

# Merton Council

## Cabinet

13 November 2017

### Supplementary agenda 2

9 Battle Close

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Reasons for urgency: The Chair has approved the publication of this redacted version of the report, which was originally published in the exempt part of the agenda, in the interests of transparency and in light of the public interest.

The redacted information together with the two valuation reports listed as appendices remain exempt from publication as they contain information falling under paragraph 10.4 of Part 4B of the Council's Constitution as follows:

Category 3 – Information relating to the financial or business affairs of any particular person (including the Authority holding that information)

Members and officers are advised not to disclose either the redacted information or the contents of the exempt appendices.

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## Committee: Cabinet

**Date: 13 November 2017**

Wards: Trinity

## **Subject: Battle Close, SW19 1AQ**

Lead officer: Chris Lee, Director of Environment and Regeneration

Lead member: Councillor Mark Allison, Deputy Leader and Cabinet Member for Finance

Contact officer: Howard Joy, Property Management and Review Manager

### **Recommendations:**

- 
1. That the Council take a surrender of the leasehold interest on the terms contained within the body of this report.
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. To authorise the surrender of the leasehold interest in Virgin Active Health Club, Battle Close, SW19 1AQ on the main terms identified within the body of this report.

## **2 DETAILS**

- 2.1. Virgin Active Health Club (previously Holmes Place), Battle Close, SW19 1AQ (Edged red on appendix Location Plan) comprises a freestanding two storey health club in a 2.406 acre (0.974 hectares) site. The freehold is owned by the Council but it is let to Virgin Active under a ground lease that expires on 4th January 2033 at a ground rent of £4,700 p.a.
- 2.2. Virgin Active has another facility in Worple Road, Wimbledon and so wishes to dispose of their interest but not to a competitor. Virgin Active initially offered to sell their lease to the Council for [REDACTED] (if applicable). The purchase of this lease offers the opportunity to gain a site for residential redevelopment sixteen years before the lease expires albeit at the loss of revenue.
- 2.3. By acquiring the lease the Council will avoid the need to pay the tenant compensation upon expiry of the lease that is their statutory right under the Landlord and Tenant Act 1954 of [REDACTED] (twice Rateable Value) and the uncertainty and expense of litigation should possession not be provided voluntarily.
- 2.4. A valuation report on behalf of the Council dated 25th September 2017 provided the following figures: Freehold value subject to lease (this is the valuation of the rent received for the remaining term of the ground lease with the expectation of redevelopment value after the lease expires in 2033) [REDACTED] Freehold value with vacant possession (as no lease is in place the council can anticipate receiving the redevelopment value as soon as planning permission is achieved) [REDACTED]. The value of [REDACTED] is, as stated within the valuation report, subject to planning permission for

residential use comprising [REDACTED] (1/2 Bedroom flats) including 40% affordable plus a commercial D1/D2 use (Non-residential institution/Assembly and Leisure) of approximately 12,000 square feet. The valuation has assumed that a scheme will be undertaken within say 12 months otherwise holding costs will erode the site value. NB The value for redevelopment could increase if the Site Allocation process allows planning permission for an increased residential content such as that contained within the valuation dated 21st June 2016.

2.5. The main terms that have subsequently been agreed for the surrender of the lease to Virgin Active, subject to authority are:

(i) The parties agree to enter into an "Agreement to Surrender" within 6-8 weeks of both parties formal Board Approval. This was the original agreement with Virgin Active but passage of time has led to this term being superseded by (iii) below.

(ii) The surrender premium will be paid on completion of the surrender on [REDACTED]

(iii) To exchange contracts as soon as possible and to complete on the [REDACTED]

(iv) A full and final surrender premium of [REDACTED] = a total of [REDACTED] is to be paid to Virgin Active the tenant on completion of the surrender.

(v) The premises will be returned to the Landlord with only agreed Tenant's fixtures and fittings removed – this will include Gym Equipment, Signage and Computer Equipment.

(vi) There will be no dilapidations liability or condition to reinstate the premises provided the property has not deteriorated beyond the standard evidenced by a schedule of condition dated January 2017.

2.6. The Council is liable to pay Stamp Duty Land Tax in the sum of [REDACTED] and Land Registry fees of [REDACTED]

2.7. Virgin Active has opted or elected to tax under the existing regulations on a number of properties within their property portfolio. The effect of this is the disposal will be subject to a charge for VAT. The VAT liability on [REDACTED] is [REDACTED]

2.8. The Council may be able to transfer this liability in effect should the council sell the freehold or grant a new lease and charge VAT on the transaction (i.e. opting to tax).

2.9. The Council should budget for [REDACTED] capital in those circumstances where there is a degree of risk in the ability of the Council to recover the VAT on the surrender and on any development costs (please see paragraph 6.3 for details). The VAT sum of [REDACTED] should be recovered subsequently dependent upon decisions made on the redevelopment and use of the property.

2.10. Until the property is redeveloped or the responsibility is transferred to another, the Council will need to fund the revenue costs that arise from

possession. These costs include electricity, gas and water [REDACTED] p.a., Business Rates [REDACTED] p.a. subject to pooling, repairs and maintenance say [REDACTED] p.a. and security say [REDACTED] p.a.. All the costs with exception of Business Rates can be accommodated within existing budgets. The period of three months void rates which should be available from the completion date of [REDACTED] removes most of this liability from the current financial year. The liability for Business Rates could be removed by demolition of the buildings but this is not an option at present in case the building is needed. Therefore the Business Rates will need to be funded from 1<sup>st</sup> April 2018 until the property is redeveloped or the responsibility is transferred to another. The budgets are being reviewed to see if funding is available and following that a growth bid will be considered.

### **3 ALTERNATIVE OPTIONS**

- 3.1. Not proceed with purchasing the lease/taking a surrender of the leasehold interest. This would maintain the revenue income of £4,700 p.a. (subject to review in 2018 and five yearly thereafter) and avoid the revenue costs of holding the property vacant. However, this would delay the redevelopment opportunity and the enhanced capital receipt until the lease expires unless a deal to surrender the lease was able to be agreed with the new tenant. There could also be the need to pay the tenant compensation upon expiry of the lease that is the tenants statutory right under the Landlord and Tenant Act 1954 of [REDACTED] (twice Rateable Value) and the uncertainty and expense of litigation should possession not be provided voluntarily.
- 3.2. Should the Council decide not to proceed the parties are not under contract and Virgin Active are not in a position to force the council to complete. All negotiations have been subject to Authority and Funds and on this basis it is unlikely Virgin Active would be successful in seeking to recover their costs from the council.
- 3.3. Virgin Actives main options are to mothball the facility (but they would need to fund the running costs including rates) or keep it operational (probably unlikely) or try to assign their lease to another. They could operate the break clause in their lease but they have missed the opportunity to break in January 2018 and the next opportunity is five years distant.
- 3.4. Assignment of the lease would need our consent but they have a reasonable prospect of doing so with 15 years remaining and the rent at a low level (£4,700 p.a.). This should also give them a premium that Andrew Scott Robertson assesses at [REDACTED]. One operator is unlikely to use the whole building so there may be a budget operator in part of the property, a nursery using part and the swimming pools are likely to be closed. Any of these users are likely to approach the council to vary the lease terms particularly lengthen the lease but this is our choice, we cannot be compelled. Similarly we may be approached by Virgin Active in partnership with a developer to seek a deal for the redevelopment of the site although their past experience may dissuade them from this.
- 3.5. To decide not to take the surrender of the lease from Virgin Active is likely to result in a reputational issue for the Council with the commercial sector at the time when the Council is trying to develop a good relationship with the industry.

**4 CONSULTATION UNDERTAKEN OR PROPOSED**

4.1. Officers of the council through the normal circulation process.

**5 TIMETABLE**

5.1. Exchange of contracts for the surrender once council has approved the Recommendation with completion scheduled to take place on [REDACTED]. The Council will be responsible for the property from completion.

**6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

6.1 Property implications are contained within the "Details" section of this report, however, paragraph 2.4 states "The value of [REDACTED] is, as stated within the valuation report, subject to planning permission for residential use .... The valuation has assumed that a scheme will be undertaken within say 12 months otherwise holding costs will erode the site value."

6.2 Capital

6.3 The approved Capital Programme 2017-21 contains [REDACTED] for Acquisitions during 2017/18. The proposals contained in this report will result in the following changes to corporate financial plans:

	Year 1 £
Cost	[REDACTED]
VAT	[REDACTED]
Other Costs Incl Stamp Duty	[REDACTED]
<b>Total if VAT cannot be reclaimed</b>	[REDACTED]
Budget	[REDACTED]
Remaining Budget	[REDACTED]

6.5 Revenue

6.6 The likely revenue impact of this purchase is given in the Table below and depends on whether or not the building is demolished. The below does not take account of any potential re-letting of the site, which could achieve [REDACTED] p.a. (if the site is not demolished) or any dilapidation costs:-

<u>Revenue Implications</u>	<u>2018/19</u>	<u>Full Year</u>
<u>Retain Building</u>		
Loss of Income	[REDACTED]	[REDACTED]
Gas/Electricity		
Repairs and Maintenance		
Security		

<b>Rates foregone (30% retained)</b>		
<b>MRP</b>		
<b>Interest</b>		
<b><u>Total</u></b>		
<b><u>Demolish Building</u></b>		
<b>Loss of Income</b>		
<b>Rates foregone (30% retained)</b>		
<b>Demolish Building</b>		
<b>MRP</b>		
<b>Interest</b>		
<b><u>Total</u></b>		

\* May increase if the pooling of Business Rates is agreed for 2018/19 and 2019/20.

\*\* Assumes 15 year debt repayment period and scheme funded from internal borrowing at 0.5%

6.7 No provision exists for this expenditure. The budgets are being reviewed to see if funding is available and following that, a growth bid will be considered, but depending on future options for the site, may not need to be on-going. Currently, purchases of this type have stagnated whilst the Council develops plans to utilise the site (e.g. the WCA building and Farm Road Church). Given the revenue costs likely to be incurred by the site it is essential that plans for the site are developed and executed quickly.

## **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. The council has a duty to act fairly and reasonably in carrying out its functions and duties.
- 7.2. There are several powers which allow a Local Authority to acquire land or property. The most appropriate one is section 120 of the Local Government Act 1972.
- 7.3. Section 120 of the 1972 Act allows a local authority to acquire by agreement any land situated inside or outside its area for the purpose of any of their functions under the 1972 Act or any other Act or for the benefit, development or improvement of their area.
- 7.4. The Council's freehold is subject to the lease between the Council and Virgin Active. Once the surrender has taken place the leasehold title should be extinguished to ensure the Council holds an unfettered freehold title
- 7.5. A purchaser is liable to pay Stamp Duty Land Tax and Land Registry fees on the purchase of a property. The liability for Stamp Duty Land Tax will be [REDACTED] on the surrender with the Land Registry fees of [REDACTED]

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. None for the purpose of this report

## **9 CRIME AND DISORDER IMPLICATIONS**

9.1. None for the purpose of this report

## **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

10.1. Risk management regarding the revenue and capital budget are contained within the body of this report.

## **11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- Location Plan.
- Valuation report from Andrew Scott Robertson dated 25th September 2017. EXEMPT - see note
- Valuation report from Andrew Scott Robertson dated 21<sup>st</sup> June 2016. EXEMPT – see note

Note on Exempt Appendices:

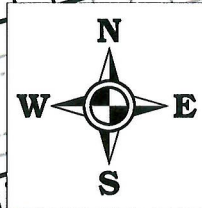
The following paragraph of Part 4b Section 10 of the constitution applies in respect of information given in this report and it is therefore exempt from publication. Members and officers are advised not to disclose the contents of this report:

Information relating to the financial or business affairs of any particular person (including the Authority holding that information).

## **12 BACKGROUND PAPERS**

12.1. None.





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Scale = 1: 1000

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