

## Slough Borough Council

<b>Report To:</b>	Cabinet – Urgent Leader’s Action
<b>Date:</b>	16/02/2023
<b>Subject:</b>	Disposal of Council Asset at Montem Lane
<b>Lead Member:</b>	Cllr Robert Anderson - Cabinet Member for Financial Oversight & Council Assets
<b>Chief Officer:</b>	Pat Hayes - Executive Director Housing & Property
<b>Contact Officer:</b>	Mark Halligan - Property Director (Interim)
<b>Ward(s):</b>	Chalvey Ward
<b>Key Decision:</b>	Yes
<b>Exempt:</b>	Public with exempt appendices under paragraphs 3 and 5 of Schedule 12A to the Local Government Act 1972 Act (as amended), as the appendices contain information relating to the financial and business affairs of Slough Borough Council and Muse and Slough Urban Renewal LLP, and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
<b>Decision Subject To Call In:</b>	No, the Chair of Overview and Scrutiny Committee, Councillor Harjinder S. Gahir, has agreed that the decision will not be subject to the call-in procedure.
<b>Appendices:</b>	Confidential Appendix - Summary of the Commercial and Financial Implications

### 1. Summary and Recommendations

- 1.1 This report notes, and seeks approval to accept, the revised purchase price offer for the Montem Lane asset (which is the best consideration reasonably obtainable for the disposal of the asset in accordance with section 123 of the Local Government Act 1972) on the revised completion date of 3rd August 2023.
- 1.2 The contract for sale is due to exchange on 17 February 2023 and any delay in the exchange date would be prejudicial to the best interests of the Council.
- 1.3 An urgent decision needs to be taken before the next scheduled Cabinet and it is not necessary or practical to call a special Cabinet meeting.

## 1.4 Recommendations:

Cabinet is recommended to:

- Agree to the disposal of the Montem Lane asset at the revised purchase price and on the revised completion date (or on any alternative completion date subsequently agreed by the parties) shown in the exempt Appendix to this report, and
- Delegate authority to the Executive Director of Housing and Property, in consultation with the Lead Member for Financial Oversight and Council Assets and the Executive Director of Finance and Commercial, to exchange contracts and to enter into the sale contract and the related legal documentation in connection with the disposal.

### Reason:

To enable early exchange of contracts and subsequent completion of the disposal of the Montem Lane asset.

### Commissioner Review

This disposal is essential to meet the Council's financial recovery goals and is considered to be best value in the market today. The recommendations are strongly supported.

## 2. Report

### 2.1 Introductory paragraph

The early disposal of surplus assets is a key element of the Council's new Corporate Plan, which includes a strategic priority to be "a Council that lives within its means, balances the budget and delivers best value for taxpayers and service users." Agreement to the recommendations in this report will contribute to the reduction in the Council's future financial commitments/liabilities, generate disposal receipts at the earliest opportunity and reduce the Council's borrowing and MRP. The proposed asset sale has been subject to a due diligence process and reflects best consideration for the disposal of the asset in accordance with section 123 of the Local Government Act 1972.

### 2.2 Options considered

#### Option A – Not to accept the revised offer and go back to market

Professional advice from the Council's property advisors, Montague Evans, is that the revised offer still represents best consideration for the disposal of the asset in accordance with section 123 of the Local Government Act 1972, and that the Council should not go back out to market now.

The confidential Appendix provides further detail supporting this recommendation.

#### Option B – Accept the revised offer and completion date and complete the sale

This option is strongly recommended to Cabinet for approval.

## **2.3 Background**

- 2.3.1 On 13 October 2022 the Cabinet Asset Disposals Committee resolved to recommend to Cabinet to agree to the disposal of the Montem Lane asset and to delegate authority to the Executive Director of Housing and Property, in consultation with the Lead Member for Financial Oversight and Council Assets and the Executive Director of Finance and Commercial, to enter into the sale contract and the related legal documentation in connection with the disposal in accordance with the Heads of Terms and Site Development Plan (SDP) appended to the report.
- 2.3.2 On 17 October 2022 Cabinet accepted the recommendation from the Asset Disposal Committee.
- 2.3.3 All legal documentation to facilitate the final sale was agreed and completed in early January 2023 with the intention to proceed with exchange and completion at the end of January/early February at the agreed sale price confirmed to Cabinet on 17 October 2022.
- 2.3.4 The preferred bidder has recently revised its final purchase offer as shown in the exempt Appendix, with a revised completion date of 3rd August 2023 to align with its financial year end, subject to early exchange of contracts, which legally commits the buyer to proceed to completion at an agreed date.
- 2.3.5 As the Cabinet delegation on 17 October did not extend to the Executive Director accepting a revised purchase offer, Cabinet approval is urgently required to enable the Council to exchange contracts imminently and complete the sale of the Montem asset.
- 2.3.6 On 31 January the Leader, Lead Member, and the Commissioners were informed about the revised purchase offer and completion date by the Council's financial advisor and agreed in principle to accept the revised purchase offer and completion date.
- 2.3.7 As the value of the revised purchase offer is above the key decision threshold and the delegation to the Executive Director did not extend to accepting the revised purchase offer, a Cabinet decision is required to accept the revised purchase offer, by way of an urgent Leader's action due to the imminent exchange date. Failure to exchange contracts on this date would be prejudicial to the best interests of the Council because it could risk the preferred bidder withdrawing its offer.

## **3. Implications of the Recommendation**

### **3.1 Financial implications**

- 3.1.1 The site was acquired in the 1930s and as such there are no acquisition costs or debt associated with the site. The former leisure centre on the site was demolished in 2019/20 at a cost in the region of £500k. There are no ongoing revenue costs/income streams associated with this site.
- 3.1.2 The terms of the offer remain subject to contract and as such the detailed financial implications are reported in Confidential Appendix 1 only.

- 3.1.3 However it is estimated that the Council will have a MRP saving in the region of £350-400k in each of the next five years. Plus the valuation for accounting purposes (at fair value) is less than the preferred offer.
- 3.1.4 The site has increased in value since the Council acquired the site and the valuation in the accounts is significantly less than the current purchase offer received.
- 3.1.5 The Council has also sought advice from its property advisors, Montague Evans, who have advised that the purchase offer is a strong bid due to the current market conditions and in light of the range of offers received as part of the procurement process. In addition, significant resources (time and money) have been allocated to agreeing the full suite of legal documentation, and an early exchange date has been agreed with the purchaser.
- 3.1.6 Further detailed commercial and financial implications are included in the Appendix to this report.

## 3.2 **Legal implications**

3.2.1 The Council has statutory powers to dispose of land, including under:

- Section 123 of The Local Government Act 1972;
- Housing Act 1985;
- Section 233 of the Town and Country Planning Act 1990;
- Local Authorities (Land) Act 1963;
- Housing and Planning Act 2016; and
- Localism Act 2011.

3.2.2 Under section 123 of the Local Government Act 1972, the Council has a statutory duty to dispose of land at the best price reasonably obtainable. The Financial Implications section and the Appendix to this report confirm that the revised purchase price is the best price reasonably obtainable for the disposal.

3.2.3 The Council's joint venture with Muse was procured in 2012 under a compliant public procurement procedure. The JV is governed by (amongst other documents) a combination of the SUR Partnership Agreement, and the individual site Option Agreements (OA). The Council (as JV Partner) has to date complied with the relevant legal and governance requirements under the JV arrangements to enable the disposal of the Montem Lane Asset to take place and by making the resolutions referred to in paragraph 1.4 (Recommendations) the Council will take the final steps in this regard.

3.2.4 Under paragraph 2.13 of Part 4.4 (Executive Procedure Rules) of the Council's Constitution, when an urgent decision needs to be taken in circumstances where to wait until the next scheduled meeting of the Executive would be prejudicial to the best interests of the Council, then The Leader (or in his/her absence, the Deputy Leader) may, after consultation with the relevant Lead Member, take the decision.

Before taking a Key Decision, the Leader (or Deputy Leader) must first consider whether the importance of the matter warrants the calling of a special meeting of the Executive.

The decision must be taken in a way that fully complies with the Access to Information Rules and in particular, if relevant, with the rules relating to “key decisions”.

A copy of the minutes of the decision must be published within two clear working days of the decision and published on the Council’s website with electronic notification given.

Where a decision is deemed to be urgent, and where the Access to Information Procedure Rules has been followed, that decision will not be subject to the call-in procedure provided the Chair of Overview and Scrutiny Committee agrees.

3.2.5 Under paragraph 16 of Part 4.2 (Access to Information Procedure Rules) of the Constitution, where a key decision will be taken and the Council is not able to give 5 clear working days’ notice, then the decision can only be taken if the Chair of the Overview and Scrutiny Committee agrees that the taking of the decision cannot be reasonably deferred. If the Chair of Overview and Scrutiny Committee is unable to act, then the agreement of the Mayor, or in his/her absence the Deputy Mayor will suffice.

As soon as reasonably practicable after the decision maker has obtained agreement under Rule 16.1 he must make available at Observatory House and publish on Slough.gov.uk a notice setting out the reasons that the decision is urgent and cannot reasonably be deferred.

### 3.3 Risk management implications

The recommendations required from Cabinet, as outlined in this report, are intended to improve the Council’s financial position, by realising capital receipts which can then be used to repay Council borrowing from the existing high level and reduce debt servicing charges in the form of interest and MRP. If the recommendations are not approved this will delay the Council being able to return to a financially sustainable position. Specific risks are summarised below:

<b>Risk</b>	<b>Summary</b>	<b>Mitigations</b>
Financial	<p>Delay in realising capital receipts from assets sales will delay the Council’s financial recovery.</p> <p>Failure to agree a deal may result in Council liabilities (Site WIP), and the purchaser withdrawing.</p>	<p>Cabinet to approve officers to proceed with the sale to achieve the stated exchange/completion date</p>

<p>Governance</p>	<p>Failure to obtain best consideration from the disposal could expose the Council to risk of legal challenge</p>	<p>SUR has appointed external property advisors (with a duty of care to Muse and the Council) to advise on land valuation (for the purposes of calculating the land value under the terms of the PA) and the marketing and bidder evaluation process.</p> <p>Independent assessment of compliance with the terms of the PA.</p> <p>Independent assessment of best consideration compliance</p>
<p>Governance</p>	<p>Failure to establish robust governance arrangements could expose the Council to risk of impropriety and legal challenge</p>	<p>The Council has established sound governance arrangements for SUR asset disposals to ensure that the Council achieves best consideration from asset disposals.</p> <p>The Leader's Urgent Action ensures compliance with the executive procedure rules for key decisions in the Council's Constitution.</p>
<p>Reputational</p>	<p>Unable to agree a way forward causing delay to asset disposals and failure to deliver capital receipts within the timescales set out in the Debt Reduction/Asset Disposal Strategy</p>	<p>Governance, project management and decision-making operate effectively to deliver asset disposals on time and at best consideration for the Council</p>

### **3.4 Environmental implications**

3.4.1 Under the sale contract the buyer will carry out landscape works to the adjacent open space land that will enhance the amenity of the area.

### **3.5 Equality implications**

3.5.1 No equality implications have been identified as result of the options in this report.

### **3.6 Procurement implications**

3.6.1 No procurement implications have been identified as result of the options in this report.

### **3.7 Workforce implications**

3.7.1 No workforce implications have been identified as a direct result of this report

### **3.8 Property implications**

3.8.1 This report will directly impact on the Council's property holdings as identified in this report.

## **4. Background Papers**

[Disposal of Council Asset at Montem Lane - Cabinet Committee Assets Disposals 13/10/2022](#)

[Recommendations from the Cabinet Committee for Asset Disposals: Cabinet 17/10/2022](#)