



Cabinet

26 APRIL 2009

**CABINET MEMBER
FOR HOUSING**

Councillor Lucy Ivimy

**REGENERATION OF 248 HAMMERSMITH
GROVE**

**Ward
Hammersmith
Broadway**

This report proposes the Council sells the head lease of 248 Hammersmith Grove to Notting Hill Housing Group (NHHG) to facilitate the regeneration of the site and that the Council agrees that officers may apply for the acquisition of Compulsory Purchase Order powers on investment leaseholders in order to facilitate the disposal if necessary.

**HAS A PEIA BEEN
COMPLETED?
YES**

A separate report on the exempt part of the Cabinet agenda provides exempt information about the proposed Heads of Terms and the amount of the consideration involved in the acquisition by NHHG.

CONTRIBUTORS

H&F Homes
ADLDS
DFCS

Recommendations:

- 1. To agree to Notting Hill Housing Group acquiring the head lease of 248 Hammersmith Grove (see site plan in Appendix 1) from the London Borough of Hammersmith and Fulham, subject to final terms being agreed between the Council and Notting Hill Housing Group (NHHG).**
- 2. For the Assistant Director (Legal and Democratic Services), in conjunction with the Director of Community Services, the Director of Finance and Corporate Services and the Head of Asset Management and Portfolio Management to agree the Heads of Terms for the sale of the head lease specified in the report.**
- 3. To agree to the Council assisting NHHG with their site assembly by purchasing any long non-resident investment sub-leasehold interest not already acquired**

by them, and to the Council making and implementing one or more compulsory purchase orders where a negotiated sale by the non-resident investment sub-leaseholders would (in the opinion of officers) be unlikely to succeed or unlikely to complete within NHHG's timescale for commencement of its development. Such assistance to be subject to NHHG financing the purchase price and bearing all costs (including compensation, disturbance payments, loss payments, taxes, legal and surveyors' costs and any rehousing costs) and indemnifying the Council against them all, and following such acquisition to transfer or surrender to NHHG all interests so acquired for no further consideration (other than any costs associated with such transfer or surrender).

1. INTRODUCTION

- 1.1 248 Hammersmith Grove is on the corner of Hammersmith Grove and Goldhawk Road. The block sits above a former petrol station with a large forecourt. LBHF owns a head lease to the block; Notting Hill Housing Group (NHHG) bought the freehold to the site including the former petrol station on 6 November 2005 and would like to redevelop the whole site. As NHHG owns the freehold, it would not be appropriate to sell the head lease to any other party. The head lease expires in December 2090, ie. 82 years to run.
- 1.2 The block comprises 15 units of which 9 are leasehold flats and 3 of these are now owned by Notting Hill Housing Trust. All of the six social rented flats are now vacant. Notting Hill has placed tenants in the 3 flats that NHHG has bought back from leaseholders.
- 1.3 There are six leasehold flats and 5 leaseholders remaining in the block. (One investment leaseholder owns two properties). Of the leaseholders, two are resident leaseholders and three are investment leaseholders.

2. PLANNING

- 2.1 The proposed scheme would be made up of the following tenure and bed mix:

Beds	Persons	Rent	Shared Ownership	Private Sale	TOTAL
1	2	0	14	16	30
2	4	3	6	18	27
3	5	6	2	0	8
		9	22	34	65

- 2.2 This approach would replace the existing number of social rented units in a bed size mix far more suitable to meeting the Borough's housing requirements.
- 2.3 NHHG has submitted a pre planning application to planners. The response from planners has generally been favourable, although there are still issues to resolve with 248 Hammersmith Grove (ie. the ground floor relationship with Goldhawk Road, loss of employment, elevational treatments).
- 2.4 NHHG is expecting to submit a planning application in December 2010.

3. HEADS OF TERMS

- 3.1 Officers have been negotiating the sale of the head lease with NHHG and are now ready to agree the Heads of Terms (details are in the separate on the exempt part of the cabinet agenda).

4. COMPULSORY PURCHASE ORDER

- 4.1 Cabinet had previously agreed (7 January 2008) to an in-principle approval of the use of a Compulsory Purchase Order if necessary. Officers have judged that the ability to make use of a Compulsory Purchase Order (at least in the case of investment-leaseholders, as indicated below) is (for all practical purposes) necessary and are asking for authority to make the orders on investment leaseholders and apply to the Secretary of State to confirm them and thereafter implement them. NHHG and HF Homes officers will be making every effort to negotiate purchases with the remaining leaseholders in the block.
- 4.2 Officers have been advised that it would be beneficial for investment leaseholders (for capital gains tax purposes) to sell to the Council (as an authority possessing compulsory powers) rather than sell direct to NHHG. NHHG has been advised by tax consultants that for this to be applicable, it would require actual acquisition by the Council under its statutory powers, with the Council then selling on to NHHG. It is therefore proposed that LBHF should purchase the subleases on the flats and then that NHHG immediately purchase these sub leases from LBHF.

5. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES

- 5.1 These are in the separate report on the exempt part of the Cabinet agenda.

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

- 6.1 The Council holds its lease of 248 Hammersmith Grove under Part II of the Housing Act 1985. It has power under Section 32 of that Act to dispose of land so held, but disposal requires the consent of the Secretary of State at the Department for Communities and Local Government (DCLG).
- 6.2 In addition, any disposal at less than best consideration with a view to provision of residential accommodation for private letting requires a further consent from the same source under Section 25 Local Government Act 1988.
- 6.3 In 2005 the Secretary of State issued General Consents, but the relevant one (Consent A) is not capable of applying in this case (because the Council's lease has less than 99 years left to run and the flats would not necessarily all be vacant at the time of sale). Specific application for consent will therefore need to be made.
- 6.4 NHHG is aiming to buy out the remaining 6 long leaseholders in the block. If any leaseholder were to decline to sell, NHHG could not implement its redevelopment proposals (unless it sought the assistance of the Council in making, or at least threatening to make, a CPO). The Council has power to make a CPO, but any CPO must be confirmed by the Secretary of State. The

power under Section 17 of the Housing Act 1985 is likely to be used, though, (given that the development of the site arises from the closure of the petrol station) it may prove preferable that any CPO would better be made under planning, rather than housing, powers. If use of CPO powers were to be considered (or indeed if sale to the Council were made voluntarily after threat of a CPO), the costs involved would (one way or another) need to be borne by NHHG, which would include home loss payments to occupying leaseholders and subtenants of non-occupying leaseholders, or possibly even the cost of rehousing either, if suitable alternative accommodation on reasonable terms was not otherwise available to them. A similar "Basic Loss Payment" is now also payable to non-occupying leaseholders. All such payments would be in addition to the value of the interest acquired and any compensation for disturbance. If the Secretary of State were to order a public local inquiry, the costs of that would also need to be borne by NHHG.

- 6.5 A proportion of capital receipts from Part II housing land generally have to be accounted for to the Secretary of State at DCLG under pooling arrangements (75% in the case of houses and flats and 50% for other Part II property). However, the Council is first entitled to set off expenses incurred in realising the receipt. If NHHG were to sell-on the building without them redeveloping, any additional capital receipt receivable by the Council would also potentially be caught by the obligation to account for 75% to the DCLG. However, the obligation to pool may be avoided to the extent the Council has "available capital allowance" (in effect sums the Council has decided to spend on, or contribute towards, the provision or improvement of affordable housing or on regeneration).
- 6.6 One possible reason for continued reluctance of investment leaseholders to sell their flats direct to NHHG is the prospect of a substantial liability to capital gains tax. However, where sale is to an authority possessing compulsory purchase powers (such as the Council) it is possible (even if no CPO is in fact made) for the seller to defer capital gains tax by rolling over the gain into a replacement property (Section 247 Taxation of Chargeable Gains Act 1992). It is for this reason that NHHG consider it would be beneficial for the Council to purchase the investment leaseholders' interests (ideally without making a CPO) and then to sell on to NHHG.

7. COMMENTS OF THE HEAD OF ASSET MANAGEMENT AND PORTFOLIO MANAGEMENT

- 7.1 The property has not been placed on the open market as NHHG as freeholders of the site are special purchasers, which is reflected in the terms agreed. BNP Paribas Real Estate, the Council's property advisers, negotiated the Heads of Terms on the Council's behalf which represent the best consideration reasonably obtainable for the sale of the Council's leasehold interest in this building.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	248 Hammersmith Grove	Liz Tuckwell	HF Homes

CONTACT OFFICER:	NAME: Liz Tuckwell
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APPENDIX 1 – 248 HAMMERSMITH GROVE : SITE MAP

