

REQUEST FOR DEPUTY MAYOR FOR FIRE & RESILIENCE DECISION – DMFD75

Title: Disposal of St Columba Radio Station

Executive Summary:

This report recommends the Deputy Mayor for Fire and Resilience gives approval to the London Fire Commissioner (LFC) to progress the sale of the freehold property known as St. Columba Radio Station, Spaniards Road, Hampstead Heath, London NW3. The property would be sold with vacant possession granted by the LFC and the lease to the City of London Corporation would remain in place. The property currently generates £4,500 annual income from the City of London Corporation's use of the telecoms mast at the property and costs the LFC £16,034 in annual maintenance plus £9,605 in rates.

Due to complex lease restrictions which impact on an open market approach to disposal, Heads of Terms have been negotiated with a 'special purchaser' for the sale of the LFC freehold interest. The terms agreed have proposed a sale price of £850,000. This exceeds both the market value (£400,000) and the proposed 'market plus marriage' value (£750,000) as advised by LFC estate management consultants Dron and Wright in a Red Book Valuation report. The Heads of Terms include further protection of LFC's interest in the form of an overage clause. This will entitle LFC to receive further funds after completion if the purchaser sells the property within five years without having obtained and implemented planning consent for a development and/or alternative use. The overage clause will entitle LFC to obtain 50% of any increased sale price above the agreed price of £850,000 negotiated with the purchaser.

The London Fire Commissioner Governance Direction 2018 sets out a requirement for the LFC to seek the prior approval of the Deputy Mayor before "the acquisition or disposal of any freehold interest in land (including buildings)...".

Decision:

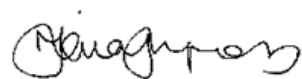
That the Deputy Mayor for Fire and Resilience authorises the London Fire Commissioner to dispose of the freehold interest in the property known as St. Columba Radio Station, Spaniards Road, Hampstead Heath, London NW3 for an amount not less than 5% below the anticipated sale price of £850,000.

Deputy Mayor for Fire and Resilience

I confirm that I do not have any disclosable pecuniary interests in the proposed decision.

The above request has my approval.

Signature:



Date:

14 August 2020

PART I – NON-CONFIDENTIAL FACTS AND ADVICE TO THE DEPUTY MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1 Report LFC-0364 to the London Fire Commissioner (LFC) sets out the background for the request to dispose of the freehold interest in the property known as St. Columba Radio Station, Spaniards Road, Hampstead Heath, London NW3 for an amount not less than 5% below the anticipated sale price of £850,000.
- 1.2 Hampstead is a prosperous suburb of north-west London. St. Columba Radio Station (the property) is located in the north-west section of Hampstead Heath, within the London Borough of Camden. Hampstead Heath is owned and managed by the City of London Corporation. The property comprises a section of heathland enclosed by mature trees, housing a radio telecoms mast and an associated single storey building. The total site area is approximately 0.42 acres.
- 1.3 The surrounding area is predominantly parkland and heathland in a rural setting which is used for leisure purposes, with some residential property. There is a very large residential property with extensive grounds and gardens to the east adjoining the site. This is known as The Elms, Spaniards End and is owned by Elms Nominees.
- 1.4 The property proposed for disposal was formerly used by LFC as one of its paging sites. That use ceased relatively recently and LFC no longer has any equipment at the radio station (either on the mast, or in the associated building). The radio station does not support national telecommunication infrastructure associated with 4G/5G communications. Its current use is by the City of London Corporation for the purpose of operating the radio system used by its Park Rangers who are involved in the management of Hampstead Heath.
- 1.5 The property is not well placed for access to public transport facilities. Hampstead underground station (Northern Line) is approximately three quarters of a mile to the south of the property and Hampstead Heath mainline station is about a mile to the south-east.
- 1.6 The LFC owns the freehold interest in the property which was transferred by Loup Limited to LFC in the late 1980s. The transfer was made subject to severe restrictions on use in favour of Loup Limited and their successors in title. Loup transferred its interest in the adjoining land to Elms Nominees, under a Deed in May 2001.
- 1.7 The LFC has granted a 10-year lease to the City of London Corporation with rent of £4,500 per annum in respect of communication equipment on the mast and a dedicated room in the associated building. The lease expires in 2025 and the proposed sale of the freehold will include the transfer of this lease. The lease is contracted out of the Tenant and Landlord Act 1954 and therefore there will be no automatic right for a purchaser of the freehold to renew this lease.
- 1.8 LFC has the benefit of a licence granted by the City of London Corporation recording access rights over the track between Spaniards Road and the property to support the operation, repair and maintenance of the property. The rights are expressly stated not to be for the purposes of redeveloping the property. Critically, access rights granted by the City of London Corporation do not extend right up to the boundary of the property and the property is, in effect, 'landlocked' in terms of access rights and subject to the restrictions in favour of Elms Nominees, which are contained in the LFC freehold title.

2. Objectives and expected outcomes

Valuation Approach

- 2.1 A Red Book Valuation report that adheres to the Royal Institution of Chartered Surveyors (RICS) valuation professional standards was commissioned from Dron and Wright. Dron and Wright are LFC's Estate Management Consultants, who are contracted providers of professional services associated with the delivery of estates management. One of their roles is the management and development of telecommunications sites. The market valuation, or estimated amount for which an asset or liability should exchange on the valuation date, has taken into account the following factors:
- the restrictions on the use and development of the property in the freehold title;
 - limitations on access to the property arising from the licence Deed from the City of London Corporation and the access track which does not reach the boundary of the property;
 - there is no planning consent in place for the use of the property as anything other than a telecoms mast and an associated building;
 - LFC's active use of the radio station to support paging has ceased;
 - the terms of the lease to the City of London Corporation, in respect of their telecommunication equipment on the mast and in the associated building;
 - the potential requirement to remove the radio station (mast and associated building) from the property in the future and the costs to the LFC associated with that; and
 - the requirement that any purchaser would need to obtain consent from Elms Nominees to cross the area of land currently owned by them to access the site.
- 2.2 Informed by the Red Book valuation standards, which incorporate relevant factors and on comparable freehold land sold recently subject with restrictions on use, LFC's property consultants consider the Market Value of the freehold interest in the property is £400,000.

Equitable Value and Special Purchaser status

- 2.3 Equitable value is an internationally recognised valuation basis discrete from market value and applies to a party having special interest where special value and marriage value would arise on the acquisition of the LFC freehold interest. In the situation of the proposed disposal of St. Columba Radio Station, Elms Nominees have a designated 'special purchaser' status as this asset has attributes which make it more attractive to them than to the general market.
- 2.4 Should the property be sold to the adjoining owner Elms Nominees, the various restrictions and limitations which affect the freehold title and the access to the property will, to a large extent, cease to be relevant. Hence, Elms Nominees will benefit from a site of approximately 0.42 acres, which can be incorporated within the already extensive gardens and grounds of their adjoining residential building.
- 2.5 In addition, there is medium to long term development potential, subject to Elms Nominees obtaining vacant possession from the City of London Corporation of their premises and securing planning and the other requisite consents.
- 2.6 A residual appraisal of the site on the basis that it is redeveloped to provide residential space of a similar size has been undertaken. Alongside assumptions and variables reflecting the very unusual circumstances of the property, and costs associated with the removal of the mast and the demolition of the associated building, it is considered a figure for the site is in the order of £1,100,000.
- 2.7 In assessing the equitable value for a transaction between the LFC and Elms Nominees, it is considered that the appropriate figure is £750,000. This comprises the Market Value of the property, £400,000, plus 50% of the marriage value arising from the deal (£350,000). The marriage value is the site value for residential development purposes as referred to in paragraph 2.7 (£1,100,000) less the Market Value (£400,000), amounting to £700,000, of which 50% is £350,000.

Negotiations with Elms Nominees

- 2.8 Elms Nominees first expressed an interest to purchase the LFC freehold interest shortly after they acquired The Elms (the adjoining land). This was not an option during the period of LFC utilisation as a key paging site.
- 2.9 Elms Nominees have retained their interest in buying the property over many years. In November 2019, when Elms Nominees became aware of LFC ceasing to utilise the site for paging, they offered to purchase the freehold interest for the sum of £400,000. Following subsequent negotiations, Elms Nominees finally submitted a best and final offer of £850,000 on 26 February 2020. This offer is substantially in excess of Dron and Wright's Red Book valuation outcome of the Market Value of the property, as well as £100,000 higher than their view of the Equitable Value of £750,000.
- 2.10 It should be noted that the valuation was undertaken before the current market uncertainty caused by the COVID-19 pandemic. The International Valuation Standards Council (IVSC), whose standards have been adopted by 'RICS Red Book', issued a letter in March 2020 with the title '[dealing] with valuation uncertainty at times of market unrest'. This confirms that valuers should not apply pre-crisis criteria to their valuations as this approach is based on the potentially erroneous assumption that values will return to their pre-crisis levels and there is no way of predicting this assumption is in fact correct. As a result, if the purchaser tries to re-negotiate this value to the 5% threshold recommended in this paper, a new Red Book Valuation would be required, and a new report would be put through the governance process.
- 2.11 In addition to the enhanced offer, further protection of the LFC's interest has also been negotiated and included in the Heads of Terms, in the form of an overage clause. This will ensure that if the purchaser sells the property within five years of the purchase without having obtained and implemented planning consent for a development and/or alternative use, 50% of any increase in price above the original purchase price is to be paid to the LFC. LFC estate management consultants will monitor any movement of this freehold as part their periodic monitoring of disposed LFC assets and their present-day use.
- 2.12 The property is being bought in the name of Elms Nominees, a company registered in the British Virgin Islands (BVI). General Counsel to LFC cannot establish any information on any BVI registered company. This company is the owner of the adjacent site and LFB advises that it is effectively controlled by Mr David Pears, who has been trying to buy this site from LFB for a considerable number of years. LFB are selling subject to a lease to the City of London Corporation over telecoms equipment, which the buyer is fully aware of and is documented in the sale contract. Dron and Wright acting for LFC have confirmed that there is no conflict of interest with the buyer, Elms Nominees or Mr Pears.
- 2.13 The buyer's solicitors are obligated to undertake money laundering checks as due diligence on their client and the source of their client's funds. LFC, as the seller, will only accept monies that have been checked and cleared through the purchaser's solicitors' UK bank account. LFC would not accept deposit nor completion monies from buyers direct nor from third parties. This is an unconditional sale therefore LFC will receive 100% of the sale price on completion, from UK cleared funds as stated above.

Proposed disposal – outline benefits

- 2.14 Approving the negotiated Heads of Terms on the sale of LFC's freehold interest in St. Columba Radio Station will realise the following outline benefits:
- Securing a capital receipt not less than 5% below the negotiated sum of £850,000 for a complex freehold site no longer required by LFC to support operational delivery. The offer made by Elms Nominees is in excess of both the Market and Equitable Values assessed by Dron and Wright's

Red Book Valuation report and provides an opportunity to support investment in LFC's Transformation Plan.

- Elms Nominees have agreed to progress issues in relation to obtaining vacant possession of the City of London Corporation's premises.
- There is no requirement or cost to the LFC to dismantle and remove the mast as part of the proposed transaction, hence a cost avoidance estimated at between £100,000 – £125,000.
- Expected revenue savings in the region of £21,139 per annum (£25,639 business rates and maintenance costs less £4,500 income from lease to City of London Corporation).

Conclusion

- 2.15 Given LFC have no further use for the property, the complexities associated with the freehold, and the anticipated benefits in the disposal of this asset, it is recommended that a sale of the freehold interest in the property is progressed in line with the Heads of Terms negotiated with Elms Nominees not less than 5% below the sum of £850,000. This conclusion accommodates a COVID-19 tolerance, is informed by a Red Book Valuation report by Dron and Wright and would represent 'the best consideration which is reasonably obtainable' by LFC, in accordance with the terms of Section 123 of the Local Government Act 1972.

3. Equality comments

- 3.1 The London Fire Commissioner and the Deputy Mayor for Fire and Resilience are required to have due regard to the Public Sector Equality Duty (s149 of the Equality Act 2010) when taking decisions. This in broad terms involves understanding the potential impact of policy and decisions on different people, taking this into account and then evidencing how decisions were reached.
- 3.2 It is important to note that consideration of the Public Sector Equality Duty is not a one-off task. The duty must be fulfilled before taking a decision, at the time of taking a decision, and after the decision has been taken.
- 3.3 The protected characteristics are: Age, Disability, Gender reassignment, Pregnancy and maternity, Marriage and civil partnership (but only in respect of the requirements to have due regard to the need to eliminate discrimination), Race (ethnic or national origins, colour or nationality), Religion or belief (including lack of belief), Sex, and Sexual orientation.
- 3.4 The Public Sector Equality Duty requires decision-takers in the exercise of all their functions, to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation and other prohibited conduct.
 - (b) Advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.
 - (c) Foster good relations between people who share a relevant protected characteristic and persons who do not share it.
- 3.5 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic 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 where those disadvantages are connected to that characteristic;

- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 3.6 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 3.7 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) tackle prejudice, and
 - (b) promote understanding.
- 3.8 An Equality Impact Assessment (EIA) has not been undertaken. An EIA was not required as the sale of the freehold property of St Columba radio station is unlikely to have a disproportionately adverse effect on any persons with a particular characteristic.

Other considerations

Workforce comments

- 4.1 No workforce implications have been identified therefore no staff side consultations have taken place.

Sustainability implications

- 4.2 As this report is recommending the disposal of an LFC asset with a tenant in situ, there are no future sustainability impacts to consider as this would be the purchaser's responsibility.

5. Financial comments

- 4.3 This report recommends the sale of the St. Columba Radio Station for an amount not less than 5% below £850,000. This proposed receipt does not currently form part of the capital programme and will be considered as part of the budget process for 2021/22 and future years. The report also notes that there is also a cost of sale of £3,250 to Dron and Wright.
- 4.4 The sale will also result in reduced revenue costs of approximately £26,000 annually, offset by lost income of approximately £5,000, for a net financial saving of £21,000. This saving will also be considered as part of the budget process.

6. Legal comments

- 6.1 Under section 9 of the Policing and Crime Act 2017, the London Fire Commissioner (the "Commissioner") is established as a corporation sole with the Mayor appointing the occupant of that office. Section 1 of the Fire and Rescue Services Act 2004 (the "2004 Act") states that the Commissioner is the fire and rescue authority for Greater London.
- 6.2 Under section 327D of the GLA Act 1999, as amended by the Policing and Crime Act 2017, the Mayor may issue to the Commissioner specific or general directions as to the manner in which the holder of that office is to exercise his or her functions.

- 6.3 By direction dated 1 April 2018, the Mayor set out those matters, for which the Commissioner would require the prior approval of either the Mayor or the Deputy Mayor for Fire and Resilience (the "Deputy Mayor").
- 6.4 Clause 2.1 paragraph (a) of Part 2 of the said direction requires the Commissioner to seek the prior approval of the Deputy Mayor before "the acquisition or disposal of any freehold interest in land (including buildings)...".
- 6.5 The Deputy Mayor's approval is accordingly required for the Commissioner to dispose of this Site on the basis set out in this Report.
- 6.6 The disposal price set out in this Report satisfies the LFC's legal requirement to obtain best consideration on disposal of its assets as required by Section 123 of the Local Government Act 1972.
- 6.7 Terms have been negotiated with the owner of the adjacent property due to their status as a special purchaser, being the beneficiary of access restrictions binding this landlocked site. Their initial offer was £400,000 but terms now agreed have set a sale price of £850,000. This exceeds both the market value (£400,000) and the proposed market plus marriage value (£750,000) as advised by LFC estate management consultants Dron and Wright in a Red Book Valuation report.

Appendices and supporting papers:

Report LFC-0364 – Disposal of St Columba Radio Mast

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:**Is the publication of Part 1 of this approval to be deferred? YES**

If YES, for what reason:

The commercial interests of the London Fire Commissioner require deferral of the decision until after the sale has been finalised.

Until what date: 1 February 2021

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer

Richard Berry has drafted this report with input from the LFC and in accordance with GLA procedures and confirms the following:

✓

Assistant Director/Head of Service

Niran Mothada has reviewed the documentation and is satisfied for it to be referred to the Deputy Mayor for Fire and Resilience for approval.

✓

Advice

The Finance and Legal teams have commented on this proposal.

✓

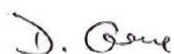
Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 3 August 2020.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature



Date

14 August 2020