

**Report of the Executive Member for Environment and Transport**

<b>Meeting of:</b>	<b>Date:</b>	<b>Ward(s):</b>
Executive	16 <sup>th</sup> January 2020	Bunhill

<b>Delete as appropriate:</b>		Non-Exempt
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**THE APPENDICES TO THIS REPORT ARE NOT FOR PUBLICATION****SUBJECT: FINSBURY SQUARE****1. Synopsis**

- 1.1 This report provides information in respect of an innovative proposal from Hondo Enterprises Limited for the redevelopment of the underground space at Finsbury Square and the restoration of the public square and open space. Hondo Enterprises own AG Finsbury Square BV, the leaseholder of the car park space underneath the square. The report should be read in conjunction with exempt Appendix 1.
- 1.2 Prior to receiving Hondo's proposal, a Finsbury Square Task and Finish Group (TAFG) was established with the overall aims of exploring opportunities for the creation of a first class square and maximising income. The Group was Chaired by the Executive Member for Environment & Transport and included the Executive Members for Finance, Performance and Community Safety; Inclusive Economy and Jobs and Housing and Development. The first meeting took place in December 2016 and several further meetings were held throughout 2017 and 2018.
- 1.3 The Hondo proposal was first suggested to Council officers in 2017 and could potentially lead to the regeneration of Finsbury Square and convert the car park into commercial, retail and leisure use at no cost to the Council, including the restoration of the open space. This scheme represents a potentially viable opportunity taking into consideration the complex property and legal arrangements associated with the site. Following the steer given by the Task and Finish Group, officers have been in discussion with the leaseholder of Finsbury Square regarding their development proposals and the potential for a revised lease with the Council.
- 1.4 As a result, the Council appointed a property consultancy (Knight Frank) to advise on the proposal and negotiate Heads of Terms on behalf of the Council for a Conditional Agreement with the leaseholder to undertake the Development on the basis of an agreed Development

Agreement and new head-lease.

- 1.5 Reports were presented to CMB on 23<sup>rd</sup> July and 27<sup>th</sup> August 2019 to present the latest position, further ideas and proposals were suggested to be considered for inclusion into the Heads of Terms and where appropriate, those changes have been incorporated.
- 1.6 Therefore, it is considered that the project can now proceed to the detailed design, consultation and pre-application planning phase. From the leaseholder 's perspective this is time critical given that the under lease of the car park contains a break clause which the leaseholder can only exercise up until 31<sup>st</sup> December 2020.

## **2. Recommendations**

- 2.1 To note the proposal from Hondo Enterprises to Finsbury Square to redevelop the underground car park and open space as shown in the indicative outline design CGI (attached as exempt Appendix 1a);
- 2.2 To note that a Task and Finish Group was established chaired by the Executive Member for Environment and Transport and involving other Executive members and officers to consider the proposal and options for the redevelopment of Finsbury Square;
- 2.3 To note the Heads of Terms negotiated with AG Finsbury Square BV (attached as exempt Appendix 1b) and agree to delegate authority to the Corporate Director for Environment & Regeneration to make any amendments to and finalise the Heads of Terms following consultation with the Executive Member for Environment & Transport;
- 2.4 To agree to the Council working in partnership with Hondo Enterprise and to create development plans for Finsbury Square Open space and the enhanced use of the underground space including public consultation for the Council's approval and the commencement of pre-application planning discussions;
- 2.5 To note the development pre-conditions that must be satisfied in order for the developer to proceed (as detailed in section 3.12.1) and agree to enter into a Conditional Agreement with AG Finsbury Square BV in order to support the submission of a planning application;
- 2.6 To note that the Council's costs to including will be met by Hondo Enterprises including all reasonable legal costs.

## **3. Background**

- 3.1 Finsbury Square is located in Islington on the northern fringes of the City of London. It is a designated open space. One side of the square comprises a grassed bowling green surrounded by a paved area with benches. The other side is laid out as a lawn. The two sides are divided by single storey buildings comprising a restaurant, toilets and bowling facilities. Beneath the square is a car park operated by National Car Parks Limited (NCP). Land use in the vicinity of the square is predominantly offices but with a hotel and some retail and food and drink.
- 3.2 The square is a well-known local amenity for residents and office workers. However, the square requires renovation as recent high-quality developments in the locality highlight the widening gap between the condition of the square and its vicinity. The square is in relatively poor condition due to lack of investment and blight caused by the hardstanding areas that used to comprise of two petrol stations and the operation of the underground car park. The current layout and condition constrain the utility of the square which, at 0.8 hectares (1.986 acres) should provide significantly greater amenity, value and income.

### 3.3 **Land ownership**

The Council owns the freehold of Finsbury Square. The freehold was originally acquired by the Council's predecessor, Finsbury Metropolitan Borough Council, from the Church Commissioners in August 1956.

3.4 The underground garage and car park, two disused petrol stations and the ramps are the subject of a 99-year lease commencing on 18 December 1961 and expiring in December 2060. The lease has been assigned on several occasions and most recently to AG Finsbury Square B.V. Under the lease, the Council receives rent equal to one tenth of the net trading profits in each calendar year derived from the car park business carried on the demised premises. The average rent received is around £70,000 per annum.

3.5 A deed of covenant between Finsbury Metropolitan Council and the Church Commissioners in relation to the above lease, requires the council to pay to the Church Commissioners a sum equal to one half of the rent received by the council from the lessee pursuant to the above lease. As a result, the council is only securing a net rent of around £35,000 per annum.

3.6 There is an under lease of the underground car park from AG Finsbury Square B.V to NCP Ltd for a period of 34 years 11 months commencing on 29 June 2002.

### 3.7 **Development proposal**

The Council was approached by Hondo Enterprises Limited with a proposal for the redevelopment of the underground space at Finsbury. Hondo Enterprises own AG Finsbury Square BV, the leaseholder of the underground space. Details of the proposal are set out in exempt appendix 1.

3.8 The proposal also involves the refurbishment and improvement of the public open space. Overall, there would be a small increase in the open space area.

3.9 Hondo Enterprises presented their proposal for Finsbury Square to officers and executive members. The latest indicative outline plans for the proposal are attached as exempt appendix 1 to this report and a CGI of what the square might look like is attached at exempt appendix 1a It should be noted that at this stage, the design is an indicative proposal that formed the basis of the discussion with the Task and Finish Group. The table at exempt appendix 1c shows a benefits statement of how the proposals might meet the core objectives set out in the council's Corporate Plan.

3.10 It was agreed that that the development proposal from the leaseholder merited further consideration by the council. Previous development proposals for Finsbury Square since 2000 have not been taken forward. Those proposals were from developers with no legal interest in the square and floundered because the developers were unable to raise sufficient finance. However, significant redevelopment in the vicinity of the square in recent years and the forthcoming Elizabeth line through Farringdon and Liverpool Street may make the development of the underground more attractive for a developer. Accordingly, Knight Frank have been instructed on behalf of the council to review the current proposal and to negotiate detailed Heads of Terms for the regeneration of Finsbury Square.

### 3.11 **Heads of terms**

The main provisions of the Heads of Terms are detailed in exempt Appendix 1. and the latest version of the Heads of Terms negotiated by Knight Frank on behalf of the council with the developer's property consultants (Cushman and Wakefield) are attached as exempt Appendix 1b to this report. It should be noted that the Heads of Terms (apart from the confidentiality

term and the developer meeting the council's reasonable professional costs in respect of the transaction up to a cap to be agreed, are not binding on the Council and the developer and are subject to negotiation and execution of the transactional documentation.

The council would enter into a conditional agreement with AG Finsbury Square BV (the 'Developer') in respect of the redevelopment of Finsbury Square. The development will not proceed unless all the conditions precedent are satisfied within an agreed period whereupon the Developer may serve a Development Notice on the Council that it has satisfied all those conditions and intends to commence the development.

### **Conditions precedent**

The conditions precedent are:

- i. implementable planning permission for the approved development has been issued and all other consents are in place;
- ii. the development plans have been approved by the council as freeholder;
- iii. completed section 106 planning agreement;
- iv. the Developer has satisfied the Council that it has or will obtain vacant possession and acquired any necessary third-party rights to enable the development to proceed;
- v. the Developer has satisfied the Council that it has the necessary funding in place to undertake and complete the development;
- vi. the Developer has satisfied the Council that it will be able to provide the Council with a guarantee in respect of the costs of the work; and
- vii. the Developer elects to undertake the development.

## **3.12 Refurbishment of the Open Space**

The Council, in its capacity as the landowner will be fully involved in the evolution of the proposed development and will be responsible for approving the planned development before a planning application is submitted to the council as local planning authority. Accordingly, the council will approve the plan and design for the refurbishment of the open space. It should be noted that the Council cannot unreasonably withhold its consent.

It is presently envisaged that the open space works will be carried out by the Developer as part of the main building contract. Consideration was given to the council appointing its own contractor to undertake the open space works. However, the council accepted that it is not feasible to have two contractors on the site each responsible for different aspects of the development.

The procurement of a building contractor by the developer will be subject to competitive tendering albeit without an OJEU advertisement and the developer has agreed not to appoint a contractor that is unable to meet the council's blacklisting requirements.

The Council's external solicitors are of the view that the requirements of the Public Contracts Regulations 2015 will not apply to the appointment of a developer or building contractor to carry out the developer relying on the 'protection of exclusive rights' exemption in regulation 32. An opinion will be sought from Leading Counsel to confirm their view.

## **3.13 Best Consideration**

For any transaction to proceed it is necessary for the Council to be satisfied that it is receiving best consideration in respect to any legal interest granted to facilitate the proposed development. Accordingly, the council must be satisfied that it will be receiving best

consideration in respect of the proposed grant of a new lease to the developer to facilitate the proposed redevelopment scheme for Finsbury Square.

As mentioned above, the council have been advised by Knight Frank who are satisfied with the assumptions made on behalf of the developer in the development appraisal for the project.

An opinion will be required from Knight Frank to the effect that the development proposal and terms of the new head lease represent best consideration for the council for the purposes of section 123(2) of the Local Government 1972

### 3.14 **Milestones**

The key milestones for the project are:

- Signing of the Heads of Terms
- Negotiating and entering into legal documentation including conditional agreement and agreed form of new head lease and development agreement
- Developer applying for and obtaining planning permission for the redevelopment
- Developer satisfying the conditions precedent
- Developer serving the development notice (intention to carry out the approved development)
- Council granting the new head lease to the developer
- Developer carrying out and completing of the works to the underground space and ancillary surface works
- Developer carrying out and completing the works to the public open space
- Developer handing the public space back to the Council.

A draft programme from Hondo for the initial community engagement and planning programme will be finalised pending the decision by Executive.

### 3.15 **Consultation**

Under the Heads of Terms, in evolving the development, the Developer will consult with stakeholders and address and effectively respond to public and community concerns. The Council, as freeholder, will approve the planned development.

Given the extensive changes proposed to the square and the underground space and, in order to satisfy itself over the likely acceptability of the Developer's development proposals, the Council, as owner with responsibility for maintaining the square as a public open space will need to undertake a consultation exercise which will involve consulting with the public that use the square and also relevant stakeholders including the Friends of Finsbury Square, English Heritage and the Church Commissioners.

### 3.16 **Risk**

A project of this scale and complexity will by its very nature involve a number of areas of risk. Insofar as practicable risk will be managed through the way in which the delivery mechanism is

structured. The main risks associated with the delivery of the project are set out in exempt Appendix 1.

### 3.17 **Options Appraisal**

The following option appraisal was discussed by the Task and Finish Group and demonstrates that the Council has considered a breadth of options for achieving the outcomes outlined above.

#### 3.17.1 **Do nothing**

The current poor quality of the Square would remain, income would not be maximised and there would be an adverse impact on asset value.

#### 3.17.2 **Short term - Increasing event days**

Under the Town and Country Planning General Permitted Development Order, the land cannot be used for events on more than 28 days in any calendar year and allows for the siting of removable structures in connection with that use. Accordingly, increasing the number of event days beyond this limit to increase hiring income to the Council would require planning permission.

Parks and Open Spaces are responsible for the day to day operation of Finsbury Square and recently applied for planning permission to increase the number of event days from 28 to 240 days a year, though following wider discussions with elected members, this proposal has been dropped.

#### 3.17.4 **Medium Term - Refurbish open space**

The amenity space would be improved and the Square would be more visually appealing. S106 funds may be available to offset the cost but there are potential planning issues and the current state of the buildings would persist, with income and asset values as with the 'do nothing' option above.

The possibility of replacing the bowling grass lawn with a synthetic surface could be funded from S106 and would extend the bowling season, save in maintenance costs and make it easier to hold events and generate more income, but may also incur reputational damage with the bowls community.

Another option for the grassed open space could be refurbishment alongside a reduction in size, whilst being interspersed with planters and benches that are moveable for events. This would save on maintenance costs but may not be popular with office workers and residents during the summer.

Substantially improving the existing grassed surfaces would require significant investment into the soil structure and the installation of a sprinkler system, itself requiring an above ground water tank that may need planning consent. There would also be increased ongoing revenue costs to maintain the lawn areas to the expected standards. Increasing the level of events may also require an annual re-turfing.

#### 3.17.5 **Medium Term - Refurbish existing buildings**

The estimated cost of this is £250k (some S106 may be available) with potentially £45k annual income from the restaurant, though potential income would not be maximised.

**3.17.6 Medium Term - Refurbish open space and develop new surface building on existing footprint**

Improving the open space and constructing a new building on the existing footprint would cost around £500k and help income opportunities, including increasing the annual income from the restaurant to £80k. However, whilst cheaper and quicker, it may be considered a short-term solution, and building on the existing footprint misses a potentially better opportunity and may limit market demand to kiosk type operators. There is also a potential planning risk.

**3.17.7 Medium Term - Refurbish open space and seek permission for greater quantum of commercial space**

This option would help generate higher levels of income and create a building more in keeping with market demands, raising the profile of the Square as a destination point. Potential income from a 6,000 sq feet restaurant on 2 levels could be £450-500k, though development and construction costs could be around £2.5m. However, such a rebuild would be affected by the shafts serving the underground car park which are within the lease of that space.

Whilst there is a planning risk, if no deal is forthcoming on the carpark, this could be a good opportunity to refurbish the open space and generate significantly more income.

**3.17.8 Medium Term - Demolish and remove disused Petrol stations**

The petrol stations are within the lease of the underground car park and therefore negotiations with the lessee would be required. There may be contamination of the ground and as alluded to above in 3.12, the Finsbury Square Act may make their removal problematic.

**3.17.9 Medium Term - Acquire Church Commissioner's interest**

Details are set out in exempt Appendix 1

**3.17.10 Medium Term – Acquire lease of underground space**

Details are set out in exempt Appendix 1.

**3.17.11 Long Term - Work with existing leaseholder and negotiate development agreement (new lease and commercial terms etc) for redevelopment of underground space.**

**4. Implications**

**4.1 Financial implications:**

The financial implications are set out in exempt Appendix 1.

**4.2 Legal Implications:**

The legal implications are set out in exempt Appendix 1.

**4.3 Environmental Implications**

The potential redevelopment of the Square presents an important opportunity to redevelop the open space to create a high-quality public realm that better serves the needs of its users and the local community. The condition of the square currently is very poor and the intensity of use that the site gets means that the lawn areas are very hard to maintain and sustain. The proposals would protect the current amount of open space and indeed increase it slightly.

The current underground car park would be replaced with a mixed-use development that would mean less cars coming to the square to park helping to improve local air quality. The planning process for the redevelopment will require an assessment of the ecology of the site and potential for enhancements. There will also be a thorough assessment of the sustainability of the development and how it might contribute to the Council's commitment to a Carbon neutral borough by 2030.

#### **4.4 Resident Impact Assessment:**

The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.

An assessment of the impact of the potential redevelopment has been carried out against the Council's Corporate Plan, *Building A Fairer Islington* and the Council's six core objectives. This is set in in exempt Appendix 1c.

A full RIA will be completed as the development proposals evolve and before the Council, as landowner gives its approval to the application for planning permission.

#### **5. Reasons for the decision:**

- 5.1 Finsbury Square is in need of attention given its poor condition and the impression that creates in the context of its location close to the City. The development proposal from Hondo Enterprises on behalf of AG Finsbury Square BV, the leaseholder of the underground space, has been evaluated and reviewed by Knight Frank. Officers recommend taking the proposal forward as it represents the most realistic option for the council to achieve its objectives of improving Finsbury Square and generating increased income whilst representing an acceptable level of risk to the Council.

**Signed by:**



Councillor Rowena Champion  
Executive Member for Environment and  
Transport

Date 08.01.20

#### **Appendices (exempt)**

- Appendix to report (Appendix 1)
- Design CGI (Appendix 1a)
- Head of Terms (Appendix 1b)
- Benefit to the Residents and support of the Corporate Plan (Appendix 1c)
- Revised Financial Appraisal (28<sup>th</sup> October 2019) (Appendix 1d)



**Background papers:**

None

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