

<b>Item No.</b> 13.	<b>Classification:</b> Open	<b>Date:</b> 17 April 2012	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Acquisition of Freehold Interest in 66 & 68 Ambergate Street, SE17	
<b>Ward(s) or groups affected:</b>		Newington	
<b>Cabinet Member:</b>		Councillor Richard Livingstone, Finance, Resources and Community Safety	

## **FOREWORD – COUNCILLOR RICHARD LIVINGSTONE, CABINET MEMBER FOR FINANCE, RESOURCES AND COMMUNITY SAFETY**

This report proposes the acquisition of 66 & 68 Ambergate Street, under statutory provisions. To achieve this objective, it is necessary to re-house and compensate the existing secure tenants to allow the property to be subsequently sold with vacant possession.

The receipt from the sale of the property would be allocated to the housing investment fund.

## **RECOMMENDATIONS**

That the Cabinet:

1. Approves the terms outlined in this report for the acquisition of the freehold interest in 66 & 68 Ambergate Street, SE17 (“the Property”) plus the payment of compensation to the existing secure tenants for home loss and disturbance, along with statutory costs.
2. Authorises the head of property, once acquired and full vacant possession has been achieved, to market for sale the council’s unencumbered freehold interest in the Property. The results of this marketing exercise to be brought to cabinet for approval and further recommendation.

## **BACKGROUND INFORMATION**

3. The Property is held on a lease by the council which satisfies the criteria for enfranchisement. The lease was granted for a term of 99 years from 24 June 1912 at a fixed ground rent of £4.50pa. The lease was due to expire on 23 June 2011, however the expiry date has been extended as a result of the Formal Notice to acquire the freehold process, which was served by the council on 7 February 2011 and the lease will therefore expire once this process has ended.
4. The Property consists of two 2 bedroom flats, both of approximately 59 m2 in size, within a two storey period built end of terrace house. Both of the units are occupied by secure council tenants.
5. The landlord is a private individual who owns the freehold of the Property
6. Changes to the Leasehold Reform Act 1967 brought in by the Commonhold and

Leasehold Reform Act 2002 enabled non-resident leaseholders of houses, such as the council, to exercise statutory enfranchisement rights for the first time. Following these statutory changes, the then executive approved (on 27 July 2004) a change of policy in respect of leasehold houses occupied by secure council tenants which enabled the council to exercise statutory enfranchisement rights and acquire the freehold interests in 17 occupied leasehold houses held from the Dulwich Estate at a substantial discount to vacant possession market value.

7. Previously Housing policy in respect of occupied leasehold houses had been focussed on the re-housing of secure tenants prior to lease expiries in order to limit dilapidations claims against the council on returning properties to landlords (usually the Dulwich Estate). The change in legislation has also been used to advantage to purchase the freehold interests in some vacant leasehold houses at a discount and then sell at full market value, generating capital receipts.
8. The successful service of a statutory Notice to Enfranchise should enable the council to acquire the freehold interest in the Property at a significant discount to its vacant possession market freehold value.
9. In order to assist with the process, the council appointed an external surveyor to undertake an initial valuation of the estimated price payable for the freehold and to subsequently negotiate settlement terms for acquisition. In addition to the purchase price to be negotiated, compensation will need to be allocated to the tenants for giving up their tenancies that the council have no legal right to end. Any move by the tenants would be solely subject to their agreement and the amount payable will be a matter of negotiation.
10. The appointed external surveyor is an expert in leasehold enfranchisement and has acted successfully for the council on a number of similar freehold acquisitions. The council will need to cover the valuation fees of the external surveyor, in addition to the property division's internal valuation fee for dealing with this matter in a management capacity.
11. The council, as purchaser, is also liable to pay the Landlord's reasonable surveyors and solicitors fees in connection with the purchase. In addition, the council will need to budget for our own legal fees and compensation packages for the secure tenants.
12. A Formal Notice to acquire the freehold was served on the current freeholder on the 7 February 2011 and a Counter Notice was received in return by the freeholder within the statutory deadline date of 7 April 2011.
13. After a lengthy period of negotiations between the valuation surveyors appointed by the council and the freeholder, terms were finally agreed on 21 October 2011 although the council has yet to formally accept the terms and needs cabinet authority in order to do so.
14. Whilst there is no statutory timescale for acceptance of the agreement, the current freeholder reserves the right to refer the matter to the Leasehold Valuation Tribunal (LVT) to expedite the process at any time. If this option is taken, there is no guarantee that the LVT will uphold the agreed premium and the council's professional fees would increase significantly, due to additional work required for LVT preparation and attendance.

15. On 11 January, the valuation surveyor representing the freeholder wrote to the council's appointed surveyor expressing concern over the delays in the council formally accepting the terms agreed, which he felt was unacceptable. It was therefore asserted that the council should either promptly accept the agreement to acquire the freehold or pay a commercial rent of £18,375 pa as calculated within the valuations, as the council were effectively holding over under the old lease. If neither of these actions is taken in the near future, it is anticipated that an application to the LVT will be lodged by the freeholder to decide the matter.
16. On 23 February 2012, funding for the acquisition and associated costs was approved by the Investment Property Group (IPG) without reservations. This was on the basis that the council may have to acquire the Property before the existing secure tenants are re-housed, due to restricted statutory timescales to complete the transaction.
17. Both tenants have agreed to be re-housed and have accepted compensation packages, subject to suitable alternative accommodation being provided.
18. Other options, such as obtaining a lease extension, have been considered and discounted on the basis that it would not be a financially viable option for the council. Under the relevant legislation, the council would be entitled to apply for a 50 year lease extension based on a modern ground rent agreed and calculated at £18,375 pa, as mentioned above. The total liability to the council over the 50 year term, excluding rent reviews, would be £918,700 and the council would further forfeit the option of acquiring the freehold at a discounted rate at a later stage.
19. Authority to acquire property is delegated to the head of property in individual cases where the acquisition price is below £100,000 or less under 3P of the council's constitution. The cost of acquiring the freehold interest of 66 and 68 Ambergate Street will exceed this limit and cabinet approval is therefore required.

#### **KEY ISSUES FOR CONSIDERATION**

20. The estimated costs of the statutory purchase of the freehold interest in the Property represents a significant discount, from the freehold vacant possession market value of the Property.
21. Formal valuations have been provided by the council's external surveyor, to support the purchase price agreed with the landlord for the freehold interest.
22. The statutory basis of valuation used to ascertain the agreed prices for the freehold interest in the Property is expected to be the 'site value' method. This is the most advantageous basis of valuation available to an enfranchising leaseholder. In broad terms, the site value method of valuation enables a leaseholder to acquire the freehold interest for the proportion of the freehold value of the property (based on the assumption that the house is fully modernised) attributed to the land only. This figure is then discounted to take account of the remaining term of the lease: the longer the unexpired term, the greater the discount. The date of the valuation is the date when the Notice to Enfranchise was served.
23. Once the freehold interest is acquired by the council the tenants will have a 'right to buy' if they wish although it should be noted that a fully discounted 'right to

buy' purchase price for each of the units in the Property combined should be significantly in excess of the estimated enfranchisement purchase price of the Property.

24. If the council does not exercise its enfranchisement rights in respect of the Property, it will revert to the landlord on expiry of the lease necessitating the re-housing of the occupying tenants and the council may face dilapidation claims from the landlord.
25. Although both tenants have agreed to be re-housed and have accepted compensation packages, the council does not yet have vacant possession of the Property and it is conceivable that the tenants could refuse to move and the council will be left with a prime located asset generating rental income. This could be sold at a later date once vacant, or via Right to Buy.
26. Terms for acquisition will formally be accepted by the council, subject to cabinet approval being obtained on 17 April. Once the council formally accepts the terms, there is a statutory timescale of two months from acceptance to complete the purchase. If the purchase is not completed within this period, the council's right to acquire the freehold will remain, however the current freeholder will reserve the right to refer the matter to court, who would then set a completion price and date.

#### **Financial implications**

27. This proposed capital expenditure falls within the capital program and will be resourced via the approved housing investment programme, which has an annual provision per year for leasehold and freehold acquisitions, which is sufficient to cover this bid.
28. Should the matter be referred to court, the council's professional fees for this transaction would increase significantly, which has been budgeted for within the total projected acquisition cost. There is also the possibility that the agreed freehold purchase price could be increased, should the matter proceed to court.

#### **Policy implications**

29. Cabinet approved the Asset Management Plan 2010 (AMP 2010), on the 14 December 2010, underpinning its aim of planning for a smaller sustainable operational estate. At the same meeting it also approved the objective of reducing the council's property estate by approximately 30% of its present size (excluding dwellings and schools). The eventual disposal of the Property, once full vacant possession has been achieved, will go some way to meeting these objectives.
30. This disposal of the Property will generate a substantial capital receipt, which will be used to provide capital funding in support of the council's key priorities. This includes the provision, refurbishment and redevelopment of affordable housing. This assists the council in meeting its commitment to regeneration and sustainability in housing as demonstrated through the 2009-2016 Southwark Housing Strategy.
31. The environmental improvements arising from the refurbishment of the Property will assist the council in meeting its cleaner, greener and safer agenda..

### **Effect of proposed changes on those affected**

32. The sale of properties within the HRA stock will have a negative impact on the number of council properties available to let. However, this will be offset by gains through the investment to retained stock, especially where decent homes have not yet been delivered.
33. Increased investment into Southwark's stock to provide warm, dry and safe homes will have a positive impact on disadvantaged and minority communities, who are statistically more likely to be council tenants than the general population as a whole.

### **Community impact statement**

34. The tenants in occupation of the Property have been consulted about the council's intention to acquire the Property but consultation to the wider community around the acquisition of this third party interest and the decision to offer the Property for sale, once full vacant possession has been achieved, is not thought to be appropriate in this instance.
35. The acquisition of this third party interest and subsequent disposal will not negate the council's diversity and equal opportunities policies.

### **Resource implications**

36. The acquisition and subsequent disposal will be dealt with by the council's property division. This will be resourced from existing budgets.

### **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

#### **Strategic Director of Communities, Law and Governance**

37. Section 120 (1) of the Local Government Act 1972 ("the 1972 Act") authorises the council to acquire any land by agreement for the purposes of (a) any of its statutory functions or (b) for the benefit, improvement or development of its area. By virtue of Section 120 (2) of the 1972 Act the council may acquire by agreement any land for any purpose for which they are authorised by the 1972 Act or any other Act to acquire land, notwithstanding that the land is not immediately required for the purpose; and until it is required for that purpose, it may be used for the purpose of any of the council's functions.
38. Cabinet is advised that acquisition of land and property, outside any scheme already agreed by members, where the market value is more than £100,000 is reserved to full cabinet for decision under Part 3C of the council's constitution.

#### **Finance Director (NR/F&R/12/3/12)**

39. This report recommends that the cabinet approves terms for the acquisition of the freehold interest in 66 & 68 Ambergate Street, SE17 including the payment of compensation and authorises the Head of Property, once acquired and full vacant possession has been achieved, to market for sale the council's unencumbered freehold interest in 66 & 68 Ambergate Street, the results of this marketing exercise to be brought to cabinet for approval and further recommendation.

40. The finance director notes that there is provision within the approved housing investment programme for the cost of the acquisition and professional fees arising from the acquisition. Officer time to effect the recommendations will be contained within existing budgeted resources

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Report To IPG – 26 January 2012. 66 & 68 Ambergate Street	Development Team, Property Division, 160 Tooley Street, SE1, 2QH	Jason Guthrie 020 7525 5681

## APPENDICES

No.	Title
Appendix 1	Site plan

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Richard Livingstone, Finance, Resources and Community Safety	
<b>Lead Officer</b>	Eleanor Kelly, Deputy Chief Executive	
<b>Report Author</b>	Jason Guthrie, Surveyor	
<b>Version</b>	Final	
<b>Dated</b>	4 April 2012	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
	<b>Officer Title</b>	<b>Comments Sought</b>
		<b>Comments included</b>
	Strategic Director of Communities, Law & Governance	Yes
	Finance Director	Yes
	<b>Cabinet Member</b>	Yes
	<b>Date final report sent to Constitutional Team</b>	4 April 2012