consult with the Information Management Officer before proceeding.

Heading

*(add text)