



## CABINET REPORT

<b>Report Title</b>	<b>Land &amp; Buildings at Campbell Square – property ownership and occupation</b>
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**AGENDA STATUS: PUBLIC**

<b>Cabinet Meeting Date:</b>	14 September 2011
<b>Key Decision:</b>	Yes
<b>Listed on Forward Plan:</b>	Yes
<b>Within Policy:</b>	Yes
<b>Policy Document:</b>	No
<b>Directorate:</b>	Planning & Regeneration
<b>Accountable Cabinet Member:</b>	Cllr Tim Hadland
<b>Ward(s)</b>	Castle

### 1. Purpose

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- 1.1 The purpose of this report is to seek the authority of Cabinet to the disposal of freehold property, identified in Appendix 1, by way of the grant of two 999 years leases.

### 2. Recommendation

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- 2.1 That Cabinet gives authority in principle for this Council to grant a 999 years lease to the Department of Communities and Local Government (CLG) of those parts of the premises known as Campbell Square Police and Magistrates Court complex (shown edged red on the attached plan at Appendix 1) that are presently occupied and used by the Courts Service. The terms of this lease to be generally consistent with the principles set out in the body of this report and having regard to the obligations of the Council under the Courts Act 2003.

- 2.2 That Cabinet gives authority in principle for the Council to grant a 999 years lease to Northamptonshire Police Authority of those parts of the premises described at 2.1 above that are presently occupied and utilised by the Police Service. The terms of this lease to be generally consistent with the approach and principles set out in the body of this report.
- 2.3 That Cabinet delegates authority to the Director of Planning and Regeneration to approve the precise terms of the leases (and any necessary ancillary documents) to give effect to the above.

### **3. Issues and Choices**

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#### **3.1 Report Background**

- 3.1.1. The unregistered freehold interest in the Police Station and Court Complex at Campbell Square, Upper Mounts, Northampton belonged to Northampton Borough Council. Under the terms of an agreement granted in 1972 by the then County Borough of Northampton, Northamptonshire Police Authority (NPA) occupy parts of the premises, including adjacent enclosed car parking area, on a rent free basis. The agreement permits them to occupy in perpetuity until they cease to use specified parts of the property for Police purposes – whereupon they must give those premises back to this Council. The Magistrates Court occupies the basement, first and second floors of the building and their staff and magistrates use certain car parking spaces in the adjacent car park. There is no formal agreement that governs their existing use and occupation of this property. There are existing rights, across neighbouring land owned by Northamptonshire County Council, to provide access for vehicles bringing persons in custody to the Court.
- 3.1.2 In 2003 the Courts Act was passed with the intent that Magistrates Courts should be owned and controlled by Central Government. A Property Transfer Scheme was devised by Her Majesty's Courts Service, (HMCS), to give legal effect to this intention. This included the grant of long leases of Magistrates Courts – to fuse the ownership and administration of court buildings. That Property Transfer Scheme was challenged by another local authority in the High Court and was held to be unlawful.
- 3.1.3 Following a long period of reflection after this judgement, HMCS approached this Council and others seeking consensual agreements to the transfer/lease of Court accommodation in various locations. In the event that agreement could not be reached, they had made clear that a new Property Transfer Scheme would be devised to achieve the same ends by compulsory means.
- 3.1.4 Discussions and negotiations were conducted between officers of this Council, HMCS and NPA concerning the existing arrangements that exist between the Council and the Police and those between the NPA and HMCS regarding the property at Campbell Square. At present, the NPA look after almost all aspects of the running of the building and recover certain cost contributions from HMCS. This Council presently have no existing liabilities in relation to the property.

- 3.1.5 The Council reached agreement with HMCS in 2007 to grant to them a 999 years lease at a peppercorn rental of those parts of the property utilised by them. The objectives of Council officers in these discussions were to protect the reversionary value of the Council's interest in the land, whilst at the same time limiting, as far as possible, any exposure to landlord's liabilities under any proposed lease.
- 3.1.6 Prior to the grant of the proposed long lease being brought to Cabinet in late 2007 for approval, a dispute as to ownership of the freehold was then raised by Northamptonshire County Council (NCC) and by the NPA. It was suggested that by operation of law following local government re-organisation in the 1970's, the freehold interest should have passed to NCC at that time. In light of this claim, HMCS were not willing to proceed with taking a long lease, since this would cause registration problems with the Land Registry.
- 3.1.7 Notwithstanding various communications between this Council, NCC, NPA and HMCS' representatives over a lengthy period between 2007 to 2010, this dispute remained outstanding. Pursuant to a new Courts Act Property Transfer scheme, CLG on behalf of HMCS did therefore complete the acquisition of the 'flying freehold' of the parts they occupy. Nevertheless, there remained a need to resolve the practical and documentary position governing the relationship between HMCS and NPA as occupiers and between this Council and those parties.
- 3.1.8 Following further round table discussions in 2010 and 2011, NCC and NPA agreed to withdraw their claims concerning the freehold ownership, to facilitate a practical resolution. The Courts Service is similarly willing to co-operate to give effect to this comprehensive solution. This would involve the transfer of the "flying freehold" back to this Council by way of confirmatory transfer, with NPA and NCC formally waiving any claims too. It would enable this Council to formally register itself as the 'undisputed' freehold owner of the entire site. In return for this, the Council would grant two leases, as set out below.
- 3.1.9 Under the basis now provisionally agreed, this Council would grant a 999 years lease to CLG of all that property utilised by the Courts Service at a peppercorn rent (reflecting that they already have a flying freehold). Similarly, this Council would grant a 999 years lease to the NPA of the parts used by the Police, also at no rental (reflecting the terms of the existing 1972 Agreement referred to at 3.1.1). Under those leases, this Council would accept repairing and other liabilities in respect of the common and exterior parts of the building. However, simultaneously this Council would enter into a tripartite agreement with CLG and NPA. All parties would mutually agree that whilst NPA's lease continues, NPA would perform the obligations of landlord under both leases. CLG would bind itself to pay contributions to NPA (otherwise due under the lease to this Council), whilst NPA continue to perform the landlord's role upon behalf of the Council.
- 3.1.10 The leases would though differ in important respects. The lease to NPA would determine in the event that the NPA no longer utilised the property in the delivery of Police services and ancillary activities. In those circumstances this Council would get back control of those parts of the property at no cost. However, this would be subject to the right of CLG to choose to surrender existing cell accommodation within its lease and "swap" that for alternative cell accommodation on a different floor (i.e. presently police controlled). This option would be subject to a caveat, that

all parts that would then be vacant must be fully accessible and practically available to let to a third party by this Council.

3.1.11 In contrast to NPA, if CLG wished to cease use of the premises and to assign their lease, the Council would have a pre-emption right to acquire the CLG interest but only at its market value at that time. This reflects the commercial strength of the HMCS by virtue of the Courts Act 2003.

3.1.12 In the event that one tenant decided to determine their lease, this Council would then be directly liable to perform the landlord's obligations under the remaining lease. However, that liability could be mitigated at that point by this Council being able to let the vacated part to a third party, to generate rent and service charge contributions.

3.1.13 In order to facilitate the continued practical operation of the property as existing, it will be necessary for the parties to the leases to enter into a separate Deed of Grant with NCC. This is to permit custody vehicles on behalf of the Courts Service/ Police crossing adjoining NCC (Fire Station) owned land to deliver prisoners to the Van Dock at the side of the Police Station/ Magistrates Court complex.

## **3.2 Choices (Options)**

3.2.1 In light of the statutory position (Courts Act 2003), the principal concern is to agree a methodology by consent that will (a) allow the Council to retain all of its freehold interest in the property and thus the inherent value that might ultimately be realisable from that ownership and (b) that reduces the risk of exposure of the Council to costs arising from landlord's liabilities. The above option achieves this objective in a comprehensive and properly structured way.

3.2.2 The Council could, alternatively, choose to (a) accept the existing position of a 'flying freehold' in respect of part of the property in favour of the Courts Service and (b) rely upon the existing 1972 documentation regulating the Police occupation and management of the property. This would mean that the freehold ownership of the property would be permanently fragmented, limiting this Council's scope to realise long term value out of its ownership of the property. It would also rely upon the HMCS, NPA and NCC agreeing to co-operate on a day-to-day basis over a number of practical matters. Given the history of lengthy communications, claims made and legal opinions taken by all parties, this 'default' resolution is unlikely to be deemed satisfactory by one or more of the relevant parties.

## **4. Implications (including financial implications)**

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### **4.1 Policy**

4.1 There are none.

### **4.2 Resources and Risk**

4.2.1 Capital: The Council's freehold ownership of this property would be registered for the first time, giving certainty and a stronger position from which to potentially generate capital value in the long term.

4.2.2 Revenue: The building generates no income but has no holding costs at present. This would continue to be the case for the foreseeable future. It is possible that this Council could start to incur landlord's liabilities at some point in the future, but it would then also have the opportunity to generate revenue (rent and service charge) from vacated parts of the building. Considerable officer time (Legal and Asset Management) has already been expended in reaching a basis for proper regularisation of the occupational and ownership position. A limited amount of further officer time would be required to conclude the matters.

4.2.3 The risk in proceeding, as recommended, is limited to that of this Council potentially not being able to generate sufficient income in the future to cover potential landlord liabilities – if one of the tenants chooses to determine their lease. The risk in not proceeding is that the Council will not adequately protect its long-term interests and that it will lose a 'one off' opportunity to register the freehold of the entire property in its name.

### **4.3 Legal**

4.3.1 The pertinent legal issues are dealt with in the body of this report.

### **4.4 Equality**

4.4.1 There are none. The actual use of the land and property will not change at all. The proposed grant of the leases of the property would regularise the existing position and would not disadvantage any section of the population disproportionately.

### **4.5 Consultees (Internal and External)**

4.5.1 Given the nature of the transactions proposed which have no impact on the existing day-to-day operations of the Police Station and of the Magistrates Court, it is not considered relevant in this instance to take the views of Ward Councillors.

4.5.2 In the course of dealing with this matter there has been extensive liaison with HMCS, NPA and NCC.

### **4.6 How the Proposals deliver Priority Outcomes**

4.6.1 The regularisation and registration of ownership and completion of comprehensive occupational documentation relating to this building protects the long-term financial interests of the Council. This helps sustain effective and prudent financial management within this Council (Corporate Priority 8).

### **4.7 Other Implications**

4.7.1 There are none specifically.

## **5. Background Papers**

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- 5.1 The Courts Act 2003
- 5.2 Asset Management files

**Simon Dougall, Corporate Asset Manager, x 8177**

**Appendix 1 – Plan of Campbell Square Police Station and Magistrates Court and associated vehicle parking**