

Cabinet Member Delegated Decision 6 February 2018

Report title: Loughborough Children's Centre, LEAP Programme Leasehold disposal

Wards: Coldharbour

Portfolio: Deputy Leader of the Council (Finance & Resources), Councillor Imogen Walker

Report Authorised by: Jackie Belton: Strategic Director for Corporate Resources
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Report summary

Lambeth Early Action Partnership (LEAP), a Big Lottery funded programme delivered through the Council's partner the National Children's Bureau (NCB), is designed to improve outcomes for children through early intervention in health, early childhood development and family support. The LEAP capital funding investment enhances the facilities being used for the delivery of LEAP services. Where capital investment exceeds £100,000 or £350,000 compliance with grant funding conditions is required.

The capital investment at Loughborough Children's Centre (CC), located at Minet Road, London SW9 7UA, subject to procurement, may exceed £350,000 triggering these conditions. This includes the grant of a 10 or 20 year lease to the National Children's Bureau depending on the final grant value. A leaseback to the Council will be granted simultaneously so that the Council remains responsible for the premises, albeit the use of the premises will be restricted to the provision of early childhood services for the lease period.

The works at Loughborough CC also require an Appropriation of Land from the Loughborough Estate, being part of the HRA into the Children's Centre, being part of the General Fund.

Finance summary

The capital investment requirement at this property is set out as part of the separate LEAP Procurement Report – Phase 1 of the Lambeth Early Action Partnership (LEAP) Capital Works Programme.

The proposed lease and leaseback transaction is for the purpose of meeting the grant funding conditions and approval to the lease will enable the drawdown of grant funding, expected to be in the region of £350,000.

There are no revenue implications from the proposed transactions. Under the leaseback to the Council, the Council retains the responsibility for the management and maintenance of the premises.

Recommendations

1. To approve the proposed 20 year lease to the National Children's Bureau at nil rent, including leaseback to the Council at nil rent and delegate the authority to complete the lease to the Head of Valuation and Strategic Assets.
2. To approve the appropriation of Housing Revenue Account (HRA) land for planning purposes for a sum of £1 to allow the land to be incorporated into an enhanced Loughborough Children's Centre

1. Context

- 1.1 A grant of £35 million was awarded in 2014 by the Big Lottery Fund to the National Children's Bureau (NCB) for the Lambeth Early Action Partnership (LEAP) programme with roughly £4m earmarked for capital works for a series of projects on Lambeth properties. Where, on an individual project, the capital investment exceeds a specified level of grant funding additional funding conditions are imposed as follows:
- For projects with a capital investment greater than £100,000, the grant of a 10 year lease to the NCB, and a restriction on NCB's leasehold title
 - For projects with a capital investment of or greater than £350,000, the grant of a 20 year lease to the NCB together with a charge over NCB's leasehold title.
- 1.2 The planned investment at Loughborough is budgeted to be around £350,000 and thus is at a level that may require the grant of a 20 or 10 year lease to the NCB. On completion of the lease and charge, the NCB will be able to draw down and release the funding from the Big Lottery Fund to enable the project to proceed and thus deliver the LEAP outcomes for this property.
- 1.3 This investment, will also alter the use of some of the land on the Loughborough Estate and enclosing a small area within the Children's Centre and converting some roadside verge to provide replacement car parking spaces. However, the alterations to the Estate are required to provide an enhanced children's centre and the development will contribute the improvement of the economic and social well-being of the area.
- 1.4 The LEAP Programme outcomes are set out in the LEAP Programme reports links to which are attached as background information.

2. Proposal and Reasons

- 2.1 The grant of this lease is required to enable delivery of LEAP Programme outcomes at this property through release of grant funding for capital investment in the building.
- 2.2 The lease of this property to the National Children's Bureau (NCB), subject to a leaseback of the premises to the Council, is required to enable the release of the grant funding for the building improvement project. Before a lease can be granted, the land that will be incorporated into the children's centre must be appropriated from the HRA to the GF.
- 2.3 The budgeted investment at Loughborough of £350,000, will refurbish the premises and provide a new entrance lobby, create a buggy store and extend the garden including landscaping of the garden. The enhance lobby, buggy store and extended garden will be developed on Loughborough Estate car parking spaces which will be replaced in an alternative location along the estate road.
- 2.4 The key lease terms are as follows

Term:	20 years (reduced to 10 years if the results of the tendering bring the costs below £350K)
Landlord:	LB Lambeth
Tenant:	National Children's Bureau (NCB)
Rent:	A Peppercorn (effectively nil rent)
Use:	A centre for the provision of early childhood services.

Break: The Council can break the lease but will be required to either offer alternative premise for use by the LEAP Programme or return the grant funding.

Simultaneously with the grant of the lease to the NCB, a lease back to the Council will be granted. The Council will therefore be Landlord and Subtenant and will retain responsibility for management and maintenance of the premises. The lease back to the Council will be on the same terms as the lease granted to the NCB, thus;

Term: 20 years (less 3 days to allow for the termination provisions) reduced to 10 years subject to results of the tendering of the works.
Landlord: National Children's Bureau (NCB)
Tenant: LB Lambeth
Rent: A Peppercorn (effectively nil rent)
Use: A centre for the provision of early childhood services.
Break: The NCB can break the lease if the Council breaks the head lease.

This proposal is recommended as two simultaneous transactions, thus all obligations under the lease granted to the tenant, NCB, will immediately be granted back to the Council. The Council will therefore retain responsibility for all running, operational, health and safety and management costs at the premises. At this time, the responsibilities for operating Loughborough Children's Centre are delegated to Loughborough Primary School through the scheme of delegation for devolved children's centre budgets.

- 2.5 The LEAP investment, as well as enhancing the fabric of the premises and improving the building, also enhances the social wellbeing of the borough. So while the 20 year lease and leaseback arrangement has a depressing impact on the value of this asset, the investment in the premises balances this out. On a market valuation basis the LEAP investment creates a net increase in the asset value of £190,000K.
- 2.6 The disposal by the lease and leaseback arrangement therefore meets the criteria set out in the General Consent Order and can be supported.

3. Finance

Impact of the Lease Proposals

- 3.1 The disposal of these premises by lease is for the purpose of meeting the Big Lottery Fund/NCB grant funding conditions and enabling the drawdown of the grant funding.
- 3.2 Approval to the capital expenditure proposed at Loughborough Children's Centre is subject to the LEAP Capital Procurement Report. However, the grant funding for this project will only be released on completion of the Lease. So the grant of the lease will enable inward investment of a projected £350,000 to be drawn down.
- 3.3 Although the grant investment in the premises enhances the asset value, the grant conditions which require the lease and leaseback arrangement, has a depressing effect. The net impact is a positive effect on asset value and can be supported. In addition, as well as being no cash implications, the premises are enhanced and they continue to be available for the provision of early childhood services.

- 3.4 There are no revenue implications from the lease transactions as the Council retains the responsibility for operating the premises under the leaseback arrangements.

Impact of the Appropriation Proposals

- 3.5 An area of land approximately 90 sq m, currently used as estate car parking spaces will be incorporated into the Children's Centre. This land will move from the HRA into the General Fund. The value of the land transferred is theoretically £50,000. However, an equivalent number of car parking spaces will be re-provided on the estate by developing roadside land into new paved and marked car parking spaces, thus increasing the land value of the retained estate. The impact of the change in estate land values at the overall 'estate wide' level is therefore considered to be nominal.
- 3.6 In revenue terms it is considered that there will be little, if any impact on management of the either the estate, or the Children's Centre.

4 Legal and Democracy

- 4.1 Section 122 of the Local Government Act 1972 permits the council to appropriate for any purpose for which the council are authorised by that or any other enactment to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation
- 4.2 Section 203 of the Housing and Planning Act 2016 permits the council to carry out building or maintenance work notwithstanding it interferes with a relevant right or interest, or breaches a restriction as to the user of the land arising out of a contract where:
- There is planning consent for the building or maintenance work;
 - The land has been appropriated for planning purposes as defined by s246 of the Town and Country Planning Act 1990;
 - The council could acquire the land compulsorily of the building or maintenance work (for the purpose of the section, land currently owned by the council is to be treated as if it is not currently owned; and
 - The building and maintenance work is for a purpose related to the purpose for which it was appropriated.
- 4.3 Section 204 of the Housing and Planning Act 2016 provides that the council is liable to pay compensation for any interference with any relevant right or interest or breach of a restriction so authorised by s203.
- 4.4 In the case of R v Leeds City Council ex p Leeds Industrial Co-operative Society Limited [1996] it was held that in a case where third parties are known to have rights, a local authority should not consider using its appropriation powers unless it has good reason to believe that interference with such rights is necessary.
- 4.5 In making a decision as to whether to appropriate land for the planning purpose of the development, the following matters are relevant considerations that should be taken into account by the Council:-
- I. The existing rights affected and the likely extent of interference with Rights of Light
 - II. Whether interference with the rights is necessary in order to allow the development to be carried out and whether agreement can be reached for release of those rights on what terms and in what timescale;
 - III. Whether acquisition will facilitate the carrying out of the development;

- IV. Whether the development will contribute to one or more of the following well-being objectives and thus be in the public interest:
 - The promotion or improvement of the economic well-being of the area
 - The promotion or improvement of the social well-being of that area;
 - The promotion or improvement of the environmental well-being of the area
 - V. Whether the benefits of the development could be achieved without giving rise to all or some of the infringements.
 - VI. Whether the public benefits arising from the recommendations are proportionate to the infringements, and in particular to any interference with rights guaranteed by the European Convention on Human Rights (“Convention Rights”) and whether the balance is right in respect of the overarching public interest against the individual rights being interfered with.
- 4.6. In this case, the key public interests benefits of the proposal which need to be balanced against the infringement are:
- The improvement of the early year play provision
 - The delivery of the LEAP Outcomes as defined by the LEAP Programme
 - The improvement to the Social well-being and environmental well-being of the area.
- 4.7 Section 123 of the Local Government Act 1972 empowers the council to dispose of land it owns in any manner it determines save that it is not permitted to dispose of land at less than the best consideration reasonably achievable, unless the disposal is by way of a short lease, i.e. less than seven years.
- 4.8 Where land is disposed of at less than best consideration and the lease is not a short lease, the Secretary of State has issued a general consent ‘Disposal of land for less than the best consideration that can reasonably be obtained: circular 06/2003’. This general consent means that specific consent from the Secretary of State is not required where the Council considers the disposal will further the social, economic or environmental wellbeing of the borough, subject to a limitation that the undervalue should not exceed £2,000,000.
- 4.9 Section 105 of the 1985 Housing Act requires the council to maintain such arrangements as it considers appropriate to enable those of its secure tenants who are likely to be substantially affected by a matter of housing management, including a new programme of maintenance, improvement or demolition:
- to be informed of the authority's proposals in respect of the matter; and,
 - to make their views known to the authority within a specified period.

The council is required, before making any decision on the matter, to consider any representations made to it in accordance with those arrangements.

- 4.10 In the event that the Head of Valuation and Strategic Assets proposes to dispose of any land or property which is not included in the Disposal Programme (other than those required by statute), prior approval to the disposals must be obtained from the Director of Finance and the relevant Strategic Director responsible for the land or property and the Deputy Leader of the Council (Investment and Partnerships).
- 4.11 The authority to grant and acquire leases for terms of up to 20 years subject to a rental limit of £200,000 per annum and the cost being contained within existing budgets is delegated to the Head of Valuation and Strategic Assets.

- 4.12 Section 149 of the Equality Act 2010 requires the Council in the exercise of its functions to have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and other form of conduct prohibited under the act; and,
 - (b) to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic (age, disability, gender re-assignment, pregnancy and maternity, race, religion and belief, sex, and sexual orientation) and persons who do not share it.
- 4.13 Having regard to the need to advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share it involves having due regard, in particular, to the need to:
- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of the persons who share that characteristic that are different from the needs of persons who do not share it; and,
 - (c) encourage persons of the relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 4.14 Members need to ensure that they act reasonably in making any decision. This would require them to take account of all relevant considerations, disregard irrelevant matters; observe procedural requirements, not act in bad faith, act for proper purposes and not make a decision that is so unreasonable that no reasonable local authority would make. Officer's obligations in this respect would include complying with their fiduciary duty the Council Tax payers and other funders.
- 4.15 This proposed key decision was entered in the Forward Plan on 23 December 2016 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

5 Consultation and co-production

- 5.1 Consultation on the proposed LEAP projects was undertaken as part of the design process for the LEAP programme. At this site, the process was undertaken through the Children's Centre provider and the Loughborough Estate Management Board (LEMB). Consultation included consultation with the integrated linked schools (on the same site) and neighbouring schools. Consultation was through one to one meetings and presentations on the proposed capital works. These parties are happy to proceed with the planned works at the premises.
- 5.2 In addition, LEMB carried out a consultation leaflet drop to all households at Harper House, Leicester House and Elmore House (the block opposite the children centre) inviting all residents to a consultation meeting at the school on 25th February 2016. There were no objections to the proposals.

- 5.3 Again, as part of the planning application all residents at Elmore House were consulted in October 2016.
- 5.4 It is recognised that there have been delays in bringing the LEAP projects forward. This has been for a combination of factors including, negotiations over the grant conditions, negotiations over the treatment of VAT and changes to the procurement strategy due to the variety of projects within the LEAP programme and as a result of market conditions. Consideration has taken place and LEMB have been asked to consider whether additional consultation is required.
- 5.5 At their Board meeting on 9th January 2018 LEMB were provided with a review of the LEAP programme and benefits, thus far, together with an update on the Loughborough Children's Centre project and programme. Board members confirmed their general support for the LEAP proposals and a response has been provided to the questions raised.
- 5.6 The Director: Education and Learning has been consulted and is aware that the grant of the lease will restrict the Councils freedom to deal with these premises at the Council's sole discretion for the term of the lease. The Director is content that the risks identified can be managed in the context of the planned change in education roll numbers during the course of the lease.

6 Risk management

- 6.1 The risk associated with this transaction is that the grant of the lease prevents the Council from dealing with this site at the Council's sole discretion for the 20 year lease term. i.e. The Council cannot use the site for any other purpose, than set out in the lease, for 20 years.
- 6.2 While the lease is in place the Council will be restricted from using the site for a different purpose, or from disposing or redeveloping this site. If the Council wanted to terminate the lease arrangements, the Council would have to either offer alternative premises for use by the LEAP programme to deliver LEAP programme outcomes, or repay the grant funding.
- 6.3 It should also be noted that this property was the recipient of Sure Start Capital Investment. The Sure Start capital guidance includes a 25 year clawback in favour of the Department for Education in the event that the buildings are no longer used for early childhood services. Thus the risk identified, of penalties being imposed if the premises is used for any purpose other than for early childhood services, will be extended from 2031-34 (under Sure Start) to 2037 (under the LEAP lease) and the potential capital repayment increased.
- 6.4 The requirement to repay LEAP grant funding, if the Council wants to terminate the lease, is mitigated by the option for the Council to offer alternative premises for the same purpose. However, the risk can be completely managed if the Council commits to the premises being used for early childhood services only until 2037.
- 6.5 There is a risk associated with committing the premises for early childhood services until 2037 because of changing profile of the population. For example after a significant increase in the pupil population from 2008-2013 there followed a dip in numbers because of a lowering of birth rate, the impact of welfare reforms and increased costs of living in the borough. The premises therefore may not be needed for early childhood services in the same way as they are now until 2037.

7 Equalities impact assessment

- 7.1 This proposal enables the drawdown of capital funding to improve the facilities available at Loughborough Children's Centre which will be used by the LEAP programme to engage with pregnant women and families with young children in the delivery of LEAP services.
- 7.2 With the focus in four of the most deprived wards in Lambeth, the LEAP programmes are designed to narrow the inequalities that start from birth by providing opportunities for children in these areas to have a better start in life. These wards also have higher proportions of ethnic minority residents, English as another language, health and economic disadvantage. The benefit of the LEAP programmes therefore has the potential to have a disproportionately positive impact across both the statutory protected and local protected characteristics, including pregnancy, age, race, disability, English as another language, economic disadvantage and health disadvantage.

8 Community safety

- 8.1 There is no direct impact on Community safety from this proposal, however investment in buildings in a local area has the potential to enhance the community safety outcomes by generating an improved local environment.

9 Organisational implications

9.1 Environmental

None.

9.2 Staffing and accommodation

None.

9.3 Procurement

The LEAP Capital Programme is subject to a separate Procurement Report.

9.4 Health

None

10 Timetable for implementation

- 10.1 The agreed leases needs to be circulated, signed and sealed by the NCB board as well as Lambeth legal. This could take some time. The reports need to be completed early in September to ensure the leases don't delay the award of works contracts. The leases will remain ready for completion at the same time as the contract awards.

Table 1: Key Milestones and Timelines

Activity	To be completed by
Completion of the LEAP Partnership Agreement	Completed
Release of ITT documentation	Completed
Circulation of lease and works contracts to Big Lottery for approval to release funds	Completed
Agreed Leases to be executed by NCB and LBL ready for completion	December 2017
Tender Return	December 2017
Procurement Board	December 2017
Completion of Leases	December 2017

Audit Trail				
Consultation				
Name/Position	Lambeth directorate/department or partner	Date Sent	Date Received	Comments in para:
Councillor Jane Pickard	Cabinet Member for Families and Young People	23.08.17	22.09.17	None
Councillor Imogen Walker,	Deputy Leader for Finance & Resources	24.08.17	2.10.17	7
Annie Hudson	Strategic Director for Children	23.08.17	25.09.19	None
Jackie Belton	Strategic Director for Corporate Resources	23.08.17	12.12.17	
Nilesh Jethwa; Assistant Director Finance	Corporate Resources	17.01.17 & 05.05.17	13.07.17.	3
Greg Carson, Legal Services	Corporate Resources	17.01.17 & 14.07.17	19.07.17	4.1 to 4.14
Wayne Chandai, Democratic Services Manager	Corporate Resources	16.12.17	21.12.17	
Cathy Twist	Director: Education & Learning, Education, Learning & Skills	17.01.17	09.02.17	6.5
Neil Wightman	Director of Housing Services	06.12.17	12.12.17	
Rachel Sharpe	Director, Strategic Projects	06.12.17	12.12.17	
Rosemary Mann	Project Manager, Major Capital Programmes	04.06.17	05.01.07	incorporated
Katy Shaw	Governance Officer, Neighbourhoods & Growth	17.01.17	23.01.17	incorporated
External	Date of meeting			
Laura McFarlene	NCB	17.01.17		

Report History	
Original discussion with Cabinet Member	2015
Part II Exempt	No
Key decision report	Yes
Date first appeared on forward plan	23.12.16
Key decision reasons	Expenditure, income or savings in excess of £500,000.
Background information	9th July 2014 LEAP Update Report 8th July 2015 LEAP Progress Report
Appendices	None

APPROVAL BY CABINET MEMBER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board and taken account of their advice and comments in completing the report for approval:

Signature: _____ **Date:** _____

Post: Yvonne Hardy, Assistant Head - Directorates, Valuation and Strategic Assets

I confirm I have consulted the relevant Cabinet Members, including the Leader of the Council (if required), and approve the above recommendations:

Signature: _____ **Date:** 6 February 2018

Post: Councillor Imogen Walker, Deputy Leader of the Council (Finance & Resources)