

# London Borough of Croydon

<b>REPORT:</b>	<b>Cabinet</b>	
<b>DATE OF DECISION</b>	<b>16<sup>th</sup> October 2024</b>	
<b>REPORT TITLE:</b>	<b>Accommodation and Support for Care Experienced Young People</b>	
<b>CORPORATE DIRECTOR</b>	<b>Jane West – Corporate Director of Resources and S151 Officer Susmita Sen – Corporate Director of Housing Debbie Jones – Corporate Director of Children and Young People</b>	
<b>LEAD OFFICER:</b>	<b>Huw Rhys-Lewis – Interim Director of Commercial Investment and Capital Beatrice Cingtho-Taylor - Director of Housing, Homelessness Prevention &amp; Accommodation Roisin Madden - Director of Children Social Care</b>	
<b>CABINET MEMBER :</b>	<b>Mayor Jason Perry – Executive Mayor Cllr Jason Cummings – Cabinet Member for Finance Cllr Lynne Hale – Deputy Mayor and Cabinet Member for Homes Cllr Maria Gatland – Cabinet Member for Children and Young People and Education</b>	
<b>KEY DECISION?</b>	<b>Yes</b>	Key Decision <b>0924CAB</b> – Decision incurs expenditure, or makes savings, of more than £1,000,000 or such smaller sum which the decision-taker considers is significant having regard to the Council’s budget for the service or function to which the decision relates
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>Yes</b>	Exempt and Confidential appendices  Exempt under paragraph(s) 3 & 5 of Schedule 12A of the Local Government Act 1972 and the public interest in withholding disclosure outweighs the public interest in disclosure.
<b>WARDS AFFECTED:</b>	<b>All</b>	

## 1. Summary of Report

- 1.1 This report details the proposal to enter into lease arrangements for an improved accommodation and support scheme for Care Experienced Young People. The Council is committed to improving our services to our community and particularly those that are vulnerable. This proposal involves the disposal of 90 Central Parade in New Addington and to agree a leaseback once the investor has developed a building. If developed, the Council will then sub-lease the building to YMCA who will manage the accommodation whilst delivering onsite necessary support and care to Croydon’s Care Experienced Young People.

- 1.2** This proposal contributes to the Mayor's Priorities of Children and Young People in Croydon having the chance to thrive, learn and fulfil their potential and expanding the opportunity for People to lead healthier and independent lives for longer. Croydon Council has committed to a Whole Council Approach to Corporate Parenting of Looked After Children and Care Experienced Young Adults up to the age of 25 years. This Strategy was launched in November 2023 and provides the four key priority areas for our Corporate Parenting focus of which the improvement of our housing and homes offer is a key objective in enhancing the lived experiences of our children and care experienced adults. Historically Croydon has not prioritised the quality, safety and affordability of appropriate properties in safer areas for our care experienced young people. This has led to a large legacy of young people living in unsuitable temporary accommodation which has impacted upon their relationships, education, training and employment opportunities in some instances. This project is part of an overarching approach to realising a significant improvement in our commitment to ensuring our young people have the best start in their transition into adulthood. This partnership delivers on multiple fronts for the Council as it achieves a property sales proceeds for an asset on the disposal list, retains use of the asset for Council use, improves provision of accommodation and services to care experienced young people as set out in the Corporate Parenting Strategy and brings in investment into Borough.
- 1.3** With this proposal the Council is partnering with the private sector and not-for-profit sector to help bring forward a viable and much improved service and accommodation offering in the Borough. The Council will work with the YMCA, who will take on the management of the property and will provide necessary care and support for care experienced people on site. The private investor will bring the capital investment and development expertise to bring forward a building that is intended to meet current and future needs of Care Experienced Young People.
- 1.4** This report provides consideration of the deal structure, including an explanation of the operational and financial benefits. The Council has set up a steering group which will oversee the project in relation to its work with YMCA and MV Developments and Partners to take on the lease and will receive updates regarding the developer's progress.

## **2. Recommendations**

For the reasons set out in the report and its appendices, Cabinet, is recommended:

- 2.1** To approve that the Council disposes of 90 Central Parade to MV Developments and any associated partners ("Investor"), which will be conditional upon receiving planning permission, and enter into Heads of Terms and subsequently a Conditional land sale agreement (or similar) for the value set out in the confidential Part B report; and an Agreement for Headlease with the Investor or an associated entity for the provision of an exempt supported accommodation scheme for care experienced young people.

- 2.2** To note that the disposal meets best consideration as detailed within the confidential Part B Appendix C.
- 2.3** To approve that the Council enters into Heads of Terms and subsequently into an agreement for underlease at 90 Central Parade with YMCA.
- 2.4** To delegate to Corporate Director of Children, Young People and Education, in consultation with the Executive Mayor, Cabinet Member for Finance, Cabinet Member for Homes, Cabinet Member for Children and Young People, Corporate Director of Resources, Corporate Director of Housing and Director of Commercial Investment and Capital to finalise and enter into all relevant final agreements related to the Conditional sale purchase agreement, Headlease, Underlease and Nomination agreement, including Heads of Terms and Agreement for Leases, subject to final financial and legal due diligence; and to take all steps to implement those agreements.
- 2.5** To note that the proposal set out in this report can only progress once MV Developments receive necessary planning approval and reach practical completion in relation to the development. The full planning and development risk remains with the developer.
- 2.6** To delegate authority to the Corporate Director of Children, Young People and Education, in consultation with Corporate Director of Resources, the Executive Mayor, Cabinet Member for Finance and Cabinet Member for Homes, to renegotiate terms of the Headlease or Underlease along with any documents preceding the main leases, should this be required prior to completion, but not to deviate by more than £1 million from reported benefits of this proposal as set out within this report.
- 2.7** To delegate to Corporate Director of Children, Young People and Education in consultation with Cabinet Member for Housing and Corporate Director of Housing to finalise and enter into a Nominations Agreement.
- 2.8** To note, subject to Recommendation 2.3, 2.4 and 2.7, that the Council will hold 100% Nomination rights for all 34 residential units for the period of the lease.
- 2.9** To note risks identified as part of this project are detailed within section 10 of this report.

### **3. Reasons for Recommendations**

- 3.1** This proposal requests the sale and leaseback of 90 Central Parade, subject to practical completion, and considers the provision of an exempt supported accommodation scheme. This will improve the Council's provision of support and quality of accommodation to Care Experienced Young People in line with the aims of the Corporate Parenting Strategy.

## **4. CONTRIBUTION TO EXECUTIVE MAYOR'S BUSINESS PLAN**

The proposals support outcome 3 from the Mayor's Business Plan:

- 4.1 Children and young people** - Croydon is a young borough, with the largest population of under-18s in London. We want to celebrate their talents and achievements and work with partners to enable our children and young people, including those with special educational needs and disabilities, to fulfil their potential. We also want to make Croydon safer for young people and keep vulnerable children and young people safe from harm.

## **5. Background**

- 5.1** Investors have expressed interest in acquiring Council's assets as detailed in the Asset Disposal reports approved at Cabinet previously. This engagement stemmed from the Council's strategic objective to dispose of surplus assets. Active market engagement has been taking place to seek to achieve best outcomes for the Council whilst generating investment within the Borough.
- 5.2** MV Developments have agreed to purchase 90 Central Parade from the Council and, through engagement and discussion with the investor, has proposed an opportunity for the Council to retain use of the property via a leaseback, subject to Council's governance approvals, planning and practical completion. The disposal of the property will be conditional upon receiving planning permission.
- 5.3** 90 Central Parade, currently used as a Social Service Areas office, is part of the Council's strategic disposal programme. The disposal programme aims to generate property sales proceeds to limit incurring additional debt whilst using capital proceeds to manage existing debt payments. It therefore forms a key objective to improve the Council's financial position. Young people are currently provided with a range of supported accommodation with current providers and their experiences vary considerably which in turn results in some inconsistent and poorer standards of outcomes.
- 5.4** The Council has carefully considered its options related to the asset to ensure the Council obtains best consideration, whilst aiming to meet its wider objectives along with improved care for Care Leavers. The Council had three options which included doing nothing, sell the asset to generate a property sales proceeds or to sell the asset and consider potential to retain its use for Council need. The do-nothing option was rejected as this contradicted the Council's disposal strategy, which was issued to Cabinet in May 2023. The remaining two options delivered a property sales proceeds and met key Council objectives to reduce costs and generate receipts however the option to leaseback the asset was selected as this gave the Council an added option to lease accommodation that benefitted Children and Housing services.
- 5.5** The option to leaseback the asset had the risk of delaying the potential capital receipt against the option to directly dispose in the market, but the leaseback option provided

more potential benefits to the Council over the longer term, which are not confined to financial/ commercial benefits. These benefits are further discussed within this report.

- 5.6** Since the initial review related to the best outcome for the asset and with further internal discussion, a key housing need for Care Experienced Young People (CEYP) had been identified and further conversations indicated that a CEYP scheme that meets support, and residential needs would be the best option for the Council.
- 5.7** The Council is keen to improve its accommodation for CEYP whilst also improving the wrap around care and support that is provided to ensure full independence.
- 5.8** The key challenge has been to identify a potential scheme that delivers an excellent social value for the Council whilst ensuring it is financially viable for a developer. The Council also has the objective to achieve property sales proceeds to pay down its debt as well as a key MTFs requirement to generate budget savings.
- 5.9** To ensure a scheme meets multiple financial and service-based requirements whilst ensuring the corporate financial value for money test is also met, it was evident that only an exempt supported housing scheme would work.
- 5.10** In order to achieve an exempt supported housing scheme, the landlord and the service provider must be the same organisation and that organisation must be a not-for-profit Registered Provider (RP). The Council is unable to be a provider as this materially impacts on the commercial viability as rent caps are maintained. Initial high-level discussions were held with potential providers ranging from Charities to not-for-profit RPs to test the market.
- 5.11** Through this process the YMCA London have agreed to work with the Council to deliver this scheme and take on the management of the property and provision of the care and support services to CEYP. YMCA will operate independently and will scope out delivery with the key aim of ensuring Croydon's CEYP become independent and sustain their independence.
- 5.12** Appendix A details the property structure that would need to be established to deliver the scheme which is commercially and operationally viable.
- 5.13** Council officers and CEYP have visited YMCA operational scheme in Waltham Forest on two occasions to understand how a scheme for CEYP would work including better understanding the benefits to them. The benefits of this scheme are detailed within section 7 and 8 of this report.
- 5.14** In order to validate the proposed structure, the Council commissioned legal advice to test and confirm the Exempt Supported Accommodation scheme and to advise on potential procurement risk. This is attached in confidential Appendix B. The advice confirms that the exempt accommodation scheme is achievable. The legal advice also confirms, under section 4 of Appendix B, that where the provision of the land transaction and the service delivery are inseparable there is no requirement for a

procurement process to be followed in relation to the service delivery element of the proposals.

- 5.15** The Council has set up Project Steering Board which includes all key Council teams that will work towards assisting the delivering this scheme and receive updates regarding progress. The Council expects the developer would be able to deliver the scheme 24 months from the date of this Cabinet.
- 5.16** Overall this scheme will achieve multiple Council objectives. It will generate a property sales proceeds at best consideration, retain asset use for housing need, deliver an improved and targeted service to care experienced young people, improve lives whilst reducing costs and generating savings within the Council.

## **6. Partners- MV Developments and YMCA**

- 6.1** MV Developments are a property investment and development company, with experience of developing a portfolio of residential, commercial and leisure properties in London and South East. MV Developments will partner with a funder and delivery partner to deliver the property that will help deliver this scheme. The Council's engagement with MV Developments is based on a property transaction where the Council will dispose of the asset and will take on a lease subject to agreement. All design, development and planning decisions and risks will be borne by MV Developments with no contribution from the Council.
- 6.2** In order for this scheme to work the Underlessee must be a not-for-profit Registered Provider as this delivers an exempt supported accommodation scheme. Furthermore, it also provides comfort that a regulated organisation will deliver the support services and manage the property to vulnerable members of society.
- 6.3** YMCA are a national charity working across South West, South, East and West London, providing support to vulnerable and homeless young people. YMCA provide accommodation, education and training, the Association is focused on the transformation of communities through its Health and Wellbeing Centres, children, youth and family programmes including nurseries.
- 6.4** This is a great opportunity for the Council to work with experienced and well-known organisations that will bring forward a flagship scheme focused on Care Experienced Young People.

## **7. The Croydon Care Experienced Exempt Supported Accommodation Scheme**

- 7.1** Discussions with Children and Young People and Housing have indicated that the proposed scheme could cater for 34 CEYP within 90 Central Parade. This would breakdown as 30 Studio Units, 2 one bed units and 2 two bed units. The one and two bed units could be used for care experienced young people with children. Further

refinement work will be undertaken by the Investor to finalise the number of potential units once equality and health and safety matters have been resolved.

- 7.2** The building's structure will consist of c3 levels including the ground floor. Upper floors would be used for residential purposes and the ground floor would be used to provide care and support to the CEYP residing within the building. The development of these units is entirely at the discretion and risk of MV Developments, and the Council will only be obliged to take these units if they meet the Council's accommodation needs as set out within agreed Terms.
- 7.3** Initial design proposals developed by the Investor have indicated that this scheme will be set out as a co-living scheme with the building playing an important role in fostering relationships. The developer will aim to deliver 24-hour concierge, shared kitchens with various communal services that allows for residents to engage with one another and will contain ample necessary spaces to provide much needed training, skills development and tools to move into independent living.
- 7.4** The Council would take a 25-year lease and the rents generated from the units would be used to cover the Council's lease costs. The Underlessee would be responsible for paying rental income to the Council less any deductions for costs. From a property perspective, that is the cost of leases and servicing of the property, which will be covered from the rents and result in a net neutral scheme for the Council and therefore will deliver cost reductions from current placements.
- 7.5** The Council will dispose of the asset for the sum set out in the Parr B report and as per confidential Appendix C, which is the red book professional valuation. The disposal meets best consideration and achieves an excellent value for the Council.
- 7.6** An agreement for the lease will be entered into between the Council and MV Developments subject to entering into a final lease once the development is completed that meets Council's needs. All design, planning and development decisions and risk will be borne by the developer and each party will be responsible for their own legal and administrative costs.
- 7.7** The accommodation proposals include self-contained bathrooms and touch down space along with mini kitchens. Within the communal areas the development will provide for a shared fully fitted kitchen and socialising spaces and formal training facilities. Those care experienced young people with young children will have fully self-contained residential units providing a safe and protected home for the entire family along with separate access into and out of the building.
- 7.8** The accommodation will include self-contained bathrooms and touch down space along with mini kitchens. Within the communal areas the development will provide for a shared fully fitted kitchen and socialising spaces and formal training facilities. Those care experienced young people with young children will have fully self-contained residential units providing a safe and protected home for the entire family along with separate access into and out of the building.

- 7.9** The service delivery approach is focussed on individual support and focussed plans, promoting life skills development, education, employment or training engagement. A focus on group activities to share skills and interests, worries and concerns and respect for individual needs for space and sharing. All these factors prepare young people for living in shared accommodation in the future or their own home. A dedicated key worker is allocated to each young person co-producing a tailored package of support which includes outside agencies. Regular assessments and an outcome star framework regularly monitor progress and any challenges in achieving agreed goals. The property and young people are monitored, and guests are limited in the evenings and asked to leave by 9pm. Young residents appreciate the security and safety that this arrangement will bring.
- 7.10** Appendix A details the property and operations structure that would apply with this scheme. The Council plans to initially place all 34 tenancies and will hold a nomination agreement with the Underlessee which will provide the Council with opportunity to place care experienced young people when units become void. The Joint Housing and Children's Social Care panel meets every 2 weeks to review and recommend suitable homes and support for our CEYP moving from temporary accommodation and our rising 18 year old CEYP who require homes and support as part of their transitioning into leaving care planning.
- 7.11** It is important to note that no proposal is risk free as some degree of risk is inherent in all projects. The key to risk will be the options available to the Council to manage those risks but also those risks will need to be analysed considering the broader context of demand for services, supply of housing need and cost of the alternatives. There is always future unknown risk particularly with regards to national policy and the future direction of legislative changes.
- 7.12** This scheme has a number of commercial advantages that have been negotiated with both the developer and underlessee. These include:
- i. Most proposals require inflationary uplifts linked to CPI or another benchmark, however MV Developments have agreed to cap increases at 3% or lower if CPI is less than 3%. These uplifts will only be applied every 5 years, therefore effectively providing uplifts that are below 3% as no compounding interest is applied.
  - ii. Initial financial analysis indicates a potential revenue saving of c£0.200m based on exiting the most expensive private sector tenancies based on like for like property sizes and reducing current children social care provision. However this is likely to be partially to fully offset by the cost of care and support, which will become known through the procurement process.
  - iii. Rent increase only every 5 years at the fixed rate and no annual lease increase and therefore allows for time to plan when the rent under the Headlease is due.
  - iv. 34 properties will be made available to the Council to support the growing demand for housing need for care experienced young people



- v. The rents under the structure will be priced below market rents for the tenants which achieved affordability criteria.
- vi. No upfront payment for the properties by the Council and therefore the Council avoids additional charge for Minimum Revenue Provision (MRP) and Interest. The costs associated with the Headlease will be funded from existing budgets within Housing and Children and Young People.
- vii. Subject to planning approval, the Council receives a capital receipt as property sales proceeds.
- viii. The scheme will include a number of options for alternative uses which will protect the Council's position in the event demand levels for Care Experienced Young Person drops.
- ix. An exempt supported accommodation scheme removes rent caps and allows for an enhanced scheme to be delivered.

### **Exempt Supported Accommodation**

- 7.13** This section provides further background to exempt supported accommodation and compliments the details included within the legal advice provided in Appendix B.
- 7.14** Exempt supported accommodation is a category of supported housing that is exempt from locally set caps on housing benefit. Supported housing encompasses a wide range of housing that combines housing with support for people with different needs, such as older people, people with disabilities, and people with complex needs. Exempt supported accommodation is exempt from housing benefit regulations that limit local housing allowance levels. This means Housing Benefit, which is paid by the Department for Work and Pensions and is administered by the local council, may cover the full amount of rent charged by providers.
- 7.15** The reason for this exemption is that described delivery model costs more to run than general needs tenancies, for example having higher costs for administration, insurance, and repairs and maintenance, as well as the cost of providing the support. Qualifying providers can therefore receive housing benefit payments often far more than Local Housing Allowance Rates (LHA) or social sector 'general needs' rents.
- 7.16** Exempt supported accommodation in England can be provided by a non-metropolitan county council, unitary council, housing association, registered charity or voluntary organisation. To qualify for exempt status, providers must show that they have not-for-profit status and that they are providing care, support, or supervision. Providers can be commissioned by a council, or in some cases by the NHS or another statutory body, and there are also non-commissioned providers. Some providers are registered with the Regulator of Social Housing, though this is not mandatory except for local authorities. Some providers own their properties, while others lease them from landlords or companies.
- 7.17** Exempt supported accommodation is generally transitional in nature and occupied by a wide cross section of vulnerable citizens; many with multiple or complex care and support needs. Many people who live in exempt supported accommodation have experienced or are currently dealing with challenges that mean they have few

alternative housing options. Residents include refugees, care leavers, people with disabilities and those who have formerly been homeless, had alcohol and drug addictions, been recently released from prison, or been a victim of crime such as domestic abuse or modern slavery. There are significant variations in the amount and standard of care provided within the exempt sector.

- 7.18** Whilst the main subject matter of the Underlease agreement with YMCA will be to provide accommodation, the care and support services delivered in the same building will make up part of the agreement to deliver an exempt supported scheme. In order to meet the requirements of an exempt supported scheme the organisation providing the accommodation must also provide the care and support services. Therefore, delivery of the support and care services and the accommodation together are critical to the success and viability of the scheme. Without the two elements being delivered by the same provider, the scheme would not be an exempt supported scheme and would not be able to progress due to viability and, as such, are not separable.

## **8. Children Social Care**

- 8.1** The Council is responsible for children leaving care until the age of 25 and the Council has a duty to ensure children leaving care have had the best support towards independent living. Croydon's Corporate Parenting Strategy approved at Cabinet in October 2023, highlights the improvements to be delivered in the Housing objective. This proposed development delivers on this key objective.
- 8.2** There are approximately 800 care experienced young people projected to need supported and secure homes over the next 2 years in Croydon. This includes 330 who are currently housed in temporary accommodation and require move on settled accommodation. Rising 18-year-olds, young people currently living in supported accommodation and those that will need post custody support and homes. This excludes those unaccompanied asylum-seeking CEYP without a confirmed legal status and those who do not have recourse to public funds. The Council spends on a gross basis £3.361m on local care experienced young people with £1.317m received from Central Government grants (largely the Staying Put Grant). The net spend by the Council is therefore £2.043m which is effectively funded from Council budgets. This equates to a net cost of c£109pw for each care experienced young person, but a gross unit cost of £180pw per person.
- 8.3** Assuming that the total grant received from central government remains the same and therefore proceeding with the proposed scheme at 90 Central Parade should help reduce gross costs. It is projected that by nominating 34 care experienced young people to 90 Central Parade would free up council budget allocated towards placement and staff costs. Whilst initial financial analysis indicates a potential revenue saving of up to £0.2m, which includes provision of housing, this calculation will only be finalised once the building has been leased back and process has been finalised.

## 9. Housing Provision

- 9.1** The average cost of housing provision is c£31 per night and after income received via housing benefit the net cost falls to c£13 per night. These costs are recharged back to Children and Young People and therefore the total cost reduction indicated within paragraph 4.3 includes savings that are generated from housing provision.
- 9.2** The current accommodation type for care experienced young people includes a range of studio flats, hostels and other shared accommodation. Some accommodation is not best suited to CEYP and poorly interacts with provision of support and care where the need is greater. The Council is keen to improve the type and level of accommodation provided to care experienced young people.
- 9.3** The proposal will result in cost reductions for the Council where the units at 90 Central Parade will be used instead of commissioning properties from the private market sector.

## 10. Risks and risk mitigations

- 10.1** Table below details some of the key risks that are prevalent with this proposal and suggests risk mitigation options considered along with further options to minimise the financial impact.

Risks	Description	Risk Mitigations	Other considerations
The Council will take on a minimum 25-year commitment to pay the rent and other payments under the Headlease.	The Council will need to commit lease payments for a minimum of 25 years. Whilst the lease will be for 25 years the Council will seek a break clause at year 15 or options to utilise the building for general housing needs to meet demand. Commercially it will be difficult to secure a clause less than 15 years due to viability concerns from the investor.	The level of need for Housing support is likely to be there for years to come. Whilst the market for housing in UK is buoyant this adds to the pressure on the Council to source affordable properties. The Council has a large cohort of care experienced young people that will continue to need support.  The Council will seek options to convert the use of the building for alternative uses.	The Council could consider converting the building into an alternative accommodation scheme during the lease term and re-negotiate the building use with the developer.
Potential reduction in demand from care experienced young people.	The risk here includes reduced demand over the term of the lease and therefore the scheme not being	The properties can always be retained for alternative affordable housing which help in avoiding taking on expensive properties at	The risk of housing demand from care experienced young people is low over the next 15 years.

	relevant to Council's needs.	market rates from private landlords.	
Underlessee fails to accept the EA exemptions.	Whilst the Council has received its legal advice indicating that the Exempt supported Accommodation scheme is achievable, the prospective Underlessee will need to satisfy themselves with their legal teams.	The Council will work with YMCA to address any concerns.	
Policy risk resulting is removal of Exempt Supported Accommodation.	It is possible that policy changes before or during the lease term come into effect, impacting the basis of the scheme.	This will be difficult to mitigate against however the agreements will see alternative options in such an event.	The Council may have to accept this risk and implications, if any, associated with it.
Planning and construction risk	The Council will only agree to take on the lease if the developer delivers a scheme that meets the Council requirements. If planning is not awarded and no scheme is developed then this proposal will not proceed.	The Council will aim to pursue the second option to directly dispose of the property at best consideration.	
Void Risks	The Council will likely pay for long void periods that are above a pre-agreed period with the YMCA	The Council will need to manage allocations with YMCA and include parameters within agreements so that the Council is able to act within the timelines to avoid void costs.	The Council could let YMCA allocate CEYP from their register if the Council is unable to fill the voids.
Risk that the developer does not deliver, does not deliver the expected scheme or delivery is delayed.	All design, planning and construction decisions are for the developer and there will be no obligations on the developer to develop the building or develop a building that meets the Council's needs. The developer can, therefore, choose not	If this occurs, the Council will not be obliged to take the lease, and the expected scheme will not proceed. The Council could consider if any developed building could meet other needs of the Council and seek to re-negotiate a potential lease.	The developer is taking on all development risks and therefore all development decisions should be with the developer. The proposals are for a land transaction only and not a procured works contract.

	to develop or develop a different scheme and there will be no consequences to the developer if this occurs, including that the developer will not be required to return the land to the Council.		
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## 11. Steering Board and Consultations

- 11.1 The Council has established a Steering Board to support this scheme. The Board consists of Council Officers from Children & Young People, Housing and Corporate Services and will oversee the delivery of the Council elements of this project, work closely with the delivery partners and receive updates in relation to development progress.
- 11.2 The Council has also had initial discussions and engagement sessions with Care Experienced Young People and the outcome of that engagement has contributed towards developing this proposal. The Council has listened to the challenges and issues faced by young adults and this scheme begins to help make the necessary improvements.
- 11.3 Active engagement has been undertaken with local Ward Members and Local Communities to ensure this project also works well with the wider Community.

## 12. Alternative Options Considered

- 12.1 Prior to considering the high-level options for 90 Central Parade, the Council had planned to dispose of the asset outright into the market. This option would have generated a property sales proceeds for the Council however the Council would not have benefited from use of the asset. The proposal detailed within this report allows for a property sales proceeds to be generated, investment to be made in the asset and the Council generates a benefit from its use.
- 12.2 An alternative option would have been to retain the asset to deliver the scheme directly. However, this would have meant that the Council would be taking on the planning and development risk. This would have required capital investment which the Council most likely would have called on borrowing to finance. With the Council's high debt levels and lack of resources to carry out development activity this option was discarded.
- 12.3 Not doing anything has not been considered as all other options generated a better outcome.

## **13. Implications**

### **13.1 Financial Implications**

- 13.1.1.** The proposed approach will achieve a cash receipt for the Council and result in a lease commitment for the Council. The arrangements will generate improved outcomes for young people and support the Councils priorities.
- 13.1.2.** There is risk that if the headlease and underlease are not aligned in terms of break clauses, that the council could be in the position in later years of paying out rent without the offsetting rental income.
- 13.1.3.** The Council will not incur any accommodation costs as the rents generated from the underlease are expected to cover the headlease payments. The exemption accommodation model allows for additional contribution to be claimed from Housing Benefits and therefore it is anticipated that all property management costs will be funded from the scheme.
- 13.1.4.** The proposed scheme will provide better value for money and financial analysis has shown there is potential to produce a net overall revenue saving. The cost of the Councils contribution to care and support are difficult to identify at this stage with accuracy but will depend on the contributions and engagement with wider partners to source funding.

Comments approved by Jenny Bartlett - Head of Finance – Children, Young People and Education

### **13.2 Legal Implications**

- 13.2.1.** The Council has the power to do anything that individuals generally may do pursuant to section 1 of the Localism Act 2011 (“general power of competence”). The Council therefore has the power to enter into the proposed arrangements for an agreement for lease, underlease with care and support services and nominations agreement, as set out in this report.
- 13.2.2.** This report recommends entering into Heads of Terms (HoTs), which is a document setting out the terms of a commercial transaction agreed in principle between parties in the course of negotiations. HoTs are appropriate once preliminary terms have been agreed and before commencement of detailed due diligence and the drafting of definitive agreements. HoTs demonstrate serious intent but do not legally bind the parties to conclude the deal.
- 13.2.3.** The recommendations in this report cover a number of different matters and below are the key powers and legal considerations that will apply to the proposals:

- 13.2.4.** Land Disposal – the proposed disposal will be by way of a conditional land sale agreement, conditional upon the developer obtaining planning permission. There are various powers the Council may rely upon to dispose of its assets and the Council must comply with the legal framework, including established public law principles, in relation to disposal of land and property. Under Section 123 of the Local Government Act 1972 and Section 233 of the Town and Country Planning Act 1990 (where land has previously been appropriated for planning purposes), it has a statutory duty to sell land at the best price reasonably obtainable (“best consideration”), unless it has the consent of the Secretary of State. The red book valuation set out in confidential Appendix C is a valuation by a qualified independent valuer and demonstrates the proposed disposal value as achieving best consideration.
- 13.2.5.** Headlease land transaction - where the Council contracts with a developer involving the delivery of works then, depending on the substance of those agreements and any relevant exemptions, this can be considered as a contract which falls under the scope of the Public Contracts Regulations 2015 (PCR). This is an area of law which has been litigated and case law principles should be assessed when considering if the PCR will apply to a proposed agreement involving a development. Under Regulation 10 PCR (“Specific exclusions for service contracts”) contracts *“for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property, or which concern interests in or rights over any of them”* do not fall under the detailed rules/requirements of the PCR and, therefore, do not require a competitive procurement process. The proposed HoTs for the agreement for headlease will not include any obligations on the developer to deliver a development at all or to Council requirements, it will simply facilitate the option for the Council to take a lease that meets its requirements if such a building is developed. Subject to final due diligence on the proposed terms of the agreement for headlease, it is considered that this proposal will purely be a land transaction.
- 13.2.6.** Underlease land transaction and Care and Support Services – whilst the underlease is considered to be a land transaction and not subject to PCR rules (see above), the care and support services envisaged to be delivered by YMCA are potentially subject to the PCR. However, as set out in paragraph 6.18 the care and support services are considered to not be separable from the accommodation and the main subject matter of the agreement is considered to be the underlease, which is a land transaction. Regulation 4 of the PCR sets out how different contracts which contain a mixture of procurable and non-procurable goods/services/supplies should be treated under the PCR. Regulation 4(2) covers the scenario where contracts *“have as their subject-matter procurement covered by this Part and procurement not covered by this Part”* and if the individual elements are not *“objectively separable”* then the applicable legal regime shall be determined on the basis of the main subject matter of the contract. Further advice is contained in confidential Appendix B.

**13.2.7.** In relation to paragraphs 12.2.5 and 12.2.6 above, further consideration will be given to whether a voluntary transparency notice (VEAT) under Regulation 99(4) of the PCR would assist as a mitigation measure against potential procurement challenge once the draft agreement for lease and underlease have been negotiated and finalised. Once published, any contractor/developer seeking to object and call for a declaration of ineffectiveness would need to do so within 10 days (after which such a challenge would be out of time). The Council cannot enter into the Development Agreement during this 10-day standstill period. The VEAT Notice would, arguably, also act as notice to the market starting the 30-day time limit for a damages claim. VEAT notices need to be carefully drafted and be completely transparent as, otherwise, they can be invalid and not provide the protection envisaged. This is a point that has been litigated and case law should be followed when considering use of VEAT notices. The Council can also consider issuing a contract award notice, under Regulation 50 of the PCR, which means a potential challenger would have 30 days to issue a claim.

**13.2.8.** In relation to the scheme being classified as exempt supported accommodation, the definition of specified accommodation is set out in Regulation 75H of the Housing Benefit Regulations 2006 (“HB Regulations”), which covers exempt accommodation. For accommodation to satisfy the definition of “exempt accommodation”, (under Paragraph 4(10) of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006/217) it must be provided by a non-metropolitan county council in England within the meaning of section 1 of the Local Government Act 1972, a housing association, a registered charity or voluntary organisation; and that body or a person acting on its behalf also provides the claimant with care, support or supervision. Whilst the Council would not be able to meet the first condition, YMCA does as they are a registered charity and, in order to meet the second condition, they must also provide the care and support services. Further advice is contained in confidential Appendix B.

Comments approved by the Head of Commercial, Housing & Litigation Law and Deputy Monitoring Officer on behalf of the Director of Legal Services and Monitoring Officer (Date 26/09/2024)

### **13.3 Property Implications**

**13.3.1.** In Part B report.

### **13.4 Equalities Implications**

**13.4.1.** The protected characteristics defined by law are race and ethnicity, disability, sex, gender reassignment, age, sexual orientation, pregnancy and maternity, religion or belief, marriage and civil partnership.



- 13.4.2.** The impact will be medium as the target cohort group of community members this scheme is targeted to care experienced young person. The allocation of the residential homes will be based on statutory assessments that are carried out by Children Services based on need and suitability.
- 13.4.3.** The nomination of a care experienced young person to this scheme will not be based on individual ethnic or gender but will be more based on individual's need. Allocations will be based on need and statutory assessment processes. Each allocation will be in line with the Corporate Parent strategy and will be based on need rather than background.
- 13.4.4.** The allocation of CEYP is based on data available directly with Children Services. There is data from children services that shows that Croydon's care leavers need support and care to help them become independent. The team have also visited a YMCA site to understand the impact of this scheme on care experienced young people.
- 13.4.5.** The Council has initially at a high level consulted with Care Experienced Young People but further work will need to be done as the project develops. There has been excellent feedback from CEYP who have indicated the need for improved housing.
- 13.4.6.** The Council has a statutory duty to comply with the provisions set out in the Public Sector Equality Duty (PSED) at Section 149 of the Equality Act 2010. The Council must therefore have due regard to the duty to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 13.4.7.** This decision should have a positive impact on equalities, in improving outcomes for care experienced young people in Croydon.
- 13.4.8.** It is worth noting that the allocation of the residential homes will be based on statutory assessments that are carried out by Children Services based on need and suitability. The nomination of a care experienced young person to this scheme will not be based on any of the protected characteristics, such as individual ethnicity or sex, but will be solely based on individual need. As such, there should be no impact on the Council's ability to discharge the PSED

Comments approved by Helen Reeves, Head of Strategy & Policy 04/10/2024

## **13.5 HR Implications**

- 13.5.1.** There are no HR implications arising from this report.

Approved by: Gillian Bevan, Head of HR, Resources and Assistant Chief Executive Directorates, on behalf of the Chief People Officer. (Date: 28/08/2024)

## **14. Background documents**

14.1 None

## **15. Appendices**

Appendix A – Property Structure and Operational arrangement