

Title of Report	Capital Update and Property Disposals and Acquisitions Report	
Key Decision No	FCR S089	
For Consideration By	Cabinet	
Meeting Date	21 November 2022	
Cabinet Member	Philip Glanville, Mayor of Hackney	
Classification	Open	
Ward(s) Affected	All	
Key Decision & Reason	Yes	Spending or Savings
Implementation Date if Not Called In	28 November 2022	
Group Director	Ian Williams, Finance and Corporate Resources	

1. CABINET MEMBER'S INTRODUCTION

- 1.1 This report updates members on the capital programme agreed in the 2022/23 budget.
- 1.2 Through the proposals in these monthly reports we demonstrate our commitment to meeting our manifesto pledges as well as continuing to deliver against the Council's revised Corporate Plan to Rebuild a Better Hackney.
- 1.3 This month £75k of investment in parks equipment is proposed in order to continue to maintain our green open spaces to a high standard for our residents. Investment of £643k of S106 monies in our highways is also noted.
- 1.4 This month approval is also sought for granting a lease for a commercial unit at Tower Court. This recommendation follows consideration with the Council's Area Regeneration division and engagement with the CCG as health partners.
- 1.5 I commend this report to Cabinet.

2. GROUP DIRECTOR'S INTRODUCTION

- 2.1 This report updates Members on the current position of the Capital Programme and seeks approval as required to enable officers to proceed with the delivery of those schemes as set out in section 3 of this report.
- 2.2 **Proposed Disposal of D1 commercial unit at Tower Court:** This report updates members on the current position on the Tower Court development and seeks approval to dispose of the D1 commercial unit on the ground and first floors of Block D (Daubenton Court), shown for identification purposes in the Appendices 1-3 edged in red, for a lease term of up to 125 years, following the withdrawal of the Hatzola Ambulance Service from the Agreement for Lease for this space.
- 2.3 Cabinet approval is required as a lease term over 7 years exceeds the delegated authority of the Director of Strategic Property who, under the Schedule of Delegations provided for within the Portfolio of the Group Director of Finance & Corporate Resources (FR105), has authority to approve leases and subleases for a term of up to 6 years and 364 days. The original Cabinet approval to dispose of the space was given at the Cabinet meeting of 23 January 2017 (Key Decision NH K55) and permission was obtained to dispose of the space as an ambulance bay to Hatzola only.

3. RECOMMENDATION(S)

- 3.1 That the scheme for Climate, Homes & Economy as set out in section 11 be given approval as follows:**

Parks Equipment and Machinery 2022/23: Spend approval of £75k in 2022/23 is requested to purchase equipment and machinery to carry out maintenance to the borough's parks.

- 3.2 That the s106 scheme summarised below and set out in section 12 be noted:**

S106	2022/23 £'000	2023/24 £'000	Total
Capital	404	239	643
Total Capital S106 for Noting	404	239	643

- 3.3 That the re-profiling of the budgets as set out in Section 13 and summarised below be approved:**

Current Directorate	Re-Profiling 22/23	Re-Profiling 23/24	Re-Profiling 24/25
	£'000	£'000	£'000
Non-Housing	(18,403)	15,735	2,667
Housing	4,487	(4,487)	0
Total	(13,916)	11,249	2,667

- 3.4 That the capital programme adjustments as set out in Section 14 and summarised below be approved:**

Current Directorate	Capital Adjustments 22/23
	£'000
Non-Housing	(34)
Housing	0
Total	(34)

- 3.5 To authorise the Council to grant a lease or leases of up to 125 years in respect of the commercial unit at Tower Court shown for identification purposes only in the Appendices 1-3 edged in red.**
- 3.6 To authorise the Group Director of Finance and Resources to negotiate and agree the commercial terms relating to the grant of the lease(s) of the commercial unit at Tower Court.**
- 3.7 To authorise the Director of Legal, Democratic and Electoral Services**

to prepare and sign the necessary legal documentation and any ancillary documentation required in order to implement the grant of the leasehold interest(s) in respect of the commercial unit at Tower Court.

- 3.8 **To authorise the grant of the lease(s) and that each lease disposal is compliant with S123 of the Local Government Act 1972.**

4. REASONS FOR DECISION

- 4.1 The decisions required are necessary in order that the schemes within the Council's approved Capital programme can be delivered and to approve the property proposals as set out in this report.
- 4.2 In most cases, resources have already been allocated to the schemes as part of the budget setting exercise but spending approval is required in order for the scheme to proceed. Where, however, resources have not previously been allocated, resource approval is requested in this report.
- 4.3 To facilitate financial management and control of the Council's finances.
- 4.4 **Proposed Disposal of D1 commercial unit at Tower Court:** The potential options for the use of the space have been explored with colleagues in the Council's Area Regeneration, Planning, Strategic Property Services, Woodberry Down and Finance Teams to establish the most appropriate option. Use of the space for healthcare purposes was explored with the Clinical Commissioning Group (CCG) but they confirmed that they are not interested in using the space. The result of Hatzola withdrawing from the contract is that the scheme finances are now short of the lease payment anticipated from that source and a letting on commercial terms is necessary to help ensure the viability of this development and the overall Estate Regeneration Programme. Feedback from the Council's Strategic Property Services indicates that there will be more appetite for the space if a basic fit out beyond shell and core is undertaken. Given the nature and location of the space, a letting to a commercial organisation is possible but demand may also come from local charitable or community based organisations. Obtaining Cabinet authorisation to enter into a lease or leases of up to 125 years will give the greatest flexibility in the marketing of the space for commercial use and increase the likelihood of securing a suitable provider for the space.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

- 5.1 **Proposed Disposal of D1 commercial unit at Tower Court:**
- 5.2 **Residential:** The original planning consent for the Tower Court scheme included an option that allowed an alternative use of the ambulance bay space for provision of housing, however the originally consented mix and layout is no longer deliverable, as a result of the further design development from RIBA stage 4 onwards, and the consequent

construction of Block D at Tower Court. Child Graddon Lewis (CGL) were therefore instructed in Autumn 2021 to provide alternative, feasible design options for residential conversion of the space. The most appropriate residential option identified was provision of one wheelchair adaptable four bed seven person (4B7P) social rent duplex and one outright sale three bed six person (3B6P) duplex. However, these would be sub-optimal designs with deep spaces and lack of natural light. Delivery of this option would also significantly prolong the completion of the scheme. The estimated cost of converting the space to two new homes is approximately £1.3m, against an anticipated income of £1.05m, including future rental income from the social rent home as well as Right to Buy subsidy. This represents a cost of over £200k to the scheme in addition to the financial loss from the Hatzola Agreement for Lease. This is not financially viable and this option was therefore rejected.

- 5.3 **Community Use:** An option to market the space for community use for below market rent was considered and could address the absence of community space identified in the draft Stamford Hill Area Action Plan but it is possible that a change of use application would need to be made to Planning. Planning use class D1 has been replaced by use classes E and F1. Community use within Class E would not be considered development and no change of use application would be required. For a change of use to F1 (e.g. schools, non-residential education and training centres, museums, public libraries, public halls, exhibition halls, etc.) a change of use application would be required. If the Council were to let the space to a community organisation at less than market rent this would represent a further cost to the scheme. This is not financially viable and this option was therefore rejected.

6. BACKGROUND

6.1 Policy Context

- 6.1.2 The report to recommend the Council Budget and Council Tax for 2022/23 considered by Council on 28 February 2022 sets out the original Capital Plan for 2022/23. Subsequent update reports considered by Cabinet amend the Capital Plan for additional approved schemes and other variations as required.

6.2 Equality Impact Assessment

- 6.2.1 Equality impact assessments are carried out on individual projects and included in the relevant reports to Cabinet or Procurement Committee, as required. Such details are not repeated in this report.

6.3 Sustainability and Climate Change

6.3.1 As above.

6.4 Consultations

6.4.1 Relevant consultations have been carried out in respect of the projects included within this report, as required. Once again details of such consultations would be included in the relevant detailed reports to Cabinet or Procurement Committee.

6.5 Risk Assessment

6.5.1 The risks associated with the schemes detailed in this report are considered in detail at individual scheme level. Primarily these will relate to the risk of the projects not being delivered on time or to budget. Such risks are however constantly monitored via the regular capital budget monitoring exercise and reported to cabinet within the Overall Financial Position reports. Specific risks outside of these will be recorded on departmental or project based risk registers as appropriate.

7. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

7.1 The gross approved Capital Spending Programme for 2022/23 currently totals **£181.035m (£90.052m non-housing and £90.982m housing)**. This is funded by discretionary resources, borrowing, capital receipts, capital reserves (mainly Major Repairs Reserve and revenue contributions) and earmarked funding from external sources.

7.2 The financial implications arising from the individual recommendations in this report are contained within the main report.

7.3 The recommendations in this report will result in a revised gross capital spending programme for 2022/23 of **£167.489m (£72.020m non-housing and £95.469m housing)**.

Current Directorate	Revised Budget Position	Nov 2022 Cabinet	Capital Adjustments	Re-Profiling Phase 2 22/23	Updated Budget Position
	£'000	£'000	£'000	£'000	£'000
Chief Executive's	558	0	0	(150)	408
Adults, Health & Integration	30	0	(30)	0	0
Children & Education	19,065	0	(0)	(2,677)	16,388
Finance & Corporate Resources	36,656	0	0	(6,483)	30,173
Climate, Homes & Economy	33,743	404	(4)	(9,092)	25,051
Total Non-Housing	90,052	404	(34)	(18,403)	72,020
Housing	90,982	0	0	4,487	95,469
Total	181,035	404	(34)	(13,916)	167,489

- 7.4 **Proposed Disposal of D1 commercial unit at Tower Court:** The space will need to be marketed to ensure that the income received is ideally in line with the receipt that was expected from Hatzola. Any reduction in this amount will need to be managed within the wider project and programme budgets to maintain agreed financial viability levels.

8. VAT IMPLICATIONS ON LAND AND PROPERTY TRANSACTIONS.

- 8.1 **Proposed Disposal of D1 commercial unit at Tower Court:** On the basis that the Council will grant a lease over a property for commercial use and no option to tax has been made, the lease will be exempt from VAT. Therefore any VAT that the Council incurs on costs associated with the grant of that lease, i.e. the refurbishment of the property etc, will be exempt input tax and will need to be included in the Council's partial exemption calculation.

9. COMMENTS OF THE DIRECTOR OF LEGAL, DEMOCRATIC AND ELECTORAL SERVICES

- 9.1 The Group Director, Finance and Corporate Resources is the officer designated by the Council as having the statutory responsibility set out in section 151 of the Local Government Act 1972. The section 151 officer is responsible for the proper administration of the Council's financial affairs.
- 9.2 In order to fulfil these statutory duties and legislative requirements the Section 151 Officer will:
- (i) Set appropriate financial management standards for the Council which comply with the Council's policies and proper accounting practices, and monitor compliance with them.
 - (ii) Determine the accounting records to be kept by the Council.
 - (iii) Ensure there is an appropriate framework of budgetary management and control.
 - (iv) Monitor performance against the Council's budget and advise upon the corporate financial position.
- 9.3 Under the Council's Constitution, although full Council set the overall Budget it is the Cabinet that is responsible for putting the Council's policies into effect and responsible for most of the Council's decisions. The Cabinet has to take decisions in line with the Council's overall policies and budget.
- 9.4 The recommendations include requests for spending approvals. The Council's Financial Procedure Rules (FPR) paragraphs 2.7 and 2.8 cover the capital programme with 2.8 dealing with monitoring and budgetary control arrangement

- 9.5 Paragraph 2.8.1 provides that Cabinet shall exercise control over capital spending and resources and may authorise variations to the Council's Capital Programme provided such variations: (a) are within the available resources (b) are consistent with Council policy.
- 9.6 **S106:** With regard to the allocation of monies from agreements under section 106 of the Town and Country Planning Act 1990, s.106 permits anyone with an interest in land to enter into a planning obligation enforceable by the local planning authority. Planning obligations are private agreements intended to make acceptable developments which would otherwise be unacceptable in planning terms. They may prescribe the nature of the development (for example by requiring that a percentage of the development is for affordable housing), secure a contribution to compensate for the loss or damage created by the development or they may mitigate the development's impact. Local authorities must have regard to Regulation 122 of the Community Infrastructure Levy Regulations 2010. Regulation 122 enshrines in legislation for the first time the legal test that planning obligations must meet. Hackney Council approved the Planning Contributions Supplementary Planning Document on 25 November 2015 under which contributions are secured under S106 agreements. Once completed, S106 agreements are legally binding contracts. This means that any monies which are the subject of the Agreement can only be expended in accordance with the terms of the Agreement.
- 9.7 **Proposed Disposal of D1 commercial unit at Tower Court:** The grant of a lease is pursuant to the Hackney Mayoral Scheme of Delegation of January 2017 and is reserved to the Mayor and Cabinet. Section 123(1) of the Local Government Act 1972 provides the Council with the power to dispose of land and property, provided such disposal is made for the best consideration reasonably obtainable. However, the General Disposal Consent 2003 removes the requirement for local authorities to seek specific consent from the Secretary of State for any disposal of land where: the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of: (i) the promotion or improvement of economic well-being; (ii) the promotion or improvement of social well-being; (iii) the promotion or improvement of environmental well-being; and the "undervalue" (i.e. the difference between the unrestricted value of the interest to be disposed of and the consideration accepted) is £2 million or less.
- 9.8 Where the case does not fall within the terms of this General Consent then an application to the Secretary of State for Communities and Local Government for a specific consent is required. Furthermore, the General Consent Order 2003 specifies that it is the responsibility of the Council to satisfy itself that the land is held under powers which permit it to be disposed of under the terms of the 1972 Act. A grant of a long lease is defined as a disposal within the Local Government Act 1972.

- 9.9 The comments of the Director of Strategic Property Services at paragraph 10.1 make reference to a further delegated report to the Corporate Director of Finance and Resources in the future to confirm compliance with the best consideration provisions of S123 of the Local Government Act 1972.

10. COMMENTS OF THE DIRECTOR OF STRATEGIC PROPERTY SERVICES

- 10.1 **Proposed Disposal of D1 commercial unit at Tower Court:** The intention is to market this space in a manner commensurate to the scale of the opportunity to occupiers seeking either a rental deal or a long lease at premium, so as to ensure the widest possible exposure to potential tenants. A future delegated powers report to the Corporate Director of Finance and Resources will confirm compliance of the proposed letting with the best consideration provisions of S123 of the Local Government Act 1972.

11. CAPITAL PROGRAMME 2021/22 AND FUTURE YEARS

11.1 Climate, Homes and Economy

- 11.1.1 **Parks Equipment and Machinery 2022/23:** Spend approval of **£75k in 2022/23** is requested to purchase equipment and machinery to carry out maintenance to the borough's parks. The machinery items will include: Trilo / leaf collector, Kubota cab to keep machine water tight, electric back leaf blowers and electric tricycle buggies, tractor mounted hedge trimmer, water bowsers and line markers. These purchases will replace and upgrade equipment currently in the fleet and protect expensive equipment from the elements. These purchases will continue to drive the Council's Sustainable Strategy, replace and upgrade equipment currently in the fleet and protect expensive equipment from the elements which will also allow for productivity to be maintained with the protection of the operative in inclement weather conditions. Hackney is a densely populated local area and this can put pressure on the availability of green space. Open spaces provide a valuable antidote to the stresses of urban life, especially for the many residents without gardens. Therefore, maintaining our parks and open spaces play an important role to maintaining social distance and improving leisure and relaxation, contributes to good emotional and physical wellbeing and creates opportunities for social interaction. This capital expenditure will ensure we are better prepared to meet our climate change commitments and to deal with its impacts and improve local air quality. This capital spend supports the Council's Community Strategy 2018-2028 Priority 3 'A greener and environmentally sustainable community which is prepared for the future'. This approval will have no net impact as the resources already form part of the capital programme.

12. S106 Capital For Noting

- 12.1 The s106/CIL board meeting dated 6 July 2022 considered the following bids for resource and spend approval. As a result **£643k (£404k in 2022/23 & £239k in 2023/24)** of s106 capital funding will be spent in accordance with the terms of the appropriate s106 agreements.

Agreement No.	Project Description	Site Address	2022/23 £'000	2023/24 £'000	Total
2018/3095	Highway Wks 74 Rivington Street	74 Rivington Street, London, EC2A 3AY	107	0	107
2015/1612	Highway Wks Morpeth Road	Morpeth Road, Garages Morpeth Road, London, E9 7LD	98	0	98
2016/3868	Highway Wks 12-16 Rowe Lane, E9 6EL	14-16 Rowe Lane, London, E9 6EL	96	0	96
2016/1814	Highway Wks 225 City Road	225 City Road, London, EC1V 1JT	102	239	341
Total Capital S106 for Noting			404	239	643

13. Re-Profiling of the Capital Budgets:

- 13.1 The capital programme is re-profiled twice each year to ensure that the budgets reflect changes in the anticipated development and progress of schemes within the approved programme. This helps to enhance capital budget monitoring and associated financing decisions. The table below summarises the phase two re-profiling of the capital programme between years, the full details of which are shown in Appendix 4.

Current Directorate	Re-Profiling 22/23	Re-Profiling 23/24	Re-Profiling 24/25
	£'000	£'000	£'000
Chief Executive's	(150)	150	0
Adults, Health & Integration	0	0	0
Children & Education	(2,677)	2,677	0
Finance & Corporate Resources	(6,483)	4,050	2,434
Climate, Homes & Economy	(9,092)	8,858	234
Total Non-Housing	(18,403)	15,735	2,667
Housing	4,487	(4,487)	0
Total	(13,916)	11,249	2,667

14. Capital Adjustments from 2022/23

- 14.1 Capital Programme adjustments are requested in order to adjust and reappportion the 2022/23 approved budgets to better reflect project delivery of the anticipated programme set out in the summary below and full details shown in Appendix 4.

Current Directorate	Capital Adjustments 22/23
	£'000
Non-Housing	(34)
Housing	0
Total	(34)

APPENDICES

Appendix 1 - Plan B1 - Commercial space ground floor

Appendix 2 - Plan B2 - Commercial space first floor

Appendix 3 - Plan A1 - Commercial space demise including parking spaces

Appendix 4 - Phase 2 & Capital Adjustments

BACKGROUND DOCUMENTS

In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required.

None.

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