

London Borough of Hammersmith & Fulham

Report to: Tony Clements, Strategic Director for the Economy

Date: 16th July 2020

Subject: Podium Deck Cover Renewal at the Kings Mall/Ashcroft Square Hammersmith London

Report of: David McNulty, Assistant Director, Operations

Report author: Martin Grady – Asset Programme Manager

Summary

Ingka Group the freeholders of the Kings Mall shopping centre and Ashcroft Square (the “Building”) propose to carry out works to the Building including the renewal of the first floor podium deck covering, which separates the retail units and the housing estate at an estimated cost of £3 million pounds.

As the Head Lessor of the residential part of the Building, the Council are liable for 50% of the landlord’s cost of the renewal of the podium deck covering, as per the terms of the lease

Ingka Group and the Council propose to enter into an agreement in respect of the works and the parties liabilities toward the payment of the costs.

Ingka Group proposes to bear the Council leaseholders charges estimated at £200,000, so that consultation under Section 20 of the Landlord and Tenant Act 1985 will not be required. This will therefore reduce the time required before for Ingka can undertake the proposed works which the Council as head lessor accepts are necessary. The Council will only be liable to pay costs estimated to be of £1.3 million in accordance with the terms of its lease.

This report is seeking approval for the Council to enter into an agreement with Ingka covering the following matters:

1. approval of the estimated cost provided by Ingka. The final cost will be confirmed following competitive tendering.
2. payment by the Council of up to £1.3 million being the estimate of 50% of the podium cover costs (minus the contribution by the leaseholder) which is required to be paid under the terms of the lease between the Council and Ingka
3. That the Council will consent to any application made by Ingka to the first Tier Tribunal (Property Chamber) for dispensation so far as is necessary to give effect to the agreement between the parties

4. that the service charge liability payable by the Council's leaseholders to the Council for the proposed works (estimated to be £200,000) will be borne by Ingka in consideration for the Council agreeing to dispense with requirement for a consultation for the proposed words under Section 20 of the Landlord and Tenant Act 1985.
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Recommendations

That the Council enters into an agreement with Ingka covering the following matters:

1. approval of the estimated cost provided by Ingka. The final cost will be confirmed following competitive tendering
 2. payment by the Council of up to £1.3 million being the estimate of 50% of the podium cover costs (minus the contribution by the leaseholder) which is required to be paid under the terms of the lease between the Council and Ingka
 3. In the event of a dispute the Council will consent to any application made by the Landlord to the first Tier Tribunal (Property Chamber) in so far as is necessary to give effect to the agreement between the parties
 4. that the service charge liability payable by the Council's leaseholders to the Council for the proposed works (estimated to be £200,000) will be borne by Ingka in consideration for the Council agreeing to dispense with requirement for a consultation for the proposed words under Section 20 of the Landlord and Tenant Act 1985.
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Wards Affected: Hammersmith Broadway

H&F Priorities

Our Priorities	Summary of how this report aligns to the H&F Priorities
Building shared prosperity	Replacing the first-floor podium deck covering will provide weathertightness to the retail units on the lower level and eliminate the need for minor repairs during the period of the warranty of the material (25 years).
Doing things with local residents, not to them	The Ingka Group will engage in resident consultation prior to commencing the works. A Client Representative from the Council will be appointed to liaise with the contractor during the delivery stage of the project.
Being ruthlessly financially efficient	The Ingka Group will carry out a procurement exercise to determine the final cost and the tenders will be evaluated to determine value for money.

Financial Impact

As leaseholder of Ingka Group who own the freehold of the site, the council is required under its lease to contribute 50% towards the proposed works. Therefore, this decision is seeking approval that the council is:

- satisfied with the cost estimate provided by Ingka Group
- agrees to proposed contribution to the cost of the works (subject to confirmation of the final tender)
- has sufficient budget for this.

The cost of these works to the Council is estimated at £1.3 million subject to the completion of Ingka's tender process. The total estimated value of works is £3 million and the terms of the lease are that the council should be liable to pay 50% of the costs. In order to progress the works, Ingka Group are proposing to cover the estimated £0.2 million cost attributable to leaseholders' properties to avoid any delays due to the statutory requirement to consult with the Council and the leaseholders to enable the council to charge them. This does not present a saving to the Council as it would otherwise bill leaseholders to recover these costs under their service charge provision in their leases.

The Assistant Director of Repairs has been consulted on the estimated cost.

The proposed source of funding is from the Council's approved capital programme and more specifically the HRA Asset Management and Compliance Programme unallocated budget. The final cost to the council is dependent on the outcome of Ingka's tender process and there is a risk that the council's costs may exceed £1.3

million. The unallocated budget stands at £21.68 million which is enough to allow for an increase on the £1.3m once the final tenders are confirmed. As a further mitigation until the final tender price is confirmed a minimum of £2 million will remain in the unallocated budget to allow for this uncertainty.

The council's contract standing orders state that if the final tender price exceeds a threshold of £1.5million then the decision to commit to the expenditure would become that of the Cabinet member and would therefore require another report.

Despite the Council not being the client of the contractor, the financial position of these works will be monitored and reported on as part of the HRA Asset Management and Compliance Programme via the council's quarterly capital budget monitoring process.

Legal Implications

Under section 20 of the Landlord and Tenant Act 1985, a landlord has a statutory obligation to consult with leaseholders before carrying out works over a certain threshold.

Under section 20 (ZA) (1) of the Landlord and Tenant Act 1985, a landlord can apply to the First Tier Tribunal for an order to dispense with the requirements to consult with leaseholders before carrying out major works. There are no provisions in the overriding Lease prohibiting Ingka Group from submitting an application to the Tribunal to dispense with its requirement to carry out a statutory consultation process with its leaseholders and their subtenants. In view of the parties entering into the agreement there will be no requirement for Ingka to apply for dispensation.

However, it is proposed that Ingka would be entitled to apply to the Tribunal in the event of dispute in order to enforce the terms of the agreement. In the event of Ingka applying to the Tribunal, no financial implications to the Council are envisaged other than the enforcement of the financial terms of the agreement

Under the Social Landlords Discretionary Reduction of Service Charges (England) Directions 2014, the Council may waive or reduce the service charge by an amount the landlord considers to be reasonable. In this proposal, the Council is proposing to waive the service charge contribution for leaseholders in respect of the proposed podium works which they would be required to pay under the terms of their lease and these will now be paid for by Ingka. This is part of the consideration which the Council has negotiated to enable it to support the application for dispensation by Ingka. In considering whether to exercise this discretion, the Council has considered the criterion under 3(a-e) of the direction.

Under Clause 3.6 of the Overriding Lease of the Ashcroft Square dated 19 December 2005, made between (1) St Martins Property Investments Limited and (2) the Council for a term of 999 years, the Council is obliged to contribute 50% towards the proper costs incurred by the Landlord in respect of the landlord's covenant to repair and maintain the podium deck up to and including the waterproof membrane, structural columns and foundation supporting the deck in the whole of the Estate to the south of the railway except insofar as such obligation relate to such structural

columns and foundations where the same are under and or support those parts of the estate being the office block and the Theatre and such costs shall not include expenditure for the repair and maintenance of walls other than structural load bearing walls and floors beneath the deck Provided always that the tenant shall be wholly responsible for the repair of the waterproof membrane to such extent that the same shall be immediately under the building erected on the demise premises. This would require the Council to contribute to 50% of the costs of renewal of the podium block.

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Background Papers Used in Preparing This Report

N/A

DETAILED ANALYSIS

Proposals and Analysis of Options

The Kings Mall Shopping Centre and Ashcroft Square incorporates retail units on the lower level and the housing estate above separated by a first floor podium deck which is the original 1970s construction. The site is now owned by the Ingka Group, which is the parent company of IKEA. The Council are the head lessor for the housing element which is a mix of tenants and leaseholders. As part of the redevelopment of the centre, Ingka Group propose to create an IKEA store, on the lower level, along with replacing the first floor podium deck covering which is in a deteriorated condition and leaks in several areas to the existing retail units below. The proposed works to replace the covering of the podium deck are estimated to cost £3million, for which the Council is liable to pay 50% toward it under its lease.

To date there has been a series of meetings between Ingka Group and the Council represented by:

The Assistant Director of Repairs – Des Vincent
Major Works Manager - Ciaran Maguire
Asset Programme Manager – Martin Grady

A Council officer will be appointed to act as Client Representative during the delivery stage of the project.

Ingka Group are required to carry out statutory consultation process with the Council as the head lessor. They are also required to consult with the Council's 30 residential leaseholders on the estate (see Foundling and O'Donnell Court V Camden (Upper Tribunal LRX_10_2016)).

The Council's residential leaseholders would be required to cover 13.749% of the Council's 50% proportion of costs and their contribution is estimated at £200k. Individual contributions would range from £5.6k to £7.7k and follow the recent large bills issued for extensive major works by Mitie.

In an effort to expedite the work, Ingka Group is willing to absorb the lessees' proportion of costs if they do not have to consult with those homeowners.

As the Council would otherwise expect over the long run to recoup its lessees' proportion of the costs, this is a benefit to those homeowners rather than to the Council. However, it does mean that the Council would not have to bill its leaseholders for works that would serve no benefit to them directly and follow on the tail of the Mitie bills. It is therefore a welcome offer.

The Council could still insist on being formally consulted in respect of the works as the head lessor. This would need to take place over two distinct stages either side of tender. This would give the Council an opportunity to ensure it benefitted from proper value for money (as the necessity to undertake the works is not disputed by the Council).

However, the Council have maintained an open dialogue with Ingka Group over the months and are confident Ingka's procurement method will secure best value for the Council. In consideration for Ingka's offer to cover the Council's residential lessees' proportion of the works cost, the Council wish to and be seen to support Ingka in delivering a programme that will likely to benefit the local area.

The Council therefore is willing to dispense with the statutory consultation process with the Council.

Please note that this will not detract from the Council's ability to challenge the relevance and reasonableness of the charge further down the line. It will simply mean that the Council's will not rely on a technical argument around Section 20 consultation in doing so.

Des Vincent (Assistant Director Repairs) has confirmed that the renewal of the podium deck is required based on its age, deteriorated condition and patch/ongoing repairs are no longer practical in maintaining weather tightness. The Council therefore is not able to dispute the justification for carrying out the work. Should Ingka Group fail to proceed with the podium deck cover renewal ongoing weather ingress is highly likely to occur.

The latest programme provided by Ingka Group indicates the following key dates:

- Appoint contractor: 31st July 2020
- Mobilisation: 3rd August 2020
- Commence stripping of the existing podium: 1st September 2020
- Completion: 16th April 2021

The current programme is subject to final confirmation and will take into account issues such as the current restrictions and will be amended to include resident consultation when the process/dates are confirmed.

Reasons for Decision

Approving the estimated expenditure will allow the Council to fulfil its obligation for contributing to the cost of the podium deck cover renewal, as per the terms of the lease.

Approval of Ingka Group proposal to absorb the Council's residential leaseholders contribution liability, will allow the Council to dispense with the requirement to carry out the statutory consultation process under the service charge legislations (Section 20 Landlord and Tenant Act 1985).

Equality Implications

N/A

Risk Management Implications

The cost of £3 million is based on a pre-tender estimate and the actual amount will be confirmed post tender.

The main contractor will be required to obtain 3 quotations for the specialist covering renewal and they will be subject to analysis by the Council's appointed Client Representative to confirm the costs represent value for money.

Other Implications

N/A

Procurement (*required for all contract awards*)

The procurement will be carried out by the Ingka Group as the freeholder of the Kings Mall/Ashcroft Square.

The Ingka Group has advised they will carry out a 2-stage procurement which will allow an early appointment of the main contractor and their subsequent input on design issues. The main contractor will be required to obtain 3 quotes for the specialist works in replacing the podium deck covering.

Consultation

No resident consultation has been carried out to date. The Ingka Group will be carrying out an informal resident consultation prior to commencing the works and a Council officer will be appointed and involved as Client Representative.

List of Appendices:

N/A