

19/46



Havering
LONDON BOROUGH

+ Appendix A
and Exempt
Appendix B+C

Notice of KEY Executive Decision containing exempt information

This Executive Decision Report is part exempt and Appendices B & C are not available for public inspection as they contain or relate to exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972. They are exempt because they refer to Information relating to the financial or business affairs of any particular person (including the authority holding that information), and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Subject Heading:	Option to purchase Hornchurch Police Station and the retention of Police Services
Cabinet Member:	Cllr Damian White – Leader of the Council
SLT Lead:	Neil Stubbings – Director of Regeneration
Report Author and contact details:	Kevin Hazlewood - Assistant Director of Regeneration kevin.hazlewood@havering.gov.uk
Policy context:	Following a Judicial Review legal challenge to the London Mayor's Police Access Strategy, the subsequent Agreement between the parties proposes an option for the Council to purchase the freehold of Hornchurch Police Station and to leaseback part to the Metropolitan Police to provide continuing police services.
Financial summary:	Costs, funding and associated risks/issues set out in the exempt financial implications

Key Executive Decision – Part Exempt Report

Reason decision is Key	The decision involves: (a) Expenditure or saving (including anticipated income) of £500,000 or more, and (b) Significant effect on two or more Wards
Date notice given of intended decision:	4 September 2018
Relevant OSC:	Corporate
Is it an urgent decision?	Yes
Is this decision exempt from being called-in?	Yes

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

Communities making Havering	<input checked="" type="checkbox"/>
Places making Havering	<input checked="" type="checkbox"/>
Opportunities making Havering	<input checked="" type="checkbox"/>
Connections making Havering	<input type="checkbox"/>

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

This report details the outcome to a Judicial Review legal challenge to the London Mayor's Police Access Strategy and recommends that the Council exercises the option agreed to purchase the Hornchurch Police Station together with the retention of continuing police services, as follows:

1. That the Council exercises the Option to acquire the freehold interest in the Hornchurch Police Station ("the Site") from the Mayor's Office For Policing And Crime (MOPAC) on the basis set out in the Exempt part of this Report and to acquire and hold the property for "planning purposes" under the Town & Country Planning Act 1990.
2. That upon completion of the acquisition of the freehold interests of the Site the Council simultaneously leases back part of the site to the Mayor's Office For Policing And Crime for a term of 10 years with a requirement that Police services be provided during this period, as set out in the Memorandum of Understanding in Appendix A.
3. That it be delegated to the Director of Regeneration, following consultation with the Director of Legal and Governance and after undertaking any necessary further property due diligence, the preparation and entering into all necessary legal documentation to bring into effect the proposed arrangements in Recommendation 1 and 2.
4. That the involvement of the Council's wholly owned company, Mercury Land Holdings Limited (MLH), in seeking planning permission for the Site be agreed.
5. That the involvement of the Council's wholly owned company, Mercury Land Holdings Limited in acquiring, including by novation, and redeveloping the Site to maximise potential and value whilst preserving Police and Community Services on the site be agreed in principle, subject to approval of the detailed business case and funding requirements in due course, and that the Chief Operating Officer and/or Director of Regeneration be authorised to approve any necessary arrangements between the Council and Mercury Land Holdings.

AUTHORITY UNDER WHICH DECISION IS MADE

The decision is made by The Leader of The Council.

Under Part 3 Paragraphs 2.1 (d), (g) and (h) the Cabinet has authority:

(d) To determine the Council's policy, strategy and programme in relation to the area and in respect of all Executive matters.

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(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 Leader of the Council 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.

The legally documented arrangement for exercising the option that is the subject of this report has timescales that require the Council to act quickly when all preliminary matters have been met. For this reason an Executive Decision is the most appropriate basis to ensure that the necessary notice timescales can be met.

STATEMENT OF THE REASONS FOR THE DECISION

This report arises from the outcome of a Judicial Review legal challenge to the London Mayor's Police Access Strategy. The legal action was settled by the parties on the basis of an agreement proposing an option to purchase the freehold of Hornchurch Police Station and to leaseback to provide continuing police services.

An Executive Decision of the Chief Executive of 19th July 2018 authorised the Council to formally enter into an Option Agreement, subject to a decision of final terms - which are now known.

The reason for the initial legal action arose out of proposals in the Mayor's Police Access Strategy, in respect of which the London Borough of Havering was significantly concerned about proposals to close local Safer Neighbourhood Bases and Contact Points.

The Mayor's proposals were of particular concern to the Council as it would leave some residents in the south of the borough having to travel over an hour each way by public transport to access the borough's only front counter.

Whilst the Council fully understood the need for the Metropolitan Police Service (MPS) to realise cost savings, the Council took the view that the unique geographical size and demographic challenges of Havering should have been taken into account by MOPAC and the MPS in its decision making.

As highlighted in the Council's response to the consultation, Havering is the third largest London Borough and to be left with just one publicly accessible police base to serve a borough of this size is unsustainable.

An agreement has been reached with MOPAC that seeks to align the Council's desire on the retention of police services whilst allowing MOPAC to achieve its objectives on rationalising its property estate by disposing of the site of the Hornchurch Police Station to the Council at market value, with space in the building then being leased back from the Council in order to provide a police presence at the site, alongside possible Council services and a wider multi-agency service offering.

This would be offered on the basis of the MPS continuing to provide a minimum of the three hours per week public contact time that is currently provided through the Community Contact Session (CCS) model. The Memorandum of Understanding is attached as Appendix A.

The Option Agreement and a Memorandum of Understanding have now been legally agreed and will provide for the Council a binding enforceable contract to acquire the Police Station. The Council may exercise the option to purchase the site within 45 working days of the Option being exchanged, which is now imminent.

The option agreement terms sets out the option price. A potential development proposal for the site has been prepared by Savills, acting for the Council, as part of an appraisal to determine whether the Council can be recommended to exercise its option to purchase. The Savills valuation report supports the acquisition of the property on the terms of the Option and is set out at Exempt Appendix C. The terms also provide that overage will be payable to MOPAC by the Council in certain circumstances.

The Council is not bound to exercise the option but may choose to do so in the period of the option agreement. By contrast, MOPAC is contractually obliged to sell to the Council at the agreed price in the event the Council exercises the option.

In exercising the option, the Council needs to be satisfied that the purchase price represents good value for money and that the site can be utilised for purposes that will be of benefit to the Borough and that justify the purchase.

In this respect a detailed property, valuation and legal due diligence programme has been undertaken by Savills on property and valuation matters and Freeths LLP on legal title and purchase documentation ahead of any decision to exercise the option. This supports the Council proceeding with the purchase on the terms and conditions proposed. Further site due diligence will be carried out immediately prior to the exercise of the option.

In terms of the immediate use of the property, a review is being undertaken of the future use potential. This includes use of the property as a community hub with possible Council and multi-agency users, which would be alongside the police use that is assured as part of the agreement to acquire the property. It is also agreed that the Council can relocate the police use – at the same level of provision – into an alternative property in the area. This would allow the police service still to be part of a community hub in the event that the current review work concludes on a different location for a community hub to serve this area.

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The property is of course a bespoke Police Station on a large site with associated specialised structures, a number of which are functionally obsolete for an alternative use. Consequently, it is appropriate that development options are identified to ensure that the value of the Council's acquisition can be fully maximised for the future in a scheme that could preserve or relocate police occupation whilst delivering other benefits such as community, public service or housing use.

For this reason, the purchase arrangements for the site allows the contract to be novated, if required simultaneously, through the Council and onto Mercury Land Holdings, who could then complete the transaction on the same option terms as agreed by the Council. However, this step would mean that the overriding effect of the Council holding the land for planning purposes (as referred to below) would not apply. In such circumstances other options would have to be explored to address any legal constraints on the future development of the land.

Alternatively, the Council can acquire the entire property at the outset and then undertake phased partial disposals to MLH, thereby allowing the initial refurbishment and sale/rent by MLH of the two existing houses on site and thereafter a subsequent development phase of land behind the main Police Station building, whilst allowing the continuing use of this building for police and other community services.

Mercury is a wholly owned Council company that will work to the Council's direction on ensuring the future potential use of the site meets the overall aims and aspirations of the Council, whilst protecting police services. A broader business plan for Mercury was approved by Cabinet in February 2019, including proposals for this site. As mentioned previously, it is open to the Council to provide alternative accommodation for the Police in this part of the borough if this is considered to be the best way forward in the future but essentially still protecting the provision of police services in this part of the borough for the next 10 years.

As this report proposes a future development of the site, the Council would wish to use its powers contained in the Town and Country Planning Act 1990 to acquire and hold the property for "planning purposes". This has the effect of allowing the Council to take the benefit of section 203 Housing and Planning Act 2016 thereby overriding rights and restrictions that affect the land insofar as they interfere with the planning purpose for which the land is to be acquired.

This report makes clear intent to maximise the use of the site at some future time and the manner in which the land is subsequently developed is connected and relevant to the reasons for its acquisition, thereby permitting the use of these powers.

OTHER OPTIONS CONSIDERED AND REJECTED

The Council could choose not to exercise the option, in which case it would thereafter be a matter for MOPAC to decide whether to make a further decision on the policing arrangements in this part of the borough. Reaching an acceptable outcome under the terms of the agreement outlined in this report therefore provides greater certainty for

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the Council and its residents in respect of police services and is strongly preferred.

PRE-DECISION CONSULTATION

The decision has been published in full as an intended decision for one week ahead of the decision date.

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

Name: Kevin Hazlewood

Designation: Assistant Director of Regeneration

Signature:

Date:

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The decision to purchase the freehold of Hornchurch Police Station will be taken in accordance with the Council's decision making processes set out in the Constitution. The Council had filed a claim for judicial review against MOPAC because of its concern about the impact on its residents of MOPAC's decision to reduce public access to police buildings and the police presence in the borough.

The proposed agreement substantially addresses the Council's concerns which led to the Judicial Review claim. As this dispute involves two public bodies, and the use of public funds, the onus on both parties to try to resolve the dispute without resorting to legal proceedings is a high one. Furthermore, if the Court were to rule in the Council's favour, this would only address the decision to which the Judicial Review claim was made. It would not affect the MOPAC's ability to make decisions in future on its policing arrangements. The proposed agreement reaches an acceptable outcome for a defined period of time and therefore provides greater degree of certainty for the Council and its residents.

Section 227 Town and Country Planning Act 1990 empowers local authorities to acquire land/premises for planning purposes. Following the coming into force of the Housing and Planning Act 2016 ("2016 Act"), section 237 Town and Planning Act 1990 (the former power relied on by councils to override restrictions and covenants etc.) was repealed and replaced by sections 203-205 of the 2016 Act. In order to rely on the section 203 of the 2016 Act there are a number of qualifying requirements:

1. There is planning permission for the proposed development of the premises. The permission does not have to be obtained whilst the land is in the Council's ownership, but it must be in place when the rights to be overridden are interfered with.
2. The development is carried out on land that has been acquired by the Council. This means transferred into the Council's ownership. This only has to be momentarily, for example, under a back-to-back transfer, i.e. to the Council and then immediately out again.
3. Ignoring for the moment that the Council intend to acquire the property by agreement, the Council must be able to show that it would have had the necessary power to acquire the property compulsorily should it have been necessary. Section 226 Town and Country Planning Act 1990 empowers local authorities to acquire land compulsorily for planning purposes in circumstances where acquisition by agreement (section 227) is not possible. The justification for the use of the power is the same in both cases.
4. The development must be for a purpose related to the purposes for which the land was acquired by the Council.

As with the repealed section 237 Town and Country Planning Act 1990, compensation is payable (on a compulsory purchase basis) to benefiting landowners for the interference with rights and interests that are overridden. Compensation is payable in

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accordance with section 204 Housing and Planning Act 2016 and in the first instance is payable by the party causing the interference, i.e. carrying out the development. In the event they do not pay there is a right of recovery against the Council. This, in turn, gives rise to the Council gaining a legal right of recovery against the party originally responsible for paying compensation.

FINANCIAL IMPLICATIONS AND RISKS

The financial implications including details of the cost and funding of the purchase and associated issues are included in the exempt appendix to this report.

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

None

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

S149 Equality Act 2010 provides that in the exercise of its functions the Council must have due regard to the need to advance equality of opportunity for those with protected characteristics. The option to acquire the site and the terms of the agreement provide the potential to enhance public access to council, police and other agency services, most particularly for those who find travel and access problematic, which includes some of the elderly.

BACKGROUND PAPERS

None

APPENDICIES

Appendix A – Memorandum of Understanding- Open
Appendix B – Heads of Terms - Exempt
Appendix C – Valuation Report – Exempt

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

Details of decision maker

Signed 

Name: Councillor Damian White

Cabinet Portfolio held: Leader of the Council

Date: 18.07.2019

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 10/7/2019

Signed 