

PART 1 Report



London Borough of Enfield

Title:	Surplus property disposal - Charles Babbage House
Report to:	Fay Hammond – Executive Director Resources
Date of Report briefing:	20 November 2023
Cabinet Member	Cllr Leaver – Cabinet member for Finance, Procurement and Property
Exec Director:	Fay Hammond -
Report Author:	James Hall james.hall@enfield.gov.uk
Ward(s) affected:	Southbury
Key Decision Number	KD 3432
Implementation date, if not called in:	12 December 2023
Classification:	Part I Public and Part 2 Private
Reason for exemption	The Part II report contains Information relating to the financial or business affairs of any particular person (including the authority holding that information)

Purpose of Report

1. To approve the disposal of Charles Babbage House, which has been declared surplus to operational requirements, to preferred Bidder 'B' and on terms set out in the attached Part II report.

Recommendations

- I. Agree the sale of Charles Babbage House to Bidder 'B' as preferred bidder in accordance with the Heads of Terms appended to the confidential Part II report.**
- II. Authorise the Director of Property to finalise non-material changes to the Heads of Terms, including such variations that may be necessary to cover existing third-party rights affecting the property.**
- III. To note that all agreements to be entered into as contemplated by this report are to be approved in advance of commencement by Legal Services on behalf of the Director of Law and Governance.**

Background and Options

2. Charles Babbage House had been occupied by the Council's Childrens' Services department until late 2022, when the functions moved into the newly refurbished Thomas Hardy House in Enfield town centre. As the property had been declared surplus to operational requirements, a decision was made to market the property and this followed an earlier Cabinet report in late 2020 where Cabinet had provided authority to proceed with this disposal (KD 5189).
3. Discussions had also taken place with colleagues in the HRA and Housing Gateway Ltd (HGL) about the possibility of retaining the property for conversion to temporary housing but that was considered to not be a financially viable option.
4. The Council appointed Bowyer Bryce as their appointed agent in October 2022 to market the property, with the option of either a letting or freehold disposal. A 4-month marketing campaign was undertaken (which included extensive publicity among a wide cross-section of commercial businesses and community groups). This culminated in two rounds of bidding; with best and final bids from 3 bidders on 16 March 2023 for the purchase of the freehold.
5. The approved offer was subsequently reduced just before exchange and as a consequence there was a new competitive process focusing the previous existing high bids and late expression of interest. Further information on these the bids are outlined below and in Part 2.

Preferred Option and Reasons for Preferred Option

6. The reasons for recommending Bidder 'B' are due to the level of the offer, the deliverability of the bid and greater confidence around exchanging contracts in so far as them having already undertaken their legal due diligence and offering a £50,000 non-refundable deposit as a gesture of good faith. This is deemed as having a higher prospect of proceeding to completion, and more quickly, and therefore treated as more commercially valuable. In contrast, the offer from Bidder 'D' whilst tied financially was not considered to be as good a guarantee to deliver a timely exchange and completion on the basis that their

offer still had some conditionality and they had yet to undertake their full legal due diligence and was subject to bank finance.

7. Further details of the assessment of the bids is contained in Part 2.

Relevance to Council Plans and Strategies

8. The sale of the property will deliver a much-needed significant capital receipt to the Council and thereby helping generally to fund Council services which contribute to a strong and healthy community.

Financial Implications

Capital Budget implications.

9. If the net capital receipt is used to repay debt/ substitute borrowing, that would avoid interest costs (detail covered in Part 2).

Revenue Budget implications

10. There will be a loss of £20k per annum rental income currently received (majority from roof masts) (see para 39).
11. The Council's 2023/24 Budget assumes £5m new capital receipts in 2023/24 to fund specific transformation programmes as well as contributing to a reserve to fund the replacement of the current HR and finance systems. If this is not achieved, there will be an additional pressure on the Council's revenue budget via interest costs and provisions to repay debt.
12. The bid satisfies requirements to generate best consideration, as stipulated by the Local Government Act 1972, due to competitive bidding process which generated the highest bid which was accepted.

Tax Implications (VAT & SDLT)

13. Based on the information provided, there are no significant adverse VAT implications to LBE arising from this sale since any VAT incurred will be accounted for against the Council's de-minimis.

Legal Implications

14. The Council has power under Section 111 of the Local Government Act 1972 to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The Council also has a general power of competence under Section 1(1) of the Localism Act 2011 to do anything that individuals may generally do, provided it is not prohibited by legislation and subject to public law principles. The recommendations set out in this report are consistent with the Council's powers and duties.
15. Section 123 of the Local Government Act 1972 gives a power of sale or leasing to Councils. Pursuant to subsection 1 of that provision, the Council 'may dispose of land held by them in any manner they wish' and subsection 2

qualifies this by imposing a statutory duty to achieve 'best consideration' (save for tenancies of less than seven years), unless it has the benefit of an express or general consent of the Secretary of State.

16. Therefore, local authorities have broad powers to dispose of their land, including as regards process. There are however strict requirements on best consideration, alongside public law requirements, including procedural fairness which need to be observed. Public law principles will apply to the decisions made by the Council, including the Council's duty to take account of its fiduciary duty and to act prudently. The Council is also under a general duty to act reasonably and show that its decisions are made after having given due and proper consideration to all relevant factors.
17. In entering into property transactions, the Council must also comply with the provisions of its Constitution, including but not limited to its Property Procedure Rules, which set out mandatory procedures regarding (amongst other things) the acquisition, management and disposal of property assets.
18. In this case, it is noted that the Council originally went out to the open market using Bowyer Bryce as their appointed agent and a competitive process was undertaken, therefore complying with the statutory requirements and the Council's Constitution. Furthermore, that the bid from Bidder 'B' has been assessed by Bowyer Bruce as representing best consideration with a higher degree of confidence in this unconditional bid. When considering the duty under section 123 of the Local Government Act 1972, what is reasonable in any particular case depends entirely on the facts of the transaction. Case law has determined that the Council should limit itself to taking account of those elements of a transaction which are of commercial or monetary value when assessing whether it is obtaining the best consideration reasonably obtainable. Furthermore, that the deliverability or credibility of a bid are commercial factors which are relevant to an assessment. This has been emphasised in a plethora of case law, including the recent judgement of R (Cillarda) v West Northamptonshire Council [2023]. Therefore, in light of this, the Council has properly directed itself and its decision to proceed with Bidder 'B' is justifiable.
19. The Council is required to act in accordance with the Public Sector Equality Duty under section 149 of the Equality Act 2010 and have due regard to this when carrying out its functions. It is noted that corporate advice has been taken on this issue.
20. Any legal agreements arising from the matters described in this report must be approved by Legal Services on behalf of the Director of Law and Governance.

(Legal implications provided by EP on 17/11/2023).

Equalities Implications

21. Corporate advice has been sought regarding equalities and an agreement has been reached that an equalities impact assessment is neither relevant nor proportionate for the approval of this report.

HR and Workforce Implications

22. There are no workforce implications.

Environmental and Climate Change Implications

23. The preferred bidder's proposal is to retain and reuse the building for non-domestic purposes, this use type is not expected to dramatically increase the energy consumption of the site.
24. As the site has a high embodied carbon content due to the construction type, from a carbon emissions standpoint retaining the building in its current form may be preferable to proposals that involve major development or demolition of the site, unless these works were done with careful consideration for minimising carbon.
25. The site has an EPC of E which, demonstrating the site would benefit from energy and decarbonisation upgrades, it is unknown if the bidder proposes to make energy or decarbonisation improvements to the site. Alternative options, such as PD change of use, may have had a negative energy cost impact for occupants without significant upgrades.
26. It should be noted that if the bidder retains the site for private use there may be limited planning or regulatory controls for improving the energy efficiency of the building, currently regulation primarily covers lettings.
27. For reference, the council invested in LED lighting at the site in 2016 through the Salix recycling loan (fully repaid in 2022) and PC Power Management improvement works in 2020 (repaid by 2022)

Public Health Implications (if any)

28. There are no public health implications.

Property Implications

29. Property implications are within the main body of this report and accompanying Part II (confidential) paper.
30. The freehold interest is being sold with Vacant Possession but subject to two utility tenancies detailed as follows:
 - T-Mobile (UK) Ltd & Hutchinson 3G UK Ltd – (Roof Masts Telecommunications) Lease dated 11 May 2009 for a term of 10 years from 11 May 2009 (now holding over).
 - i) TXU Europe Group Plc (In administration) (ii) Alan Robert Bloom and others (iii) National Transcommunications Ltd Lease dated 6 February 2004 for a period of 93 years expiring 22 December 2097.

Summary & Conclusions

31. The Charles Babbage House property became vacant in late 2022 and is surplus to the Council's operational needs.
32. Following the marketing process, and consideration of these revised bids, this report seeks approval to proceed with Bidder 'B' based on analysis of all offers received and a higher degree of confidence of the preferred bidder's ability to complete the transaction in a timely way. The other bidder in contention was

not considered to be as good a guarantee to deliver a timely exchange and completion on the basis that their offer still had some conditionality and they had yet to undertake their full legal due diligence (unlike Bidder B, who had already done so, and were ready to exchange contracts, and are willing to offer to pay a £50,000 non-refundable deposit).

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Appendices

Sales Particulars
Part II Report - Confidential

Background Papers

PL2223_012 – KD3432 (Part 1 and Part 2)