



CABINET REPORT

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| Report Title | Grant of lease of Magistrates Court Premises at Campbell Square to Her Majesty's Courts Service |
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AGENDA STATUS: Public

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| Cabinet Meeting Date: | 5 November 2007 |
| Key Decision: | Yes |
| Listed on Forward Plan: | Yes |
| Within Policy: | Yes |
| Policy Document: | No |
| Directorate: | Governance & Resources |
| Accountable Cabinet Member: | Cllr Malcolm Mildren |
| Ward(s) | Castle |

1. Purpose

1.1 To seek authority of Cabinet to the principle of granting a long lease of the Magistrates Court premises at Campbell Square to Her Majesty's Courts Service and to entering into ancillary related documentation with relevant public agencies.

2. Recommendations

2.1 That Cabinet gives authority in principle for the Council to grant a long lease to Her Majesty's Courts Service of those parts of the premises forming the Campbell Square Police and Court complex that are presently occupied by the Magistrates Court.

2.2 That Cabinet should delegate authority to the Director of Finance to approve the terms of a lease (and any necessary ancillary documents) with the Portfolio Holder for Finance.

3. Issues and Choices

Report background

- 3.1 The freehold interest in the Police Station and Court Complex at Campbell Square, Northampton belongs 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 rent free. 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 first and second floors of the building and staff and magistrates use certain car parking spaces. There is no formal agreement that governs their existing use and occupation of this property.
- 3.2 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 a local authority in the High Court. It was held that the Lord Chancellor had no power under the Act to force the grant of new leases of Magistrates Courts by responsible authorities in the manner proposed.
- 3.3 Following a long period of reflection after this judgement, HMCS have now approached this Council and others seeking consensual agreements to the transfer/lease of Court accommodation in various locations. In the event that agreement cannot be reached, they have made clear that a new Property Transfer Scheme would be devised to achieve the same ends by compulsory means.
- 3.4 Discussions and negotiations have recently been 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.
- 3.5 HMCS want this Council to agree 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 have been 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.

Issues

- 3.6 There is the threat of legal compulsion under a new suggested Property Transfer Scheme to either force this Council to grant a lease to HMCS or alternatively face the possible compulsory transfer of the freehold to HMCS of part only of the building (so called 'flying freehold'). In light of this, the principal concern is to

agree a methodology by consent that will limit the Council's exposure to costs risk. At the same time the Council would wish to retain all of the freehold interest in the property and thus the inherent value that might ultimately be realisable from that ownership.

3.7 A proposal has been provisionally agreed that would entail this Council granting a 999 years lease to HMCS of all that property utilised by them. Under that lease this Council would accept repairing and other liabilities in respect of those parts of the building that were not let to HMCS. However, simultaneously this Council would enter into a tripartite agreement with HMCS and NPA. All parties would mutually agree that whilst the NPA retain an interest in the property under the terms of the 1972 Agreement, they would perform the obligations of the Council as landlord under the lease made between this Council and HMCS. HMCS would bind itself to pay contributions otherwise due under the lease to the NPA whilst NPA continue to perform the landlord's role upon behalf of the Council.

Choices (Options)

3.8 The Council could choose not to co-operate with HMCS and await the outcome of any new Property Transfer Scheme that might be devised pursuant to the Courts Act 2003. This is only likely to delay an inevitable compulsory means of HMCS acquiring a very long term interest in the premises. It is possible that this stance could result in a Scheme that forced the Council to compulsorily transfer part of its freehold interest in the building to HMCS. This would be undesirable from a number of practical and valuation perspectives.

3.9 The Council could co-operate with HMCS and agree the grant of a 999 years lease, upon the basis that the ancillary agreement in 3.7 above is completed. This is judged to be the favoured course of action, since it would limit exposure to future landlord's liabilities whilst retaining the freehold ownership of a strategically placed asset.

3.10 The Council could transfer the freehold interest in the entire property to the Courts Service, subject to the existing 1972 Agreement with the NPA. This would relieve the Council of any risk of future liabilities arising (as compared with a lease). However, it would mean the transfer for no value of the Council's freehold interest in a large and potentially valuable town centre land holding. HMCS would not in any event be prepared to consider this option unless they were offered the freehold interest without any restrictions on future use. The Council in turn could not contemplate such a transfer unless a clawback arrangement were simultaneously entered into, securing a specific financial return to the Council in the event of the future redevelopment/sale of this asset. This option in practical terms cannot therefore be pursued.

4. Implications (including financial implications)

Policy

4.1 There are none specifically.

Resources & Risk

- 4.2 The proposed grant of a lease and tripartite agreement as proposed will involve continuing legal and asset management staff resources.
- 4.3 The grant of the proposed lease could expose the Council to potentially substantial liabilities in the future, should the NPA choose not to continue to occupy those parts of the premises that they presently utilise. In those circumstances, the responsibility for maintenance of the exterior of the building and common parts/ services would fall upon the Council, with limited cost recovery from HMCS. There would also be business rates to pay upon the vacant part of the building. On the other hand, in those circumstances the Council would have the right to let those vacant parts and generate income - that might be in excess of the costs referred to.
- 4.4 The risk of not co-operating with HMCS is that the grant of a long lease may be compulsorily ordered, in which event HMCS and NPA would not be under any compulsion to enter into agreements to effectively negate the immediate liabilities of the Council under the lease.

Legal

- 4.5 The legal implications are set out in this report and the provisions of the Courts Act 2003 in particular have been fully considered in the context of this matter.

Equality

- 4.6 None specifically.

Consultees (Internal and External)

- 4.7 Her Majesty's Courts Service, Northamptonshire Police Authority

How the Proposals deliver Priority Outcomes

- 4.8 Not applicable.

Other Implications

- 4.9 There are none.

5. Background Papers

Asset Management File.

Simon Dougall, Asset Manager, ext. 8177

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SIGNATORIES

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| Report Title | Grant of lease of Magistrates Court Premises at Campbell Square to Her Majesty's Courts Service |
| Date Of Call-Over | 17/10/07 |

Following Call-Over and subsequent approval by Management Board, signatures are required for all Key Decisions before submitting final versions to Meetings Services.

| Name | Signature | Date | Ext. |
|--------------------------------------|------------------|-------------|-------------|
| Monitoring Officer or Deputy | | | |
| Section 151 Officer or Deputy | | | |