



London Borough of Hammersmith & Fulham

Cabinet

18 JULY 2011

CABINET MEMBER FOR HOUSING

Councillor Andrew Johnson

REVIEW OF WALHAM GREEN COURT GARAGES

This report considers the income generating opportunities available from commercialising some of the garage and parking facilities on Walham Green Court.

A separate report on the exempt part of the Cabinet agenda considers the income generating opportunities available from commercialising some of the garage and parking facilities on Walham Green Court.

**Wards:
Walham Green
and
Parsons**

And all
Wards

CONTRIBUTORS

AD Housing Services
AD Finance &
Resources
ADLDS
DFCS

**HAS A EIA BEEN COMPLETED?
YES**

**HAS THE REPORT BEEN RISK ASSESSED?
YES**

Recommendations:

1. That (in the particular circumstance of Walham Court, having excellent access to public transport and a high proportion of void spaces) authority is given (subject to any necessary Secretary of State consent under the Housing Act 1985) to commercially lease the currently surplus parking spaces at Walham Green Court, SW6 2DE, on such terms as outlined in this report and otherwise on terms the Director of Housing and Regeneration, Assistant Director (Legal and Democratic Services) and Head of Valuation and Property Services consider appropriate.
2. That the net revenue raised from the lease arrangements is used to recover the costs involved, and is set aside for Housing and Regeneration purposes and to contribute to delivering a balanced HRA as part of the HRA MTFS programme.

- 3. That the consultation programme with tenants on the further commercialisation of garages on Council estates and ancillary land be approved.**
- 4. That authority be delegated to the Cabinet Member for Housing, in conjunction with the Director of Housing and Regeneration, to approve any necessary procurement arrangements to engage a managing agent for the letting and management of parking facilities at Walham Green Court, on such terms as are indicated in this report and otherwise as the Director of Housing and Regeneration, Assistant Director (Legal and Democratic Services) and Head of Valuation and Property Services consider appropriate.**

1. INTRODUCTION

- 1.1 The proposal to commercialise some of the parking facilities on Walham Green Court is in line with the overall Council strategy to provide value for money with a desire of improving front line services.
- 1.2 The garage area at Walham Green Court represents an ideal opportunity to raise revenue with minimal impact to existing tenants and leaseholders. Walham Green Court is situated in South Fulham, with probably the best transport links in West London. The garage area is ideally located almost directly opposite Fulham Broadway tube station, with direct access to many bus routes, local shops and businesses on the Fulham Road.
- 1.3 There are currently 86 tenants and 36 leaseholders living at Walham Green Court and there are 105 underground parking spaces, accessed from two separately controlled entrances. Tenants and leaseholders currently rent 41 spaces (19 tenants and 22 leaseholders) and 12 spaces are let commercially at a historic rent which is now below market rent. The remaining spaces are vacant and ready for letting.
- 1.4 A financial assessment has been carried out and it is estimated that the potential income could be more than £100k per annum, by leasing the currently vacant parking spaces commercially, taking into account existing / anticipated tenant and leaseholder requirements; and financial and legal considerations

2. BACKGROUND

- 2.1 The Housing and Regeneration Department manages 1282 covered garages and 2211 parking bays, the majority of which are located on Council estates and ancillary land.
- 2.2 We currently rent garages and parking bays to tenants, leaseholders, private users and local businesses on licence agreements, generating an annual revenue of £720,000 (garages) and £77,270 (parking spaces).
- 2.3 The annual revenue from parking facilities is not maximised as a result of low occupancy rates at approximately 70%. This due to a combination of demand and poor condition of stock, including poor lighting / security issues.
- 2.4 The Housing Services team has recently completed a review of the management of parking facilities and concluded, that there is revenue generating capability and

opportunities to improve the service to existing tenants and leaseholders by commercialising some of the parking facilities on Council estates. Specifically, the parking lots at Walham Green Court were identified as an area with significant revenue generating potential with relatively minimum investment requirements and without substantial adverse impact on estate residents. At Walham Green Court there is a significant underuse of the parking area and low demand from existing tenants and leaseholders.

- 2.5 Of the 30% vacant garages across all the Council's stock, just under a third require major refurbishment. In practice this relates to 112 garages or 8% of total stock that will require investment, at a cost of approximately £112,000. This includes provisions for new doors, damp proofing, making water tight and upgrade of lighting and security as required.

3. PARKING AT WALHAM GREEN COURT

3.1 Walham Green Court secure tenants with a licence agreement:

There are 19 spaces let to 17 tenants living at Walham Green, on a licence agreement at a weekly charge of £2.72. The current licence agreement at Walham Green Court requires (broadly) that the Council provide a week's notice (to expire on a Sunday) in order to terminate the licence of an individual space. There is no security of tenure for licensees of car spaces, but (given the spaces are held for housing purposes) it would be difficult to justify terminating licences except for good cause (such as increase in fees, but unlikely to include a non-housing purpose such as commercial letting without Secretary of State consent as indicated in Legal comments below).

Any empty space at Walham Green Court can (assuming there is no anticipated resident demand and subject to Secretary of State consent) be commercialised with immediate effect, provided proper procedures are followed. The Council will need to evidence - an independent valuation of the space and demonstrate that we are taking into account the present and anticipated needs of existing tenants and leaseholders.

In the future, should the Council wish to consider commercialisation beyond surplus spaces (but not merely charging residents full market licence fees), we are legally obliged under section 105 of the Housing Act 1985 to carry out a full consultation with secure tenants and an equalities impact assessment. Depending on the duration of commercial letting and whether consent is got from the Secretary of State, it may also be necessary to appropriate the land out of the HRA (with a financial adjustment in favour of the HRA). We will seek to avoid appropriation unless there is a strong housing and financial argument to do otherwise, as the

3.2 Walham Green Court leaseholders with a licence agreement

There are 22 spaces let to 22 leaseholders on Walham Green Court at a weekly charge of £2.77 + VAT (3.32 Total). Property leases do not include car spaces, which leaseholders have to licence on a similar basis as tenants. Similarly to tenants, letting any empty spaces on a commercial basis with immediate effect would not have any impact upon leaseholders, providing regard is had to likely future changes in demand from leaseholders.

Should the Council wish to fully commercialise the facility and charge market rents for leaseholders who have previously had access to reduced rate parking, a full consultation would be advisable but it is not a legal requirement, other than having a duty under the Equalities Act 2010 (particularly in this context of people with disabilities). However, too abrupt a removal of reduced rate parking is best avoided and we will also take into account the adverse effect (if any) that any restriction on leaseholders accessing secure parking at reasonable rates may have on the marketability (and therefore value) of their leases.

3.3 Planning considerations at Walham Green Court

Walham Green Court comprises 122 low and medium rise units, and was built in 1970, with a parking facility and parking spaces below the main estate for the use of residents living within the constructed residential premises. The planning advice varies dependent upon whether full or partial commercialisation is being considered – although planning permission for a material change of use would need to be sought for both.

Therefore should the Council wish to partially commercialise and utilise the vacant spaces this would require planning consent. However, we are advised that this should be more straight forward as we will be utilising or bringing back into use a facility or an area of a facility that is being under utilised.

3.4 Legal considerations

The Council's legal department have considered the commercialisation of spaces at Walham Green Court and advised (inter alia) that prior to any commercial arrangement being put in place, we consider the existing and anticipated demand for parking spaces from existing tenants and leaseholders. This is in line with Part II of the Housing Act 1985. If current demand from residents is being met and overall resident parking spaces will not be reduced permanently or long term then residents will not be substantially affected and we will not need to formally consult with tenants.

Should the Council wish to commercialise spaces on a scale which would be likely substantially to affect secure tenants, then full consultation is required under the Act. An equalities impact assessment will also be needed. In addition, when letting commercially or to someone not a local resident, we will need to demonstrate that we are charging the highest rate reasonably obtainable. We can do this through a process of periodic valuation (which would need to be regularly reviewed, at least on an annual basis and preferably quarterly or half yearly).

It is also important that (save in accordance with a rational Council-wide policy approved by Cabinet) the Council should not discriminate against a set of residents or an individual estate by charging them on a different basis from residents in another part of the borough or on other estates. To do otherwise could risk challenge by way of judicial review. Any change in policy and therefore any consultation on fully commercialising the service would need to consider the whole borough rather than focus specifically on an individual facility or estate.

3.5 Consultation with residents at Walham Green Court:

On 2 June 2011 we wrote to all tenants and leaseholders at Walham Green Court about the potential changes of use of the garage. We intend to consult again to assess demand and individual requirements in line with planning application requirements. There is no need for a full consultation if the commercialisation and charging of full market rates is of an essentially temporary nature and restricted to those spaces that are currently empty and surplus to residents' current and anticipated requirements. Any restriction or any limitations on the use of a facility that would ultimately deprive residents of these spaces or deprive their access to these spaces at a reduced rate would be subject to full formal consultation under Section 105 of the Housing Act 1985.

4. REVENUE POTENTIAL AT WALHAM GREEN COURT

4.1 Overview of current facility

There are a total of 105 parking spaces available at Walham Green Court, 93 of the spaces are available for letting to residents whilst 12 are currently let commercially. Of the 93 spaces available to residents only 41 are currently let at a weekly charge of £2.77 each (£144 per annum), or a total annual income of £5,905. There are currently 52 empty parking spaces with no waiting list for users wishing to access the facility.

4.2 Comparisons with the private sector

As part of our research into market sector charges for this type of facility, we looked at a number of commercial sites. There was quite a large variance in amount charged dependent mainly on the proximity of the space to a transport link (minimum £2400 and max £3600 per annum).

4.3 Projected income Walham Green garages for partial and full commercial letting

The projected revenue from commercialising the garages at Walham Green Court are detailed in the exempt report. In summary based on letting the vacant spaces commercially the annual income could be up to £119k. Should the Council decide to let the entire space the revenue would increase to above £200k.

5. **FUTURE AREAS OF WORK**

- 5.1 In terms of future opportunities, we will complete a review of the entire parking facilities on Council estates and ancillary land to identify further opportunities similar to Walham Green Court. As part of our work we will consider with Planners, the initial planning consents and permissions for each estate. The Council may need to amend planning permissions in order to allow use by individuals not connected to premises within the estate.
- 5.2 We will assess the attractiveness of each area and the potential income that could be generated if garages and parking spaces areas were refurbished with improved access and security such as lighting and CCTV.
- 5.3 We also intend to review the fees charged for parking spaces and garages to existing tenants and leaseholders, and improve the current licence agreement. In addition, we intend to review the current management of sheds on parking estates, the condition and fees charged to residents.

6. **RISK MANAGEMENT**

- 6.1 The risks to commercial arrangements for parking and the management of the service are minimised as we are not intending to dispose of a Council asset on a long term basis that would prejudice adequate facilities for estates.
- 6.2 By granting a tenancy of a parking space to a business or even a non-estate resident there is a danger of creating secure business tenancies which would make it difficult to recover possession except for limited purposes (e.g. redevelopment) usually on payment of compensation. It is possible to contract out of security if a statutory procedure is properly followed.

7. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES

- 7.1 The report considers the income generating potential of the Council's garage and parking spaces within the Housing Revenue Account, and specifically to enter into a commercial leasing arrangement for the vacant parking spaces at Walham Court.
- 7.2 An appraisal of potential income and management costs for the Walham Court site is detailed in the exempt report.
- 7.3 The intention, unless there is a very strong business case otherwise, is to generate additional ongoing revenue income within the HRA. To achieve this it is important that the letting agreements are structured in such a way as to create revenue, not capital receipts under International Financial reporting Standards within the HRA.
- 7.4 Further reports will detail the financial implications of subsequent commercialisation opportunities for Parking and Garages.

8. EQUALITY IMPLICATIONS

- 8.1 Under the Equalities Act 2010 the Council must have regard to the effect a change in policy may have on persons with "protected characteristics". At the very least, therefore, some form of provision for disabled residents and their carers will need to be made and any commercialisation of garages and parking spaces must allow for this. This may include, but is not limited to, being given priority and being able to apply for subsidised or reduced price access to commercial parking facilities.
- 8.2 Any improvements in access to garages and parking spaces either as a result of bringing back dilapidated stock into use or improving the customer experience and access to the service would be seen as beneficial to all residents and would not disadvantage any individual user group.
- 8.3 The specific issue of whether residents would be disadvantaged as a result of increased charges and commercial rates needs to be taken into consideration. This is of significance if full commercialisation rather than partial commercialisation is chosen and if no specific provision is made for reduced or subsidised access for estate residents.

9. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)

- 9.1 It is necessary to distinguish different types of "commercialisation". At the lowest level, merely charging estate residents fees at more commercial rates, poses little

problem from a legal standpoint. There are no specific statutory controls on local housing authority parking charges and no consultation is required with secure tenants under S.105 Housing Act 1985 solely on account of raising fees. The only real risks associated with a simple policy of charging estate residents a commercial rate for parking are that regard must be had to the special requirements of the disabled (and indeed other groups covered by the Equalities Act 2010) and that abrupt withdrawal of affordable parking could provoke a challenge by way of judicial review (e.g. on the basis that tenants had a legitimate expectation that such a facility would not be withdrawn without reasonable notice or that the Council had failed to have regard to a material consideration). On the other hand, true commercialisation, which takes the form of converting a car park into a public pay car park (with no resident parking as such) or where the car park becomes a purely private facility (e.g. for long term vehicle storage or for corporate parking) entails greater complication, especially if not confined to spaces considered surplus to residents' requirements. This derives not so much from any obligation to give tenants "reasonable preference" in relation to available parking (a Council in fact has no general duty to provide any car parking in connection with its housing), as from the general obligation to use the property it currently holds only for the statutory purpose for which it was acquired, until appropriated to some other statutory purpose or otherwise permitted by statute.

- 9.2 The parking spaces at Walham Green Court are held under Part II Housing Act 1985 for housing purposes (i.e. in connection with the flats). As such they would have been provided as amenities for the estate (albeit subject to payment of fees) and therefore must be used for that purpose (other than on a very temporary basis whilst surplus to residents' requirements). until appropriated to a new statutory purpose (and a financial adjustment made in favour of the HRA) or until otherwise permitted under specific statutory provisions. In this case, the consent of the Secretary of State could well be required either way. The appropriation of houses (including appurtenances usually enjoyed with them, such as parking) requires Secretary of State consent under Sections 19 and 56 Housing Act 1985 (though a relatively short lease granted with a view to generating income for the HRA from the surplus portion of under-used assets probably requires no appropriation). Nonetheless, a London authority can anyway only "provide and maintain in connection with housing accommodation...buildings or parts of buildings adapted for use for any commercial purpose" if it obtains consent from the Secretary of State under Section 15 Housing Act 1985. In short, Secretary of State consent will therefore be necessary unless letting is of surplus spaces on temporary short lets without any adaptation being made to facilitate the commercial use. Where Section 15 consent is given, the building remains within Part II of the Housing Act 1985. notwithstanding that use is no longer for estate residents and their visitors.
- 9.3 Aside from spaces manifestly surplus to demand, to deprive secure tenants of Walham Green Court of ancillary parking, currently available for them to let, would represent a departure in policy and be almost certain to require a consultation under Section 105 Housing Act 1985. Indeed, it would be important that residents

- of particular estates not be treated less favourably in terms of parking provision from those on other estates, unless pursuant to a clear, coherent and rational policy adopted by Cabinet. On the other hand, temporary commercial letting of spaces whilst unquestionably surplus to requirements on an estate would be unlikely to need consultation (as tenants would not be “substantially affected” by doing so). Where consultation is required, the Council must specify a period in which tenants can make their views known and the Council must, *before making any decision on the matter*, consider any representations duly received.
- 9.4 No express statutory provision would require consultation with leaseholders if parking were removed, but clearly it would be considerate and prudent to consult, rather than risk challenge based on some general ground e.g. failure by the Council to take account of all relevant considerations.
- 9.5 Quite apart from Section 105 consultation, the Council has a duty under the Equality Act 2010 to have due regard to the impact any new policy on estate parking might have on residents with “protected characteristics” (in this context the most obvious group being disabled persons reliant on their (or their carer’s) cars in order to get about). The Council ought also to be mindful of the duty under the Act to make “reasonable adjustments” to assist tenants with protected characteristics, though it is not thought this would extend to ensuring that a minimum level of parking for disabled residents (and their carers) is kept available for them, at reasonable cost.
- 9.6 Commercial letting of individual spaces can be dealt with by way of grant of a licence that does not give exclusive possession of any particular space. A commercial letting of a specific space, or number of spaces, or of an entire car park, however, would probably require a lease. Such a lease would be likely to be a secure business tenancy, unless expressly contracted out of the protection of the Landlord and Tenant Act 1954. It is recommended this is done, otherwise it may not be easy (without considerable delay and expense) to recover possession when the lease ends, should, at that time, the Council wish to make the spaces available again to estate residents or to redevelop the site or simply to let to a different operator.
- 9.7 Quite apart from the issue of consent for commercial use mentioned above, any lease of Part II housing land requires the prior consent of the Secretary of State at DCLG. However, provided (when granted) a market rent (representing the best consideration that can reasonably be obtained) is achieved for each letting by the Council, no formal application for consent will be necessary as Consent E of the General Housing Consents 2005 should apply (so long as the spaces and a block of flats do not together constitute a “dwellinghouse” - which is the better view).
- 9.8 The existing planning use of the car spaces would need to be carefully considered before any commercial letting or any letting to non-residents (in case planning

10. COMMENTS OF THE ASSISTANT DIRECTOR (PROCUREMENT AND IT STRATEGY)

- 10.1 If the Council decides, following consultation with its tenants and leaseholders , that an outsourced option is desirable for the proper management of the under used car parking facilities on various sites across the borough, then a tendering exercise will be required in accordance with the Public Contracts Regulations 2006 (as amended).
- 10.2 Given the nature of the market there are only a limited number of companies that could provide the Council with such a service. Nevertheless, a tendering exercise would take a minimum of 40 days to be undertaken followed by a short period for evaluation of received tenders to be completed.

11. IMPLEMENTATION TIMETABLE

Partial Commercialisation

Date	Action
18/07/11	Cabinet Approval
25/07/11	Planning Application application for planning consent to allow change of use. Material change from parking designated for residents allowing the charging of none resident users
01/08/2011	Informal Consultation No formal consultation is required for partial consultation, however some form of informal consultation with TRA's and residents within the estates should be undertaken in order to notify them of the change in use being proposed
25/09/2011	Early planning consent received Provisional earliest date that planning consent will be granted for partial commercialisation
25/10/2011	Planning consent received Provisional date for longest time for planning consent to be granted
25/10/2011	Partial Commercialisation Start Once planning consent granted work can be undertaken to begin valuation of spaces beginning with Walham Green Court and seeking private users for these spaces at the full commercial rate.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	Private sector garage rates in Fulham	Orla Gallagher x. 4559	HRD
CONTACT OFFICER:		NAME: Orla Gallagher EXT. 4559	