



Notice of KEY Executive Decision containing exempt information

This Executive Decision is not available for public inspection as it contains or relates to exempt information within the meaning of paragraph 3 of Schedule 12A of the Local Government Act 1972. It is exempt because it refers to confidential commercial information and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Subject Heading:	39-43 South Street, Romford – Acquisition and finalisation of outstanding pre-conditions on Property Contract
Cabinet Member:	Councillor Damian White - Leader of the Council
SLT Lead:	Neil Stubbings - Director of Regeneration
Report Author and contact details:	Kevin Hazlewood Assistant Director of Regeneration (acting) kevin.hazlewood@havering.gov.uk 01708 43 4091 direct
Policy context:	The context of this decision is requested in the promotion of the policy to increase revenue income for the Council as part of the vision for Romford aligned to the Council's regeneration programme. The site in question occupies a key strategic position and will allow the Council to promote the ambitions within the submitted Local Plan and the Romford Development Framework 2015 and the emerging Romford Master Plan.
Financial summary:	This report seeks approval to the acquisition of a major retail investment in Romford Town Centre that yields a significant revenue benefit for the Council as set out in this report.

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Reason decision is Key	<p>The decision is key due to as</p> <p>(a) Expenditure or saving (including anticipated income) of £500,000 or more</p> <p>(b) In excess of 10% of the gross controllable composite budget at Head of Service/ Assistant Chief Executive level (subject to a minimum value of £250,000).</p>
Date notice given of intended decision:	<p>Immediate - as an ^{urgency} exception to the 28 day Key Decision period and the Overview & Scrutiny Board call-in procedures.</p>
Relevant OSC:	<p>Overview & Scrutiny Board Towns & Communities OSC</p>
Is it an urgent decision?	<p>Yes - <i>under urgency provisions (para. 11) of the 2012 Executive regulations</i></p>
Is this decision exempt from being called-in?	<p>Yes</p>

The subject matter of this report deals with the following Council Objectives

- Communities making Havering
- Places making Havering
- Opportunities making Havering
- Connections making Havering

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

To approve taking all necessary steps to complete the purchase of 39-43 South Street, Romford.

Background

The Council was made aware that the premise at 39-43 South Street was on the market for disposal. The premises comprise 89,351 sq. ft. (8,310 sq. m) of space and the property is currently occupied by a major retailer who has a lease until 31 March 2027. On expiry, the tenant has the right to renew the lease for a term of 40 years, at open market rent, with a break at the 15th year (31st March 2042).

The property occupies a strategic location within the town centre and the general location features significantly within the ambitions identified within the submitted Local Plan and the Romford Development Framework 2015. Furthermore, as an “anchor” premises to the retail experience the rental income will make a positive contribution to the Councils Medium Term Financial Strategy.

As well as providing a substantial ongoing revenue benefit for the Council this site will give the Council essential influence on the future delivery of regeneration in Romford Town Centre and meet policy objectives in the Council's borough-wide Strategy for Growth. As the new Romford Master Plan emerges, it is very clear that there will be changes in central Romford in future years, particularly the retail sector as our high streets undergo significant change and likely contraction. This is a national problem faced by all high streets and town centres and it is imperative that significant local authority involvement and stewardship is maintained to ensure the vibrancy of the local retail offer and therefore the local economy. The best way to positively influence these changes is to be a land owner of a significant asset in the master plan area.

On this basis negotiations were entered into with the vendor's sales agent. The outcome of these was that the preferred purchaser was confirmed as the Council and the next stages of sale completion should be progressed.

In order to complete all necessary investigations and due diligence various reports were commissioned as a matter of urgency. Two firms were appointed for these purposes, legal advice and a report on due diligence was provided by Freeths LLP (solicitors) and a Purchase Report was prepared by CBRE (surveyors).

Draft Heads of Terms were provided by Colliers.

The CBRE report contains a summary and recommendation as follows:

“Romford and similar secure long let M&S investments are popular with investors across the spectrum (Property Companies, Institutions, Funds, Local Authorities and Family Trusts) and typified by the number of successful M&S investments transacted over the previous two years. The level of appetite, coupled with competitive bidding is driving yields for secure index-linked investments downward, and there is a substantial inflow of capital targeting similar type investments. The M&S at 39/43 South Street is a unique opportunity to purchase a retail store which is not restricted to its current use. Whilst the pricing should undoubtedly reflect the lengthy unexpired term, fixed rental uplift provision and strength of the occupier, there is also future scope to sub-divide the unit. The potential returns in doing so could, based on evidence, surpass the current income. Of course, this is all hypothetical and would be subject

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to consent and cost of division works. Nonetheless, from an investor standpoint, this is another angle to this investment which could be explored.

In summary, this is a liquid asset, providing many of the characteristics which investors are seeking. Not least, the location, quality of income, limited asset management requirements and potential future re-configuration opportunity. The asset also provides the London Borough of Havering with control of a substantial site within Romford Town Centre allocated for regeneration to provide a more diverse and higher quality retail, leisure, cultural, employment and residential offer. In light of the investment considerations and the comments above, we recommend the acquisition of the property.”

The building condition report advises:

“that the building is in the condition you might expect of a building of its age”, i.e. nothing particularly adverse to report.

Based on the information provided by the professional advisers, there is nothing provided within the reports that gives rise to concern regarding the acquisition of the property. Indeed, in relation to acquisition for regeneration purposes, acquisition is recommended by CBRE.

AUTHORITY UNDER WHICH DECISION IS MADE

The decision is made by The Leader of The Council.

Under Part 3 Paragraphs 2.1 (g) and (h) of the Council’s Constitution the Cabinet has authority:

(g) To allocate and control financial and land and property resources, to determine priorities in the use of these resources, and take any other action necessary to achieve those objectives.

(h) To have overall responsibility for acquisitions and disposal of any interest in land, buildings or the real and leasehold property of the Council and to have responsibility for land and property used for operational purposes, ‘in principle’, disposals of land in excess of £1,000,000 [with the Cabinet Member for Finance & Commerce having authority to agree the ‘in principle’ disposal of land etc., below that sum.]

Under the “Strong Leader” model of governance adopted by the Council these functions can be exercised by The Leader of the Council acting for Cabinet.

Paragraph 18 of the Overview & Scrutiny Procedure Rules within Part 4 of The Council’s Constitution outlines the circumstances under which an exception to the call-in procedure may be agreed by the Chairman of the relevant Overview & Scrutiny Committee.

Paragraph 18 of the Executive Procedure Rules within Part 4 of The Council’s Constitution outlines the circumstances where the Chairman of the relevant Overview & Scrutiny Committee can authorise a Key Decision that has not been shown on the Forward Plan.

It is considered that it is in the best interests of the Council for this decision to be implemented as a matter of urgency and without delay and that it is made as an exception to the usual procedures.

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In particular, this report seeks approval to acquire a commercial retail investment that will provide a substantial ongoing revenue benefit for the Council and essentially help deliver and influence the future regeneration of Romford Town Centre and meet policy objectives in the Council's borough-wide Strategy for Growth. The investment property in question has been competitively and openly marketed and the selection of the Council as preferred bidder has been conditional on strict timescales being met on exchange and completion.

Councillor Darren Wise, Chairman of Overview and Scrutiny Board has given written confirmation (attached at Appendix B) that the decision can be taken as an exception to (a) the 28 day Key Decision period, and (b) the call-in Overview & Scrutiny Committee procedure.

In the circumstances, the decision may be actioned and implemented without delay.

Using emergency provisions in para. 11 of the Executive regulation 2012

STATEMENT OF THE REASONS FOR THE DECISION

The reason for this decision is to enable the Council to complete the purchase of this key retail property within the Romford Town Centre. The revenue value will make a contribution to the Council's Medium Term Financial Strategy, but more importantly this site will give the Council essential influence over the future delivery of regeneration in Romford Town Centre and meet policy objectives in the Council's borough-wide Strategy for Growth as it is a key strategic location within the town centre.

OTHER OPTIONS CONSIDERED AND REJECTED

Not to proceed with the purchase – **Rejected**

This was based on the reasoning associated with location and benefits to the Council of influence over the future of Romford and future developments within the Town Centre area as detailed within the report and associated papers.

PRE-DECISION CONSULTATION

None

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Neil Stubbings

Designation: Director of Regeneration

Signature:

Neil Stubbings

Date: 12th July 2019

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The Council has powers contained within section 120 Local Government Act 1972 to acquire land for the purposes of the performance of its function or for the benefit, improvement or development of its area. The support and promotion of the economy of a local authority's area is a function. Maintaining and promoting the vitality of Romford town centre is an important Council priority. The Council's primary or main purpose in acquiring the freehold of the Site is that it will, amongst other things, enhance its position in helping to influence how any future development of the town centre occurs. The acquisition of the Site will give the Council a stake, a financial interest in its success, as well as a basis, if required, to assemble land interests adjacent or in close proximity to the Site either by agreement or compulsorily. In due course, ownership of the Site is likely to strengthen the Council's case for the compulsory acquisition, if required, of other sites as part of a process of assembling land for any future redevelopment of the town centre.

From a Real Estate perspective the principal legal risks are any significant title issues and any issues within the Occupational Lease which may not meet institutional standards. As part of the due diligence exercise being undertaken on behalf of the Council, there will be a full title report addressing both title issues and any issues arising from the Lease.

We note that part of the Property is subject to restrictive covenants prohibiting the use of the Property for the sale of wines, spirits or beer for consumption on or off the premises and prohibiting the use of the land as a theatre, concert hall, skating rink, cinema or other place of public entertainment, church, chapel, meeting house, school or hospital. There is a title indemnity insurance policy in place for use of the Property for retail and ancillary uses for the full value of the Property. The policy insures the Property if it is being used or has been built upon / altered in a way that is not compliant with these covenants.

Subject to the above, it is the case that in relation to the title this appears to be relatively clear and free of any significant issues such as restrictive covenants or rights which could potentially constrain development in a manner that potentially could prohibit the Council's long term aspirations for the site in terms of ultimately regenerating the overall site.

In relation to the Occupational Lease, we would highlight that it is the occupational tenant (Marks & Spencer PLC) that is responsible for insuring the building rather than the landlord which is unusual. The impact of that is that from the Council's perspective they lose control over the insurance.

However, the position under the original Lease which the Council's external legal advisers considered to be unsatisfactory was subsequently varied by a Deed of Variation and critically there is an obligation on the part of Marks & Spencer PLC to insure the property in the joint names of itself and its landlord from time to time. The fact that the insurance has to be undertaken in joint names in the view of the Council's external legal advisers view gives the Council a significant degree of comfort and control over the insurance proceeds.

The other important issue is that when the current Lease comes to an end in 2027 Marks & Spencer PLC have an option to acquire a new 40 year Lease of the premises (with a break at year 15) and at that point in time the rent for the new Lease would be assessed on the basis of a market rent not by reference to the rent passing at the end of the term which could potentially be significantly higher than prevailing market rents at that time. It is equally true to say that if market conditions significantly improve the new rent could be set at a higher level. However, it is the case if the Tenant have security of tenure under Part 2 of the Landlord &

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Tenant Act 1954 (which would normally be the case on a lease of this length) the position would be the same in any event in that scenario.

In the context of regeneration if, for example, the Council had acquired a number of the sites in the locality as part of its longer term objective to bring about a significant regeneration scheme within the immediate locality then potentially the option in favour of Marks & Spencer PLC to take a new longer Lease would give Marks & Spencer a significant negotiating hand in terms of exercising influence over the Council's plans.

Nevertheless, assuming that Marks & Spencer PLC is still a key retail covenant in 2027, then they would by virtue of that have a significant negotiating position in any event and as is noted in the first part of this section of this report, the Council could potentially utilise its compulsory purchase powers in order to purchase the leasehold interest of Marks & Spencer to bring about a regeneration scheme.

FINANCIAL IMPLICATIONS AND RISKS

The proposal is to purchase the site at 39-43 South Street, Romford in order to secure the key strategic site and to potentially realise in the future the ambitions associated with the submitted Local Plan and Romford Development Framework 2015. The financial details of the proposition are set out in exempt Appendix A to this ED.

As part of the capital strategy approved at council on 13 Feb 2019, a sum of £30.0m was earmarked to allow for future acquisitions to enable delivery of regeneration opportunities, to ensure that the council could secure key sites and development opportunities as they came up. This purchase will be funded from that capital allocation. The provision was intended as a rotating fund to acquire sites for regeneration and as they were developed to re-provide the funding. This site will however need to be held by the council until the regeneration of the area begins. Therefore it is necessary to cover the capital financing and MRP costs of this acquisition to mitigate the revenue impact on the MTFS of this purchase and this funding would come from the rental streams associated with the current occupiers lease.

The current occupant has a lease until 2027 with the option for the lease to be extended (as outlined in the legal Implications above). This would ensure the funding was available should the holding period go beyond this date. The table below shows the analysis of the capital financing costs of the purchase against the rental income streams over a 10 year holding period.

Over 10 years holding period assuming the lease is extended	MRP	Interest	Total Financing Costs	Income	Net income over 10 year period	NPV
	£	£	£	£	£	£
Baseline scenario						
MRP at 2% Borrowing period- 50 years PWLB rate 3%	2,806,000	4,209,000	7,015,000	- 9,279,657	- 2,264,657	- 1,950,168
Sensitivity analysis						
MRP at 2% Borrowing period- 50 years PWLB rate 3.5%	2,806,000	4,910,500	7,716,500	- 9,279,657	- 1,563,157	- 1,336,210

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Allowing cover for £50,000 pa associated costs						
MRP at 2%	2,806,000	4,209,000	7,015,000	- 8,739,779	- 1,724,779	- 1,479,517
Borrowing period- 50 years PWLB rate 3%						

The rental income stream would also cover the costs associated with the acquisition and the SDLT associated with the transaction.

This property is being purchased as a key strategic site. There is a risk that the regeneration of the area doesn't progress at the pace and the Council holds the property for longer than originally anticipated. This could lead to costs or changes resulting from the renegotiation of the lease that are currently unforeseen.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

There are no human resources implications or risks as a result of the decision proposed.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- i.the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- ii.the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- iii.foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

In respect of the proposed decision there are no implications or risks associated with the Councils statutory duty.

BACKGROUND PAPERS

39 – 43 South Street Opportunity
Colliers – Draft Heads of Terms
Freeths – Legal Due Diligence Report
CBRE – Purchase Report
CBRE – Building Survey Report

Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

~~Proposal NOT agreed because~~

APPENDICIES

Exempt Appendix A – Financial details.

Exempt Appendix B – waiver of call-in. *and agreement to usgency using para. 11 of the 2012 Executive Regulation that*

Details of decision maker

Signed



Name: Councillor Damian White

Cabinet Portfolio held: Leader of the Council

Date: 12th July 2019.

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Democratic Services Officer in Democratic Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on 15/7/2019

Signed 

