

Date of issue: Tuesday, 15 November 2022

MEETING	CABINET COMMITTEE - ASSET DISPOSALS (Councillors Swindlehurst (Chair), Ajaib, Anderson, Hulme and Mann)
DATE AND TIME:	THURSDAY, 17TH NOVEMBER, 2022 AT 4.30 PM
VENUE:	COUNCIL CHAMBER - OBSERVATORY HOUSE, 25 WINDSOR ROAD, SL1 2EL
DEMOCRATIC SERVICES OFFICER: (for all enquiries)	NICHOLAS PONTONE 01753 875120

SUPPLEMENTARY PAPERS

The following Papers have been added to the agenda for the above meeting:-

* Items 3, 4, 5, 6, 10, 11, 12, 13 were not available for publication with the rest of the agenda.

PART 1

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Slough Borough Council

Report To:	Cabinet Committee
Date:	21 November 2022
Subject:	Avison Young Appointment to support the Asset Disposals Programme
Lead Member:	Councillor Rob Anderson Lead Member for Financial Oversight and Council Assets
Chief Officer:	Pat Hayes - Executive Director Housing and Property Steven Mair, Executive Director Finance and Commercial (s151)
Contact Officer:	Fin Garvey - Group Manager – Place Delivery Peter Worth, Finance Lead Technical Advisor
Ward(s):	All
Key Decision:	YES
Exempt:	NO, except for: Appendix 1 - Exempt under paragraph 3 of Schedule 12A Local Government Act 1972 – Information relating to the financial or business affairs of the Council
Decision Subject To Call In:	YES
Appendices:	Confidential Appendices Appendix 1 – Tender Evaluation Report

1. Summary and Recommendations

- 1.1. A key element in the Council's financial recovery is the disposal of property assets. Further to the approval of the Asset Disposal Strategy at 17 October 2022 Cabinet it is recommended that Avison Young are appointed to support the implementation of the Strategy for the period from 2022 to 2027.

Recommendations:

- 1.2. Cabinet is recommended to:
- a) Approve the appointment of Avison Young to support the implementation of the Asset Disposal Strategy for the period 2022 to 2027, and delegate authority to the Executive Director of Housing and Property, in consultation with the S151 officer, and subject to legal advice, to enter into contract with Avison Young for property asset disposal related support services, at an estimated cost of £3.020m, which will be met from the capital receipts generated from asset disposals.

Reason:

- 1.3. Expert property asset disposal related advice is required to support Council officers with the timely and effective delivery of the Asset Disposal Strategy. Timely receipt of the proceeds from the sale of Council assets is fundamental to the fiscal recovery of the Council to ensure long-term financial stability.
- 1.4. Following a decision at 20 September 2021 Cabinet officers carried out a procurement exercise, in line with The Public Contracts Regulations 2015, and the Council's Contract Procedure Rules, to obtain support from external organisations who can assist the Council with a programme of asset disposals over the next five years. Avison Young was the successful bidder.

Commissioner Review

"The recommendations are supported."

2. Report

Procurement Exercise

- 2.1. In October 2021 officers engaged in a procurement exercise to select expert advice and support for the Asset Disposal Programme. The Homes England Framework for Property Professional Services was used to procure advisors through initial short-listing followed by competitive bids.
- 2.2. To ensure a considered phased approach to asset disposals a two-stage methodology was used:

Phase I, the development of a Disposal Strategy that sets out the rationale for the overall programme, i.e. to ensure that the best outcome is achieved from disposals, considering the following principles:

- Holding cost of surplus assets if retained for longer term use or sale
- Running costs for under-utilised assets and how these can be reduced
- Service requirements across the Council to ensure an asset is not sold if it could provide a cost effective solution for another service area
- Potential benefits from delaying a disposal
- Loss of revenue from any income producing assets
- Impact on the local area from holding assets empty for prolonged periods
- Additional benefits from regeneration

Phase II, The delivery, and implementation of the approved Disposal Strategy

- 2.3. Following a competitive process, Avison Young were appointed for the Phase I stage of the programme. The Tender Evaluation Report detailing the procurement process and evaluation is included in Appendix I.

- 2.4. The procurement approach allowed for the Phase I advisor to be recommended for Phase II subject to satisfactory performance in Phase I and adoption of the Disposal Strategy.
- 2.5. Commercial assessment of the fees applicable in Phase II were evaluated as part of the procurement process and benchmarked against approved Home England Framework rates.

Progress and Performance

- 2.6. The Asset Disposal Strategy which included Avison Young advice was approved by Cabinet on 17 October 2022.
- 2.7. Avison Young have also provided successful support to officers to advance early cash flow from surplus assets. An initial tranche of assets has been accelerated for marketing, of which four have been approved for disposal (Wickes Wolverhampton, Euroway Bradford, Odeon Basingstoke and Waitrose Gosport).
- 2.8. A separate paper is being brought to Cabinet recommending disposal of the Akzo Nobel site.

3. Options considered

- 3.1. Two options have been considered:
 - Option A – Retender the support service package either using an approved framework or separate tender process.
 - Option B – Appoint Avison Young to carry out the services as recommended following the procurement process carried out in late 2021/early 2022.
- 3.2. **Option B is recommended** as Avison Young have performed successfully in providing the services in Phase I and demonstrated a good level of performance with the early sale of the initial tranche of assets.

4. Implications of the Recommendation

Financial implications

- 4.1. Appointment of AY to Phase II of the Asset Disposal programme will incur fees, which were competitively tendered for through the Homes England Framework of Property Consultants. Cabinet has previously approved the fee budget of £3.020m within the Asset Disposal Programme budget on 21 October 2022. Fees will be payable for disposals on a sliding scale and are well within the maximum permissible to be met from a capital receipt of 4% as set out in Regulation 23(h) of The Local Authorities (Capital Finance and Accounting) (England) Regulations 2003, as amended. Consequently, there should be no impact on the revenue budget.

5. Legal implications

- 5.1. The Council carried out a lawful and fully compliant procurement exercise to procure the asset disposal related services in late 2021/early 2022 under Lot 1 of the Homes England Framework for Property Professional Services. This Framework has been lawfully established, it is current, the Council is able to use it, and the services required are in scope. Therefore the procurement of Avison Young to provide the services is lawful.

- 5.2. The procurement approach allowed for the Phase I advisor to be recommended for Phase II subject to satisfactory performance in Phase I and the adoption of the Disposal Strategy. Avison Young have performed well and the Asset Disposal Strategy has been agreed. Therefore the Council can include the Phase 2 services under the original procurement and this is fully compliant with The Public Contracts Regulations 2015 and the Council's Contract Procedure Rules
- 5.3. Legal Services should be instructed to complete the contract for the Phase 2 services
- 5.4. 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

6. Risk management implications

- 6.1. The recommendation required from Cabinet, as outlined in this report, is intended to improve the Council's financial position, by appointing external advisors to help the Council to realise 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 minimum revenue provision (MRP) If the recommendation is not approved this will delay the Council being able to return to a financially sustainable position. – specific risks are summarised below:
- 6.2.

Risk	Summary	Mitigations
Financial	Delay in appointing external advisors to assist the Council with the Asset Disposal programme will delay the Council realising capital receipts from assets sales will delay the Council's financial recovery.	Cabinet to approve the appointment of AY for Phase II of the Asset Disposal programme
Governance	Failure to appoint external advisors to assist the Council with the Asset Disposal strategy would reduce the Council's ability to obtain best consideration from the disposals could expose the Council to risk of legal challenge	The Council has employed external property advisors to manage and competitively market the properties, having access to wider markets than officers locally and has obtained up to date valuations for the sites for comparison purposes.

Legal	Failure to procure external advisors in line with procurement legislation, thus exposing the Council to risk of legal challenge.	The appointment of AY has been undertaken in line with procurement legislation as set out in the Legal Implications section above.
Reputational	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	Governance, project management and decision-making operate effectively to deliver asset disposals on time and best consideration for the Council.

7. Environmental implications

7.1. No environmental implications have been identified.

8. Equality implications

3.5.1 No environmental implications have been identified.

3.6 Procurement implications

3.6.1 None

3.7 Workforce implications

3.7.1 None

3.8 Property implications

3.8.1 See Legal Implications above

4. Background Papers

<https://democracy.slough.gov.uk/documents/g6745/Decisions%2020th-Sep-2021%2018.30%20Cabinet.pdf?T=2>

<https://democracy.slough.gov.uk/documents/g7088/Decisions%2017th-Oct-2022%2018.30%20Cabinet.pdf?T=2>

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Slough Borough Council

REPORT TO:	Cabinet
DATE:	21 November 2022
SUBJECT:	Disposal of Council Asset – Lavender Farm
PORTFOLIO:	Councillor Rob Anderson Lead Member for Financial Oversight and Council Assets
CHIEF OFFICER:	Pat Hayes, Executive Director Housing and Property Steven Mair, Executive Director Finance and Commercial (s151)
CONTACT OFFICER:	Fin Garvey, Group Manager – Place Delivery Peter Worth, Finance Lead Technical Advisor
WARD(S):	All
KEY DECISION:	YES
EXEMPT:	Public with exempt appendices under paragraph 3 of Schedule 12A Local Government Act 1972 – Information relating to the financial or business affairs of the Council
DECISION SUBJECT TO CALL IN:	YES
APPENDICES:	1 –Avison Young Disposal Report (13 October, 2022) outlining Marketing and Bidding. Confidential Appendices: 2 – Avison Young – Asset Disposal Recommendation, 13 October, 2022 3 –Heads of Terms for Lavender Farm 4 - Independent valuation report for Lavender Farm 5 - Financial Implications

1. Summary and Recommendations

- 1.1. This report seeks approval for the disposal of Lavender Farm.
- 1.2. The proposed asset sale has been subject to a due diligence process and reflects the best consideration reasonably obtainable for the disposal of the asset in accordance with section 123 of the Local Government Act 1972. The asset sales will generate capital receipts which will be applied to reduce borrowing and the Council's Minimum Revenue Provision (MRP).

Recommendations:

1.3. Cabinet is recommended to:

- a) Agree to the disposal of Lavender Farm and to delegate authority to the Executive Director of Property and Housing, in consultation with the Lead Member for Financial Oversight and Council Assets and the Executive Director of Finance and Commercial, to negotiate the terms of and enter into the contract and other legal documentation in connection with the disposal subject to the terms being consistent with the Heads of Terms appended at Confidential Appendix 3 and the information provided within this report.

Reason:

- 1.4. The early disposal of this significant asset 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, 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 reasonably obtainable from the disposal of the asset in accordance with section 123 of the Local Government Act 1972.
- 1.5. The disposal of this asset will enable the Council to simplify the property portfolio and enable the Council to focus on its core activities and services.

Commissioners Review

"Commissioners support the recommendation."

2. Report

Introduction and Context

Context

- 2.1. On 21 June 2021, Cabinet approved the Asset Disposal Programme which outlined the principles and process for disposing of surplus General Fund land and property assets to reduce borrowing costs. The report highlighted that the Council would seek to dispose of surplus assets to support the following objectives:
 - Provide capital receipts to contribute to the 2022/23 budget through reducing MRP and borrowing costs; and
 - Provide capital receipts to meet Capitalisation Directive commitments and align with the Medium-Term Financial Strategy (MTFS) to reduce overall borrowing costs.
- 2.2. The Asset Disposal Programme approved in June 2021 set out the following sequential steps for disposing of assets:
 - Identify assets for disposal
 - HB Public Law to produce detailed Reports on Title for each asset identified for disposal
 - Asset valuation – obtain up to date independent valuations to provide a benchmark for assessing best consideration,
 - Methods of disposal - take advice on the most advantageous method of disposal

- Officer Delegation – authorise the Executive Director (Place), subject to proper legal/valuation of advice to dispose of assets up to £1m in value after consultation with the S151 and Monitoring Officers.

2.3. In the context of the Lavender Farm disposal in this report:

- Avison Young (AY) have been appointed as external property advisors to assist with the identification of assets for disposal, marketing and advice on disposal methods;
- HB Public Law have produced a detailed Report on Title for the asset;
- An up to date independent valuation has been provided by the RICS registered valuers Wilks, Head and Eve LLP (WHE);
- AY have advised on the most advantageous method of disposal – in this case informal treaty;
- As the values are over £1million for each site, approval is being sought from Cabinet to dispose of the asset.

2.4. As part of the Council's budget setting process for 2022/23, the Council approved a Treasury Management Strategy (TMS) for the period 2022/23 to 2026/27 on 10 March 2022. A key element of the TMS is the need to reduce borrowing to bring the Council back onto a more sustainable financial footing.

2.5. The TMS includes a target to generate capital receipts from asset disposals of £50m in 2022/23 with an aspiration to realise £100m of receipts by 31st March 2023.

Asset Review

2.6. Following a detailed procurement exercise, Avison Young (AY) were appointed to support the delivery of the Asset Disposal Programme in March 2022. The appointment included advising on an asset disposal strategy and marketing of assets for disposal in a way that would secure the best consideration reasonably obtainable.

2.7. As the site is non-income producing, was not used for operational or service delivery, but could yield a high capital receipt it was agreed this should be brought to market as a priority to help alleviate Slough Borough Council's ("the Council") current financial burden.

The Asset

2.8. Lavender Farm was purchased in May 1966 using powers under the Local Government Act 1957. The purchase included Kalkingcroft Wood, what is now Bloom Park and the Goodman Park Housing Estate.

2.9. Heads of Terms have been agreed with a preferred bidder and will be ready to complete subject to approval of Cabinet.

Marketing

2.10. The site was marketed with a technical pack that included tenancy information, title information and an environmental report. The site was formally launched to market on 16 July 2022 with a half page advert in the Estates Gazette. A marketing mailshot was sent out on 28 July 2022 to 1,795 developers, investors, and agents across the South-East. 953 unique parties viewed and interacted with the mailshot. A bespoke marketing brochure was produced and circulated to all parties on request. 152 expressions of interest were received.

- 2.11. Three inspection days were arranged on 9, 16 and 30 August 2022, and a number of parties viewed the site externally.
- 2.12. The site was well received by the market with many credible parties contacting AY and requesting more information concerning the sale. Interest was predominantly for residential, industrial and storage use.
- 2.13. In response to an initial bid deadline of 12 noon 13 September, 11 bids were received.
- 2.14. Appendix 1 provides AY's detailed report on the marketing process for the asset.

Valuation

- 2.15. The asset is held as an investment property in the Council's balance sheet and is revalued annually at fair value in line with accounting standards. Fair value measures the "highest and best" value in the most advantageous market for an asset (i.e. this method of valuation includes considering alternative uses for the asset as well as its current use).
- 2.16. The asset was valued at 31 March 2022 and the valuation was updated at 26 October 2022 to reflect current market conditions by WHE. The current valuation report is at Confidential Appendix 4.
- 2.17. This site is identified within the overall strategic review of Council assets and included within the Disposal Strategy approved by Cabinet on the 17th October, 2022. Advice from AY that informed the Disposal Strategy recommended the current timeframe for disposal to secure the current favourable has provided professional advice on the market conditions. and has recommended disposal of the asset.

Options considered

- 2.18. Option A - To retain the asset for future development. The site is a non-income producing site and the Council has no plan to develop this site, the current capital receipt is linked to the current market and given current economic pressures may lead to a fall in value. Whilst there is no borrowing associated with the asset, given that it is not generating an income or delivering services, it is a wasting asset.
- 2.19.
- 2.20. Option B - To dispose of the asset on the basis of the agreed Heads of Terms and subject to legal and valuation advice. This option produces a capital receipt which will support the Council's corporate priorities.
- 2.21. **Option B is recommended** to Cabinet for approval.

3. Implications of the Recommendation

Financial implications

- 3.1. As the property was acquired in 1966 it is fully funded, and there no borrowing outstanding in respect of the original purchase. The capital receipt generated will be applied to reduce Council borrowing, thus reducing interest charges and minimum revenue provision on the Council's overall capital financing requirement. The detailed financial implications from disposing of this asset are reported in Confidential Appendix 5.

4. Legal implications

- 4.1. Pursuant to section 123 of the Local Government Act 1972 (“Section 123 LGA 1972”), the Council has the power to dispose of land in any manner it wishes, subject to certain provisions. The Council has a statutory duty to obtain the best price reasonably obtainable, subject to certain exemptions. Section 123(2) permits a disposal at less than the best price reasonably obtainable with the consent of the Secretary of State.
- 4.2. When considering the duty under section 123 LGA 1972, what is reasonable in any particular case depends entirely on the facts of the transaction.
- 4.3. Case law has determined that whilst there is no absolute requirement to market the land or obtain an independent valuation, if valuation evidence is obtained, it should be up to date and that there should not have been any material and significant changes in circumstances since it was obtained. In addition, obtaining proper professional advice throughout the process on how to maximise its receipts is a material consideration and the Council should limit itself to taking account of those elements of a transaction which are of commercial or monetary value and should disregard irrelevant factors such as “job creation” when assessing whether it is obtaining the best consideration reasonably obtainable. The deliverability or credibility of a bid are commercial factors which are relevant to an assessment.
- 4.4. The Council has employed Avison Young (“AY”) as specialist property advisors to advise on an asset disposal strategy and to market and dispose of the asset identified for disposal.
- 4.5. Following a marketing exercise on the open market reported by AY in Appendix 1, the agreed offer price for Lavender Farm exceeds the latest valuation as at 26 October 2022 carried out WHE. AY have confirmed that the best and final offer sale price for the asset received by AY following a competitive disposal process exceeds both the valuation carried out on 26 October 2022 and this reflects best consideration reasonably obtainable in accordance with Section 123 LGA 1972.

5. Risk management implications

- 5.1. The recommendation required from Cabinet, as outlined in this report, is 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 minimum revenue provision (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:

Risk	Summary	Mitigations
Financial	Delay in realising capital receipts from assets sales will delay the Council’s financial recovery	Cabinet to approve officers to proceed with the sales
Governance	Failure to obtain best consideration from the disposals could expose the Council to risk of legal challenge	The Council has employed external property advisors to manage and competitively market the properties, having access to wider markets than

		officers locally and has obtained up to date valuations for the sites for comparison purposes.
Legal	Failure to ensure legal title/deeds etc which could delay or halt sale Delay to contract negotiations	Legal title report obtained for this site. Bi-weekly monitoring of asset disposals by commissioners and officers
Governance	Failure to establish robust governance arrangements could expose the Council to risk of impropriety and legal challenge	The Council has established sound governance arrangements for asset disposals to ensure that the Council achieves best consideration from asset disposals
Reputational	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	Governance, project management and decision-making operate effectively to deliver asset disposals on time and best consideration for the Council.

6. Environmental implications

6.1. No environmental implications have been identified as a direct result of this report.

7. Equality implications

7.1. The assets is not used for operational or service delivery. There are no identified equality implications with the disposal of these sites. By reducing the level of Council borrowing, the Council will reduce its MRP, which will reduce the level of savings required from services, albeit significant savings will continue to be needed. This is likely to have a positive impact on protected groups who are more likely to utilise the services of the Council.

8. Procurement implications

8.1. The appointment of Avison Young as the Council's external property advisors was secured in compliance with:

- The Public Contracts Regulations 2015
- Council Contract Procedure Rules, and
- Expenditure Control Panel requirements.

9. Workforce implications

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

10. Property implications

10.1. This report will directly impact on the Council's property holdings. Full details will be provided via progress reports to Cabinet.

11. Background Papers

11.1. None

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Slough Borough Council

Lavender Farm, Nursery Lane

Asset Disposal Recommendation

13.10.2022

Appendix 1

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Report title: Slough Borough Council

Status: FINAL

Draft date: 13 October 2022

For and on behalf of Avison Young (UK) Limited

1. Introduction

- 1.1 The property is located to the north of Slough within Buckinghamshire and is bordered to the north by woodland, to the east by Nursery Lane/Middlegreen Road, to the south by the Grand Union Canal and to the west by Orchid Cottage and associated land and buildings.
- 1.2 The property extends to approximately 6.46 acres (2.62 hectares), bisected by Nursery Lane with 4.64 acres (1.88 hectares) of pastureland, buildings and yard to the north of the lane and a 1.82 acre (0.74 hectares) triangle of pastureland to the south of the lane.
- 1.3 The property lies within the administration area of Buckinghamshire Council, South Bucks Area (immediately adjoining the boundary with Slough Borough Council). The property falls within the Greenbelt.
- 1.4 The property is vacant, but the adjacent landowner has an informal agreement with SBC. We understand the adjacent landowner, Mr Simpson, receives a small payment from SBC to manage, maintain and keep the site secure. To secure the site, Mr Simpson has placed a mobile home and security guard on site which we understand has ensured no trespassers have gained access to the site. We understand that the location is prone to trespassers and therefore some form of security presence on site is essential.
- 1.5 The site is non income producing but could yield a capital receipt and as such it as agreed this should be brought to market as a priority to help alleviate Slough Borough Council's ("the Council") current financial burden.
- 1.6 We were instructed to undertake a comprehensive marketing campaign that was co-ordinated by the Land & Development team at Avison Young ("AY"). Owing to likely level of interest within the site and the need for a transparent and whole market process we recommended that the Council brought the site forward by way of an informal tender process.
- 1.7 An informal tender would also allow further bid stages to encourage competition between bidders, which should lead to the most attractive financial offers and terms received.
- 1.8 In preparation for marketing, we collated and prepared a detailed marketing pack that would allow bidders to make sensible assumptions within their financial appraisals and ensure robust offers were received.
- 1.9 We considered that this opportunity would appeal to a range of purchasers and a Planning Appraisal was produced to outline the development parameters for the site, which was reviewed and accepted by the Council estates team.

2. Marketing Process

- 2.1 The asset was marketed with the benefit of technical pack that included EPC and title report as well as a description of each of the buildings and a bespoke AY Planning Report. The Property was formally launched to the market on Saturday 16th July 2022 with a half page, colour advert in the Estates Gazette (EG). The Estates Gazette is an industry trusted source of real estate intelligence with 16,500 paying subscribers and a readership of approximately 120,000 people. The opportunity has also been published on the Estates Gazette Property Link website, which benefits from approximately 400,000 monthly visitors.

Avison Young

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- 2.2 On Thursday 28th July 2022 an electronic mailshot was sent to 1,795 developers, investors and agents active in Berkshire, Greater London and Southeast London. To date, 953 unique parties viewed and interacted with the mailshot.
- 2.3 A bespoke marketing brochure was produced and circulated to all parties upon request, as well as individuals and organisations who had previously indicated an interest in properties of a similar nature and those, we have had informal conversations with regarding the opportunity prior to launch.
- 2.4 AY recorded 152 parties expressing an initial interest in the opportunity and had requested a copy of the brochure and access to the data room.
- 2.5 AY arranged three open style viewing mornings on Tuesday 9th August 2022, Tuesday 16th August 2022 and Tuesday 30th August 2022. Across the three days, a total of 25 parties booked to attend, however, a number of other parties turned up on the day to view.
- 2.6 We understand that some parties also viewed the opportunity externally.
- 2.7 The asset was received well by the market with many credible parties engaging with the AY Land & Development team and requesting more information with regard to the sale.
- 2.8 Interest was predominantly received from residential, industrial and storage uses.

3. Bidding Process

- 3.1 After an extensive marketing campaign and upon agreement with the Council, an initial bid deadline was set for 12 noon Tuesday 13th September 2022. This was clearly communicated to all parties who enquired about the Property.
- 3.2 As expected, offers were received from a range of bidding parties comprising residential, industrial and storage users/developers.
- 3.3 AY hosted a call with the estates team at the Council to discuss the bids received and set out our recommendations. Within the meeting we reviewed each bid in detail focussing on price, timescales, conditionality of offer and track record.
- 3.4 AY and the Council concluded to shortlist parties and invite them to a best bids stage. This would allow parties the opportunity to improve their financial offer, terms, conditionality and also answer clarifications noted by AY at the initial bid stage.
- 3.5 Shortlisted parties were invited to submit a best and final offer by 12 noon, Thursday 22nd September 2022.
- 3.6 The best bids were reviewed by AY and a recommendation to select the preferred purchaser was provided, which was in accordance with the Councils objectives and the Best Consideration requirements of the Local Government Act 1972.
- 3.7 A preferred purchaser was subsequently selected and Heads of Terms negotiated and agreed.

Slough Borough Council

REPORT TO:	Cabinet Committee
DATE:	17 November 2022
SUBJECT:	380 Bath Road – Halfords Lease Renewal
PORTFOLIO:	Councillor Rob Anderson Lead Member for Financial Oversight and Council Assets
CHIEF OFFICER:	Pat Hayes, Executive Director Housing and Property Steve Mair, Executive Director Finance and Commercial (s151)
CONTACT OFFICER:	Fin Garvey, Group Manager – Place Delivery Peter Worth, Finance Lead Technical Advisor
WARD(S):	Haymill & Lynch Hill
KEY DECISION:	<u>No</u>
EXEMPT:	Public with exempt appendices under paragraph 3 of Schedule 12A Local Government Act 1972 – Information relating to the financial or business affairs of the Council
DECISION SUBJECT TO CALL IN:	YES
APPENDICES:	Confidential Appendices: 1 – Halfords Lease Renewal 2 – Detailed financial performance of the investment

1. Summary and Recommendations

1.1. To consider and approve the renewal of the lease between Halfords Limited and the Council at 380 Bath Road, Slough.

Recommendations:

1.2. Cabinet is recommended to:

- a) Approve the renewal of the lease between Halfords Limited and the Council at 380 Bath Road, Slough and to delegate authority to the Executive Director of Housing and Property, in consultation with the S151 and subject to legal advice negotiate and enter into a lease with Halfords Limited consistent with the terms detailed in Appendix 1 – Lease Report.

Reason:

- 1.3. The proposal is a statutory lease renewal. The lease is within the security of tenure provisions of the Landlord and Tenant Act 1954 and as such entitled to a renewal on the basis of the terms contained in the previous lease, subject to modernisation.

Commissioner Review

“The recommendations are supported.”

2. Report**Background**

- 2.1. The property was purchased on 29 July 2016 as an investment property under the aegis of the Strategic Acquisition Board. Halfords were an existing tenant with an original lease which commenced in 2001. The property has been identified for disposal as part of the Council’s Asset Disposal Strategy. The lease term ended on 24 June, 2021. In order to progress the disposal, the lease has to be renewed first.
- 2.2. At the end of the lease term Halfords are entitled to a statutory lease renewal pursuant to sections 24-28 of the Landlord and Tenant Act 1954, which means that the ability to negotiate the terms on a commercial basis, in light of the current market, are restricted.
- 2.3. As this lease is within the security of tenure provisions of the Landlord and Tenant Act 1954, the tenant is entitled to a renewal lease based on the terms of the previous lease.
- 2.4. At the start of the period of negotiation there was a moratorium on any property transactions following the s.114 Notice being issued. Consequently the lease renewal could not be progressed or agreed straightaway. As the lease is protected, if the parties cannot agree on the terms of the new lease, either party can apply to court for an order for the grant of a new tenancy. Halfords subsequently made an application to court following unsuccessful requests for the parties to engage with the process to agree the lease.
- 2.5. Lease terms have now been agreed between the parties following lengthy negotiations and are detailed in Confidential Appendix 1.
- 2.6. Vail Williams have provided advice to the Council on the negotiations and confirm that the terms proposed represent ‘best value’ in the current market conditions.

3. Options

- 3.1. Two options have been considered:
 1. Move forward with entering into the lease during the court stay period; or
 2. Go to trial to let the court decide the terms of the new lease.

- 3.2. **Option 1, is recommended** to Cabinet as the lease terms have now been agreed between the parties.
- 3.3. With regard to Option two, if there is discontent with the terms agreed so far, the Council could decide to allow this matter go to trial. The risks associated with this option are;
- there is no guarantee that the court will agree with the Council's views on the lease terms, and they may side with the tenant, so this would result in uncertainty when it comes to agreeing the lease and indeed the final form of the lease;
 - agreement of the lease will be delayed (currently, we have been made aware that court dates for trial are available from the middle of next year, so this would prolong the process); and
 - this option would result in additional costs and officer time.

4. Implications of the Recommendation

Financial implications

- 4.1. The Council has no option but to renew the lease under the Landlord and Tenant Act 1956. Any delay is likely to involve the Council in potentially but unnecessary expensive litigation, with limited prospect of success and which has not been budgeted for.
- 4.2. The property has been identified for disposal under the Council's asset disposal strategy. Avison Young have advised that for the property to be marketable it should be marketed with a sitting tenant.
- 4.3. Details of the financial performance of investment property are reported at Confidential Appendix 2.

5. Legal implications

- 5.1. The Council is authorised to make disposals at the best consideration reasonably obtainable pursuant to s.123 of the Local Government Act 1972. This power is given to Local Authorities to dispose of land in any manner they wish, including the sale of their freehold interests and the granting of leases. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of short tenancies). A disposal at an undervalue requires the Secretary of State consents to the disposal (section 123, LGA 1972). Paragraph 2 in the report confirms that Vail Williams have provided advice to the Council on the negotiations and confirm that the terms proposed represent 'best value' in the current market conditions.
- 5.2. Halfords' lease is a protected lease. This means that Halfords has a statutory right to a new lease at the end of the contractual term as Part II of the Landlord and Tenant Act 1954 applies to the tenancy and the lease has not been contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954. A tenancy protected by the Landlord and Tenant Act 1954 (LTA 1954) will not terminate automatically at the end of the contractual term. If the tenancy satisfies the qualifying criteria in the LTA 1954 at the contractual expiry date, it will continue under section

24(1) of the LTA 1954, on the same terms as the contractual tenancy, until it is terminated in one of the ways specified by the LTA 1954.

5.3. There are different procedures for renewal of a lease under the Landlord and Tenant Act 1954, depending on whether the landlord or the tenant initiates the renewal:

- The landlord can initiate renewal by serving a [section 25 notice](#) on the tenant,.
- The tenant can initiate renewal by serving a [section 26 request](#) on the landlord.

5.4. If the parties cannot agree on the terms of the new lease, either party can apply to court for an order for the grant of a new tenancy (section 24(1), Landlord and Tenant Act 1954), which is the route that this matter took as Halfords subsequently made a court application.

6. Risk management implications

6.1. The recommendation required from Cabinet, as outlined in this report, is intended to improve the Council’s financial position, by reducing the risk of litigation and removing an obstacle to marketing the property as part of the Council’s asset disposal strategy.

Risk	Summary	Mitigations
Financial	Delay in renewing the lease runs the risk that the tenant could take the Council to court incurring additional cost.	Cabinet to approve officers to proceed with the lease renewal
Governance	Failure to obtain best consideration from the disposals could expose the Council to risk of legal challenge	The Council has employed external property advisors to manage and competitively market the properties, having access to wider markets than officers locally and has obtained up to date valuations for the sites for comparison purposes.
Legal	Failure to renew the lease runs the risk of litigation	
Governance	To be completed	
Reputational	Adverse publicity from failure to agree a lease with a well-known national high street supplier	

7. Environmental implications

7.1. No environmental implications have been identified.

8. Equality implications

8.1. Decision makers should have due regard to the public sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. In order to discharge its public sector equality duty, in considering the recommendations of this report the Cabinet must have due regard to the possible effects of them on any groups sharing a protected characteristic. This is an ongoing obligation. Consideration of the duties should precede the decision. It is important that Cabinet has regard to the statutory grounds in the light of all available material such as consultation responses. The statutory grounds of the public sector equality duty are found at section 149 of the Equality Act 2010 and are as follows.

6.5 The Public Sector Equality Duty also imposes a 'Duty' on public bodies to consciously and rigorously think about the three aims of the Public Sector Equality Duty (PSED) and in exercising their functions a public authority must pay due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

6.6 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

6.7 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

6.8 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- Tackle prejudice, and
- Promote understanding.

6.9 Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would

otherwise be prohibited by or under this Act. The relevant protected characteristics for the purposes of the Equality Act are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race,
- Religion or belief
- Sex
- Sexual orientation
- Marriage and Civil partnership

6.10 Equality Impact Assessments taking into account the results of the consultation must be carried out to demonstrate that the Council is fully aware of the impact that the changes identified in this report may have on stakeholders.

...

9. Procurement implications [Discretionary]

3.6.1 None

10. Workforce implications

10.1. No workforce implications have been identified as a direct result of this report.
Property implications [Discretionary]

11. Background Papers

None

SLOUGH BOROUGH COUNCIL

REPORT TO:	Cabinet Committee
DATE:	17 November 2022
SUBJECT:	Disposal of Council Asset in Wolverhampton,.
CHIEF OFFICER:	Pat Hayes, Executive Director Housing and Property Steven Mair, Executive Director Finance and Commercial (s151)
CONTACT OFFICER:	Fin Garvey, Group Manager – Place Delivery Peter Worth, Finance Lead Technical Advisor
WARD(S):	None
PORTFOLIO:	<u>Councillor Rob Anderson</u> <u>Lead Member for Financial Oversight and Council Assets</u>
KEY DECISION:	NO
EXEMPT:	Public with exempt appendices under paragraph 3 of Schedule 12A Local Government Act 1972 – Information relating to the financial or business affairs of the Council
DECISION SUBJECT TO CALL IN:	No
APPENDICES:	Confidential Appendices: Appendix 1– Briefing Note 10 November, 2022 recommending disposal of Wickes, Wolverhampton Appendix 2 – Financial implications

1. Summary and Recommendations

- 1.1. Cabinet has previously approved the sale of the Wolverhampton property asset on 19 September 2022. This report seeks approval to enter into contract and legal documentation in connection with the disposal subject to the Heads of Terms previously approved by Cabinet being amended in accordance with Confidential Appendix 1 in this report.
- 1.2. The proposed asset sale has been subject to a due diligence process and reflects the best consideration reasonably obtainable for the disposal of the asset in accordance with section 123 of the Local Government Act 1972. The asset sale will generate both:

- a) net savings to the revenue budget; and
- b) capital receipts which will be applied to reduce borrowing and the Council's Minimum Revenue Provision (MRP).

Recommendations:

1.3. Cabinet Committee is recommended to:

- a) Agree to the disposal of the Wickes, Wolverhampton asset in accordance with the changes to the negotiated arrangement as set out in the Confidential Appendix 1 and to delegate authority to the Executive Director of Property and Housing, in consultation with the Lead Member for Financial Oversight and Council Assets and the Executive Director of Finance and Commercial, to enter into the contract and other legal documentation in connection with the disposals subject to the Heads of Terms previously approved by Cabinet being amended in accordance with Confidential Appendix 1 in this report.

Reason:

- 1.4. The early disposal of the out of Borough 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, 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.
- 1.5. The disposal of this asset will enable the Council to simplify the property portfolio and enable the Council to focus on its core activities and services. Since the decision in September due diligence has been undertaken which has resulted in some proposed changes to the purchase terms. As these are different from the terms proposed in the original Cabinet papers, officers have declined delegation and are seeking Cabinet approval to enter into legal documentation to conclude the sale.

Commissioners Review

- 1.6. Ensuring that the Council obtain a price certifiable as best value in volatile market conditions is a challenge. In this instance, there was an original competitive offer and the opportunity to test the market position again so that Members can be satisfied that the revised lower price can be accepted. The financial implications, which rightly set out the overall position, are not the key consideration. However, what this makes clear is that the original recommendation to acquire the site breached the policy and financial rules the Council had approved for such transactions. It is not yet clear how the Council is learning the lessons from this series of failures.
- 1.7. The recommendation is supported.

2. Report

Context

- 2.1. On the 19 September 2022 Cabinet approved the disposal of four out of Borough assets including the Wickes site in accordance with the agreed Heads of Terms

and Recommendation from Avison Young, the Council's property advisors. The market conditions, and bidder appetite, have changed significantly in the months since marketing the asset and Cabinet approval in September.

- 2.2. Avison Young have updated their advice, referenced in Confidential Appendix 1, with regard to the current offer. Their advice is that disposing of the site in accordance with the new terms still represents best consideration reasonably obtainable for the asset.

Options considered

- 2.3. Option A - To retain this out of borough investment asset. Whilst this would retain the rental income stream, the costs of servicing the debt outweigh the income generated and AY advise that there is no certainty that the value of the asset would recover in the medium-term.
- 2.4. Option B - To agree to delegate authority to the Executive Director (Housing and Property), in consultation with the appropriate lead member and the S151 Officer, to dispose of the asset on the basis of the agreed Heads of Terms and terms in the confidential Appendix and subject to legal and valuation advice. This option produces a capital receipt which will support the Council's corporate priorities.
- 2.5. **Option B is recommended** to Cabinet for approval.

3. Implications of the Recommendation

Financial implications

- 3.1. Whilst selling the asset will result in the loss of rent income to the Council of £0.483m, nonetheless this is outweighed by the reduction in interest charges and minimum revenue provision, such that the disposal will yield a net saving of £0.196m per annum.
- 3.2. The detailed financial implications from disposing of the asset are reported in Confidential Appendix 2.
- 3.3. The sale will realise a net loss on disposal of the asset, which is set out in Confidential Appendix 2. The net loss is written off to the Capital Adjustment Account in the Council's balance sheet.

4. Legal implications

- 4.1. Pursuant to section 123 of the Local Government Act 1972 ("Section 123 LGA 1972"), the Council has the power to dispose of land in any manner it wishes, subject to certain provisions. The Council has a statutory duty to obtain the best price reasonably obtainable, subject to certain exemptions. Section 123(2) permits a disposal at less than the best price reasonably obtainable with the consent of the Secretary of State.
- 4.2. When considering the duty under section 123 LGA 1972, what is reasonable in any particular case depends entirely on the facts of the transaction.
- 4.3. Case law has determined that whilst there is no absolute requirement to market the land or obtain an independent valuation, if valuation evidence is obtained, it should be up to date and that there should not have been any material and significant changes in circumstances since it was obtained. In addition, obtaining

proper professional advice throughout the process on how to maximise its receipts is a material consideration and the Council should limit itself to taking account of those elements of a transaction which are of commercial or monetary value and should disregard irrelevant factors such as “job creation” when assessing whether it is obtaining the best consideration reasonably obtainable. The deliverability or credibility of a bid are commercial factors which are relevant to an assessment.

- 4.4. The Council has employed Avison Young (“AY”) as specialist property advisors to advise on an asset disposal strategy and to market and dispose of the assets identified for disposal.
- 4.5. Following a marketing exercise on the open market reported by AY in the original Cabinet report, and further negotiation following due diligence, AY have confirmed that the offer prices for the asset received by AY reflects best consideration in accordance with Section 123 LGA 1972. Independent valuation evidence has been obtained, which is a relevant consideration, although the market conditions in the UK at present are volatile as evidenced by examples given in the confidential Appendix XX. Members should therefore consider what weight to place on the independent valuation compared to the AY advice and the market conditions, which represent a significant change in circumstances.

5. Risk management implications

- 5.1. 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 minimum revenue provision (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:

Risk	Summary	Mitigations
Financial	<p>Delay in realising capital receipts from assets sales will delay the Council’s financial recovery</p> <p>Market conditions are such that it is difficult to determine the optimum time to sell and to weight up the benefits of obtaining capital receipts quickly to reduce the borrowing, compared with waiting to see if market conditions improve (or worsen).</p>	<p>Cabinet to approve officers to proceed with the sales</p> <p>All sales to be informed by specialist advice.</p>
Governance	<p>Failure to obtain best consideration from the disposals could expose the Council to risk of legal challenge</p>	<p>The Council has employed external property advisors to manage and competitively market the properties, having access to wider markets than officers locally and has obtained up to date</p>

		valuations for the sites for comparison purposes.
Legal	Failure to ensure legal title/deeds etc which could delay or halt sale Delay to contract negotiations	Legal title reports obtained for all disposals Bi-weekly monitoring of asset disposals by commissioners and officers
Governance	Failure to establish robust governance arrangements could expose the Council to risk of impropriety and legal challenge	The Council has established sound governance arrangements for asset disposals to ensure that the Council achieves best consideration from asset disposals
Reputational	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	Governance, project management and decision-making operate effectively to deliver asset disposals on time and best consideration for the Council.

6. Environmental implications

6.1. No environmental implications have been identified as a direct result of this report.

7. Equality implications

7.1. The asset is not used for operational or service delivery, nor is it located in Slough. There are no identified equality implications with the disposal of this site. By reducing the level of Council borrowing, the Council will reduce its MRP, which will reduce the level of savings required from services, albeit significant savings will continue to be needed. This is likely to have a positive impact on protected groups who are more likely to utilise the services of the Council.

8. Procurement implications

8.1. The appointment of Avison Young as the Council's external property advisors was secured in compliance with:

- The Public Contracts Regulations 2015
- Council Contract Procedure Rules, and
- Expenditure Control Panel requirements.

9. Workforce implications

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

10. Property implications

- 10.1. This report will directly impact on the Council's property holdings. Full details will be provided via progress reports to Cabinet.

11. Background Papers

- 11.1. None

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