

Item No. 12.	Classification: Open	Date: 20 October 2020	Meeting: Cabinet
Report title:		760 Old Kent Road, SE15 1NJ – Strategic Investment / site acquisition	
Ward:		Old Kent Road	
Cabinet Member:		Councillor Rebecca Lury, Finance & Resources	

FOREWORD – COUNCILLOR REBECCA LURY, CABINET MEMBER FOR FINANCE & RESOURCES

760 Old Kent Road provides an opportunity to acquire a strategic investment generating a substantial income in the Old Kent Road opportunity area. This significant and prominent property is currently occupied by Lidl supermarkets under a commercial lease paying a substantial market rent. It is anticipated that rental growth will be achieved in the medium term with the supermarket sector performing particularly well in the current economic environment. The purchase which is being funded through the general fund from resources already identified for such purposes will provide revenue to support council services in these very challenging times.

The property is identified as the location of a new tube station for the BLE. The Council and TFL are both committed to delivering the BLE and with this asset in the Council's ownership it not only shows our continued confidence in the Old Kent Road opportunity area and BLE but will assist delivery with vacant possession readily available under the lease structure with Lidl to allow for the construction of the tube station without recourse to the use of statutory powers. In the eventuality of development of the site for a tube station "overstation" development rights for commercial and residential development will remain with the Council with the site able to accommodate approximately 500 flats as well as replacement retail, assisting the Council in meeting its target to build 11,000 new council homes.

RECOMMENDATIONS

That Cabinet:

1. Authorises pursuant to s227 of the Town and Country Planning Act 1990, that the Council acquires the freehold interest in the property shown edged black on the plan at Appendix A.
2. Authorises the principal purchase terms set out in full in paragraph 16 of the closed version of this report and substantially in paragraph 19 of this report.

3. Delegates to the Director of Regeneration authority to agree the detailed terms of the acquisition.

BACKGROUND INFORMATION

4. 760 Old Kent Road is shown edged black on the plan at Appendix A to this report. It comprises a 1990s single storey plus mezzanine retail warehouse unit with associated surface parking spaces. It has a site area of 2.59 acres. It currently trades as Lidl and was formerly the ToysRUs store.
5. The property is situated within the Old Kent Road Area Action Plan that aspires to transform the area with substantial new housing, an improved public realm, employment opportunities and enhanced transport infrastructure including a proposed extension to the Bakerloo Underground Line that is awaiting funding confirmation and that this acquisition supports.
6. The opportunity to purchase this strategic investment has arisen and the Council submitted a bid subject to Cabinet approval that has been accepted by the vendor who are Administrators acting for the creditors.
7. The Property offers the Council the opportunity to secure one of the largest sites on the Old Kent road which is fully let to a major retailer for another 9 years but with a series of Landlord only breaks.
8. The Council has the ability to redevelop the site in the future with potentially in excess of 500 homes and commercial / retail frontages or hold as a secure investment.

Factors for consideration

9. This strategic and substantial site of 1.05 hectares or 2.59 acres is fully let to Lidl until December 2028 on a lease outside the 1954 Landlord and Tenant Act. The Landlord does have the opportunity to terminate the lease should it wish to in 2023 and each year thereafter or continue holding the investment where there is expectation of significant rental growth above the passing rent.
10. The property provides a retail warehouse of approximately 26,045 square feet with 120 car parking spaces and servicing area. It is adjacent to other council ownerships. It is believed that there may be other opportunities to maximise income from the site.
11. The inclusion of the property within the Old Kent Road Area Action Plan means it offers scope in the future to deliver new housing and commercial space in pursuit of the Council Plan undertaking. Discussions have taken place with planning officers and these suggest the site may accommodate around 500 new homes. It will also need to provide replacement business space that would give continued income to the Council post development.

Cabinet should bear in mind these outputs are indicative and in no way fetter the Planning Committee's ability to determine any application it receives on its own merits.

12. The Bakerloo Line extension (BLE) remains an important part of the Council's proposals for the Old Kent Road and the acquisition of this strategic site supports this. The Old Kent Road remains a thriving commercial environment with intense competition for good retail warehouse space on a long term basis particularly currently from supermarket operators. There is a rapidly decreasing supply of such space around central London and the outlook remains very positive.
13. TfL identified the car park of this site for one of the new underground stations on the proposed BLE and therefore when funding for the BLE is approved the site will be next to and above a Tube station. The acquisition demonstrates the Councils' intent to support the BLE, however the purchase stands alone as sound strategic investment with rental growth and let to a major occupier.
14. Principal terms for the purchase of the property have been accepted by the vendor and the Council and these are set out in paragraph 19. Inevitably when the contract for the purchase is negotiated there will be items of detail that will also require agreement and it is recommended that the Director of Regeneration be delegated the authority to agree such matters.
15. Society creates the need for additional housing resulting in the variation of existing use planning classification to satisfy this need, it is intended that in the medium/long term this site will be redeveloped to meet that housing need. However, society is penalised because in order to acquire the land to build new housing it must pay consideration based on the revised and more valuable planning classification that it has created. The beneficiaries are landowners that have done nothing apart from sitting on the land in the hope it gains a more valuable planning consent. The additional money spent in acquiring land would be better used in building affordable new homes. The Council have for some time been campaigning that local councils should be allowed to acquire land for new housing at its existing use value rather than its post planning consent value plus a modest premium of around 10% to encourage the landowner to sell. This would enable local housing authorities to build more new affordable homes rather than giving landowners windfall profits. In this particular case the proposal is to acquire at the existing use value of a supermarket investment and is therefore recommended. The Council will however continue to make the case for a change in legislation which would allow for more affordable homes to be built.
16. Southwark Council recognises the inequities created by the current land trading system, that results in a leakage of development value away from core town planning objectives where the Land Compensation Code enshrines the 'hope value' (i.e. any level of speculative premium on any

alternative use for a site) in the price of a given valuation for purchase.

17. Alongside securing available sites for future council house-building, the Council will continue its 'Affordable Land for Affordable Housing' campaign, calling on reform of the 1961 Land Compensation Act and RICS valuation guidance, to better allow councils to purchase sites at a price nearer to their existing use value, assemble land more rationally, promote build out, and reserve a higher proportion of development value for the affordable housing and infrastructure contributions that our residents need.
18. The Council will continue to build an evidence base of discrepancies between EUVs given in developer viability assessments and real transactions in our borough to support Government in their future decision-making on the land trading system.

Principal purchase terms

19. The principal purchase terms are:
 - a) The Council pays the consideration set out in the closed version of this report.
 - b) On exchange of contracts the Council pays a 5% deposit as set out in the closed version of this report.
 - c) Contracts to be exchanged after the Cabinet has approved the purchase subject to the period for call in.
 - d) On completion, the property to be subject to the lease referred to in paragraph 9.
 - e) There is a two months period from exchange to completion at the end of December 2020.
 - f) The parties to meet their own costs of the transfer.
20. Commentary on principal terms:
 - a)-b) Refer to closed version of report.
 - c) This is a challenging timescale required by the vendor.
 - d) See paragraph 9.
 - e) This enables the vendor to retain the income during this two month period which was part of the offer.
 - f) A standard provision.

21. Rationale for recommendations:
- a) To enhance the Council's asset base by acquiring a commercial investment with substantial growth potential.
 - b) To further a commitment within the new Council Plan.
 - c) To assist in the long term commitment to providing new homes for person's on the Housing Waiting List.

Community impact statement

22. The new Council Plan was the subject of extensive community consultation. The recommendations herein further the delivery of the *A Place to Belong* commitment set out in the Plan.
23. The Equality Act 2010 requires the Council in the exercise of its functions to have due regard to the need to:
- a) eliminate discrimination;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
24. Relevant protected characteristics for the purposes of the Equality Act are:
- Age
 - Civil partnership
 - Disability
 - Gender reassignment
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Sex and sexual orientation.
25. In considering the recommendations herein the Cabinet must have due regard to the possible effects them on any groups sharing a protected characteristic in order to discharge its public sector equality duty. This is an ongoing obligation.
26. If the recommendations set out are approved, the Council will purchase a reversionary retail investment that may ultimately be demolished and new homes including ones to be let at council rent levels erected in its place together with new commercial investment space. Any new homes delivered will greatly improve the quality of life of its residents some of

whom may have protected characteristics. When the time comes to terminate the lease of the retail unit to enable the housing scheme to proceed, it will be necessary for regard to be had to any possible effects on groups with a protected characteristic arising from the action.

Financial implications

27. The acquisition of the property will incur substantial capital expenditure and this is considered in detail in the closed version of the report.
28. As set out in paragraph 9 the property will generate an income between acquisition and termination of the lease that exists. This income will more than cover the Council's holding costs for the property and the excess will be available to the support the delivery of council services.
29. Submitting the bid for the property and processing the legal documentation necessary to complete the purchase, has and will incur revenue costs but these will be met from existing budgets.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law & Democracy

30. Section 1 of the Localism Act 2011 provides that a local authority has power to do anything that individuals generally may do.
31. Section 227(1) of the Town and Country Planning Act 1990 ("the 1990 Act") provides that any London Borough may acquire by agreement any land which they require for any purpose for which a local authority may be authorised to acquire land under section 226.
32. The purposes for which a local authority may be authorised to acquire land under section 226 of the 1990 Act include purposes which it is necessary to achieve in the interests of the proper planning of the area in which the land is situated, if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land.
33. The report indicates that, whilst initially holding the Property as an investment the acquisition recommended by the report will facilitate the carrying out of development, re-development or improvement in relation to the land, whether as housing or as alternative retail or other purposes.
34. As well as the general power of competence contained in the Localism Act and referred to above, the Council also has powers to acquire land by agreement pursuant to s120 of the Local Government Act 1972, for the purposes of any of the Council's functions.
35. Accordingly there are adequate powers for the Council to acquire this site.

Strategic Director of Finance & Governance

36. Set out in the closed version of the report.

REASONS FOR URGENCY

37. The vendor has set a challenging timescale for the Council to obtain Cabinet authority to proceed with this acquisition and complete all legal formalities. If the Council does not meet these timescales then it is likely the ability to complete this acquisition will be lost and the Council will lose out on the opportunity to acquire a site providing substantial additional income and growth to support the delivery of council services and the prospect over the longer term to deliver new council homes on the site.

REASONS FOR LATENESS

38. It has not been possible to circulate this report with five clear days in advance of the meeting because the timings of the selection of the successful bidder by the vendor aligned with the challenging timescale set by the vendor for completion meant that officers were unable to prepare appropriate reports to meet this circulation deadline.

BACKGROUND DOCUMENTS

Background Papers	Contact
Council Plan 2018/9 – 2021/22	
Link: http://moderngov.southwark.gov.uk/documents/s78763/Report%20Council%20Plan.pdf	

APPENDICES

Appendix	Title
A	Plan of 760 Old Kent Road, SE15

AUDIT TRAIL

Cabinet Member	Councillor Rebecca Lury, Cabinet Member for Finance & Resources	
Lead Officer	Stephen Platts; Director of Regeneration	
Report Author	Marcus Mayne; Principal Surveyor: Regeneration South	
Version	FINAL	
Dated	15 October 2020	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Housing & Modernisation	No	No
Director of Law & Democracy	Yes	Yes
Strategic Director of Finance & Governance	Yes	In closed version
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team	15 October 2020	