

Decision of:	Corporate Director of Resources
Date of Decision:	29 October 2024
Publication:	Open
Council Priority:	Greener, Healthier Islington, Fairer Together, Child Friendly and Community Wealth
Wards:	Junction
Responsible Officer:	Director of New Homes and Corp Landlord Services
Report No.	1029387

Subject: 800 Holloway Road lease to Central and North West London NHS Trust (CNWL) 1029387

1. Recommendations

- 1.1. That the Corporate Director for Resources, gives authorisation to enter into a sublease agreement with Central and Northwest London NHS Trust (CNWL) for occupation of 1st floor office space at Unit B 800 Holloway Road at the full market rent of £90,000 per year, including any other necessary terms for the delivery of sexual health clinic services and other alternative uses as required.

2. Report summary

- 2.1. The purpose of this request is to seek approval to grant a direct sublease of commercial office premises at Unit B 800 Holloway Road, London, N19 3JH to CNWL NHS Trust, the subcontractor of Brook for the provision of young people's sexual health clinic services.

3. Details of the proposal

- 3.1. Approval is required to follow the key decision to procure Unit B, 800 Holloway Road N19 3JH, dated 21 March 2022 named as "*Briefing note on the request for*

an Urgency Notice for lease of space at 800 Archway (800 Holloway Road) for the purposes of new sexual health clinic provision". See: [Decision - Letting of Unit B, 800 Holloway Road, N19 3JH | Democracy in Islington](#), and complements a concurrent Officer Key Decision to vary the Camden and Islington Young People's Sexual Health contract which will provide an increase of £90,000 per year to the annual contract value until the end of the contract period. This will ensure the provider, Brook is able to pass this additional funding onto their subcontractor, CNWL NHS Trust, in order for the Council to fulfil the terms of the headlease to sublease Unit B, 800 Holloway Road, N19 3JH at market rent.

- 3.2. The Council obtained lease of the premises from a private landlord. The headlease permits the Council as tenant to grant a direct sublease, with the condition that no further underletting is allowed.
- 3.3. Brook is the contracted provider of young people's sexual health services for Islington and Camden Councils. CNWL NHS Trust is their subcontractor, who is responsible for delivering the clinical service aspect of their contract in Islington.
- 3.4. Extensive efforts were made to persuade the landlord either to waive the underletting restriction or to grant Brook the right to underlet to their subcontractor, CNWL NHS Trust. However, it has not been possible to reach agreement, and the only viable solution is for the Council to directly sublease to CNWL, allowing them to operate on the premises as the subcontractor of Brook.
- 3.5. CNWL is a well-known strategic partner delivering adult sexual health services in Barnet, Camden, Haringey and Islington and supporting the Council to fulfil its mandated duty to provide sexual health services in the borough.
- 3.6. Public Health and Community Wealth Building are proceeding cautiously with the procurement process for the fit-out of the space, and a contractor cannot be appointed until we secure approval to grant a sublease to CNWL NHS Trust.
- 3.7. 800 Holloway Road is ideally located close to colleges, the university and transport links. If we do not sublease the building to CNWL NHS Trust, these services may have to be delivered elsewhere in a less accessible location. As a result, young people in Islington may experience reduced access to sexual health services, leading to potential delays in receiving care, ability to address sexual health concerns promptly and may lead to poorer health outcomes.
- 3.8. Alternative facilities may experience increased demand, with the next closest young people's sexual health clinic site being in Camden. The additional pressure on this service would lead to longer wait times for Islington's young people, with the real and/or perceived impact that residents' needs cannot be met in borough.

4. Other options considered and the reasons for recommending this proposal

- 4.1. As the landlord is unwilling to permit a further sublease or underletting of the premises, the council is unable to extract the best use of the property to its full potential as intended, despite the rent, service charge costs payable. The following options were considered as mitigation: (1) Surrender agreement; (2) Assignment /Sublease in the Open Market; and (3) Abandonment.

1. Surrender Agreement

Benefits:

- The Council can be released from the ongoing responsibilities and financial obligations associated with the lease (e.g. rent, maintenance).
- By formally surrendering the lease, the Council can avoid potential future liabilities, such as repairs or dilapidations.
- There may be room to negotiate terms that are favourable, such as a reduced penalty for early termination.

Risks:

- The landlord may require a significant financial settlement to agree to the surrender, which could be costly.
- If the property is in a strategic location or serves a vital function, surrendering the lease might result in losing a valuable asset.
- The landlord is under no obligation to accept a surrender, especially if the property market is not favourable, leaving the Council with no other option but to continue with the lease.

Advice taken to surrender the lease of the building has determined that we would very likely have full liability for the cost of the rent and other costs until the term expires (nine years) and this option is not recommended.

2. Assignment/Sublease in the Open Market

Benefits:

- Financial relief by transferring rent and other costs
- Allows the Council flexibility to retain some control, especially in a sublease, where they might still have influence over how the property is used.
- In the case of a sublease, the Council retains the lease, which could be useful if the property is needed in the future.

Risks:

- If the lease is assigned, the Council might still be held liable if the new tenant defaults, depending on the lease terms.

- The Council may struggle to find a suitable assignee or subtenant, especially if the property is less desirable or the market is weak.
- The market may dictate a lower rent than what the Council is currently paying, leading to a financial shortfall if subletting.
- The landlord may not approve of the proposed assignee or subtenant, leading to complications in the assignment or sublease process.

The headlease is overly restrictive for open market use and we have taken advice that this option is not recommended. By leasing the building to CNWL NHS Trust, it will reduce the need to find alternative arrangements to move the service elsewhere at an additional cost.

3. Abandonment

Benefits:

- Abandoning the property provides immediate relief from the physical occupation and potential ongoing costs, such as utilities or maintenance.

Risks:

- Abandonment can lead to legal action from the landlord, including claims for unpaid rent, damages, and other costs associated with the breach of lease.
- Such an action could damage the Council's reputation, particularly if it is seen as not honouring its legal obligations.
- The Council could lose any security deposit or other prepayments made under the lease.
- The Council would likely remain liable for the rent and other obligations under the lease until the landlord re-lets the property or the lease term naturally ends.
- Abandonment could negatively impact the Council's ability to negotiate favourable lease terms in future dealings with landlords.

The advice taken is that abandonment of the tenancy is not in the best interest for the Council due to reputational damage and this option has not been recommended.

5. Key impacts and risks of the proposal

- 5.1. By granting the sub-lease directly to CNWL, Islington is leasing a building to an organisation with whom it does not hold a direct contractual relationship to deliver services from that building (the contractual relationships are for service delivery and are between Brook and CNWL, and between LBI and Brook). This arrangement denies LBI the usual contractual opportunities to ensure appropriate upkeep of the building by CNWL.

- 5.2. This risk can be mitigated through the sublease agreement with CNWL having appropriate assurances around liability for the upkeep of the building. In addition, CNWL is a trusted partner of the Council, with whom we have longstanding contractual relationships in respect of other commissioned services.
- 5.3. As described under section 3 – “Details of the proposal”, the recommended option is to grant the sublease to for 800 Holloway Road to CNWL NHS Trust. The alternative options considered of (1) a surrender agreement; (2) assignment / sublease in the open market and (3) Abandonment are not recommended due to the financial and reputational risks involved. Taken together, the risks associated with the recommended option, the opportunity to mitigate those risks, and the benefits of the location of the site close to schools and colleges and transport links, lead us to recommend sub-leasing directly to CNWL NHS Trust.

6. Contribution to the Islington Together 2030 Plan

- 6.1. Granting the sublease ensures that all residents, especially vulnerable, young adults and underserved populations, have convenient access to sexual health services. This promotes health equity by reducing barriers to essential care, particularly for those who may face challenges in accessing healthcare. (Child Friendly, Fairer Together).
- 6.2. Easy access to healthcare can reduce the spread of infections and promote overall well-being, contributing to a healthier community and a fairer Islington. (Greener Healthier Islington).

7. Consultation and community engagement

- 7.1. Engagement took place in 2021 when working with young people and partners (Youth Justice Service, Community Wealth Building, Homerton University Hospital Foundation Trust and Whittington Health) to identify a new service location. Engagement helped to narrow down key locations that young people felt safe in and found easily accessible by public transport. Holloway Road was identified as the most suitable area.

8. Implications

8.1. Financial Implications

The purpose of this report is to seek approval to allow a sublease of the commercial office premises at Unit B 800 Holloway Road London N19 3JH to CNWL NHS Trust.

To ensure we are legally compliant with rent charging rules whilst making sure we do not push the cost onto the service provider, all rent charged will be equal to the amount paid back to service provider (Brook Advisory Centre and CNWL), ensuring there is no net cost to the service provider from the use of the building. It is part of an attempt to ensure the commercial office premises can be utilised for their intended sexual health provision despite wider refurbishment costs.

The contract award for young people's sexual health service is detailed in the [Officer Key Decision \(procurement\) \(islington.gov.uk\)](#) report, and the decision to lease Unit B 800 Holloway Road in the [Executive Report \(islington.gov.uk\)](#). This proposal will ensure CNWL (working as a sub-contractor of Brook Advisory Centre) can sublease the property from Islington without incurring additional rent cost.

The lease costs of £90,000 per year are met equally by Islington and Camden, as is budgeted for and as was originally intended. Notably, as with most commercial leases, this lease allows for rent review every five years.

To ensure the Council is legally compliant, PH will pay to Brook Advisory Centre (who will transfer to their subcontractor CNWL) an amount equal to the rent they will charge the subcontractor for 800 Holloway Road. There is no net additional rental cost to the service provider from this arrangement. Charges such as rates, utilities, maintenance, repair, compliance, and servicing will be the responsibility of CNWL.

The young people's sexual health contract will run up to 30 June 2031. This will ensure the operation of the service throughout the life of our rental agreement with 800 Holloway Road, while allowing for Islington's dilapidation provisions to be honoured in any return of the building.

This contract is complicated by the varying stakeholders involved and the need to balance the competing legal requirements to deliver a sexual health service and the respective contractual agreements with the landlord and subcontractors. The new proposals carry some financial risk, namely that advancing funds to Brooks to either distribute to subcontractors CNWL or pay for the property directly could end up being lost if the provider financially fails at any point. Steps need to be taken through the contract to mitigate these risks.

The alternatives to this proposal are difficult to quantify but carry significant financial and reputational risks to the Council likely in excess of this report's recommendations. The recommendations are fully budgeted, adding no extra costs or liabilities to the Council while still delivering the service and minimising the financial risks.

8.2. **Legal Implications**

Section 123 of the Local Government Act 1972 gives the Council the power to dispose of property. The grant of an underlease to CNWL would be a 'disposal' for these purposes.

Section 123 of the 1972 Act provides that except with the consent of the Secretary of State, any disposal otherwise than by way of a short tenancy (less than 7 years), for a consideration less than the best that can reasonably be obtained. Under the Local Government Act General Consent (England) 2003 the Council can dispose of land for less than the market value reasonably obtainable without the consent of the Secretary of State if the authority considers it will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. In all cases, disposal at less than best consideration is subject to the condition that the undervalue does not exceed £2,000,000 (two million pounds).

The lease to a service provider would usually be provided under the service contract to enable delivery of the service. Termination of the service contract would automatically determine the lease. As Brook, the contracted service provider, has subcontracted provision of the service to CNWL and will not be occupying the premises the Council cannot underlet the premises to Brook without being in breach of the terms of its headlease and the Council's landlord has been unwilling to vary the lease to allow a further subletting to CNWL or to allow CNWL to occupy the premises as a licensee of the undertenant. It is therefore essential that the proposed underlease to CNWL be contracted out of the provisions of Sections 24-28 of the Landlord and Tenant Act 1954 with a break clause operable by the Council at any time to ensure that the Council has control over the occupation of the premises for the use intended and the ability to remove CNWL from the premises not only in the event that the contract is terminated or comes to an end but also should CNWL no longer be the subcontractor of Brook or not prove a suitable tenant. This also gives the Council certainty over its ability to dispose of the premises or change its use should it no longer be required for service delivery.

8.3. **Climate Change and Environmental Implications**

It is essential to consider climate change and environmental factors when leasing premises, especially for public service such as Sexual health provision. Service providers will be encouraged to consider such measures that will enable their clinic to remain resilient, compliant, energy-efficient, and supportive of patient care and staff well-being. For example;

- A) **Energy Efficiency:** 800 Holloway Road is a newly constructed, top energy-efficient building with an A-rated Energy Performance Certificate. The premises is expected to be energy efficient with proper insulation, modern HVAC systems, and potential

for renewable energy sources if possible. The operation of the service will have environmental implications primarily linked to the energy use in the building and specifically the use of gas heating – until this is replaced by a low carbon i.e. electric alternative. There will be additional implications from the use of plastics and other high carbon materials, any medical supplies and the use of paper and cleaning products.

- B) **Air Quality:** The proximity to major roads could raise concerns about poor air quality, which may affect the health of patients and staff, particularly those with respiratory conditions. Installing modern, efficient air ventilation and purification systems can help mitigate this risk while minimizing environmental impact.
- C) **Water Conservation:** The service could be encouraged to consider installing water-saving fixtures such as low-flow taps and dual-flush toilets will help reduce water use, which is particularly important in a clinical setting.
- D) **Waste Management:** The NHS have waste management in place for waste disposal, including recycling and clinical waste.

These measures will help ensure the clinic operates sustainably and remains a safe, comfortable environment for all.

Central and North West London NHS Trust has committed to the NHS Green Plan, as highlighted in their localised Green Plan 2022-25¹.

8.4. **Equalities 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 Equalities Impact Assessment Screening was completed, and a full Equalities Impact Assessment is not required in relation to this report, because this indicates that there will be either positive or neutral implications from the decision to enter into a sublease agreement with Central and North West London NHS Trust (CNWL) to

¹ cnwl.nhs.uk/application/files/4016/4251/1027/CORP_GP_2544_CNWLGreenPlan2022.pdf

occupy the space at 800 Holloway Road.

9. Timetable for implementation

Next steps	Timeframes
Finalise procurement for fit out of 800 Holloway Road to operate as a sexual health clinic.	November 2024
Signing of sublease between LBI and CNWL	November 2024

Report authorised by: Steve Caplan,
Interim Director of new Homes and Corp Landlord Services

Date: 16 09 2024

10. Record of the decision

I have today decided to take the decision set out in section 1 of this report for the reasons set out above. My agreement is indicated by the checkbox below.

Decision authorised by:

Corporate Director of Resources

Date: Date the decision was taken

Appendices:

- Not applicable

Relevant decisions / reports:

- [Executive Report Pre-tender \(islington.gov.uk\)](https://www.islington.gov.uk/Executive-Report-Pre-tender)
- <https://democracy.islington.gov.uk/ieDecisionDetails.aspx?Id=1473>

Background papers:

- Not applicable

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