Growing a place of opportunity and ambition

Date of issue: Friday, 6 September 2024

MEETING	**CABINET COMMITTEE - ASSET DISPOSALS** (Councillors Smith (Chair), E. Ahmed, Bedi, Chahal and Manku)
DATE AND TIME:	THURSDAY, 12TH SEPTEMBER, 2024 AT 4.30 PM
VENUE:	MERCURY 3 - OBSERVATORY HOUSE, 25 WINDSOR ROAD, SL1 2EL* *(* please note the change of meeting room)*
DEMOCRATIC SERVICES OFFICER: **(for all enquiries)**	NICHOLAS PONTONE 07749 709 868

SUPPLEMENTARY PAPERS

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

* Items 4 and 5 were not available for publication with the rest of the agenda.

PART 1

AGENDA ITEM	REPORT TITLE	PAGE	WARD
4.	James Elliman Homes Limited (JEH)- Update on governance and risks	1 - 10	All
5.	Property Capital Programme Review	11 - 22	All

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Slough Borough Council

Report To:	Cabinet Committee
Date:	12 September 2024
Subject:	James Elliman Homes Limited (JEH)– Update on governance and risks
Lead Member:	Councillor Wal Chahal Deputy Leader – Financial Oversight, Council Assets, Procurement and Revenues & Benefits
Chief Officer	Pat Hayes – Executive Director (Regeneration, Housing & Environment) Annabel Scholes - Executive Director Finance & Commercial
Contact Officer:	Vicki Palazon – Finance Consultant (FIP and Companies)
Ward(s):	All
Key Decision:	NO
Exempt:	NO
Decision Subject To Call In:	NO, noting report only
Appendices:	None

1. Summary and Recommendations

1.1. This report provides an update on the current position of James Elliman Homes Limited ("JEH")

Recommendations:

1.2. Cabinet is recommended to:

1.2.1. Note the audited Statement of Accounts for 2022/23 were filed on 14 August 2024 (due 31 March 2024);
1.2.2. To note the issue of two special resolutions giving direction to the JEH board;
1.2.3. To note the planned next steps to improve governance of JEH, including management of risks;
1.2.4. To note the next steps to undertake a detailed options appraisal to consider the role and case for continuing with JEH.

Reasoning:

1.3. JEH is a company limited by shares wholly owned by the Council. The Council has provided a loan to allow JEH to purchase residential properties for the purpose of renting. JEH's sole activity is that of a housing provider. It is not a registered provider and therefore not a social housing landlord. JEH owns a stock of housing, providing required housing for local residents and is potentially a significant asset for the Borough.

1.4. The Council as Shareholder needs to consider its future strategy in the context of both the Council's finances and the broader homelessness pressures on Slough and therefore the options for the company that best meets the Council's strategic objectives and minimises financial risk exposure held within the company.

1.5. The company employs no staff directly and utilises the services of the Council through a Service Level Agreement to provide operational resource and back-office support including finance. The company at the time of writing does not have a fully functioning board and recognises the need to review its company secretary and financial support. This has contributed to the company struggling to comply with regulatory requirements to file audited accounts within the prescribed timescales for the two previous years, leading to Companies House taking action to compulsory strike off JEH on two occasions and issue penalties. Strike off action was averted following intervention by the Council to support the company.

1.6. Board directors have changed on multiple occasions, but there have been no executive directors and limited independent non-executive directors leading to a lack of capacity and expertise at board level. There is no clear policy to ensure conflict of interest does not arise.

1.7. The Council's housing management service has been providing all housing management services to JEH as JEH has no paid employees. The board has been unable to properly contract manage this arrangement to ensure that regulatory requirements are met, properties are maintained to a decent standard and rent arrears and voids are managed. These are key risks which the board need to manage and these are directly related to its ongoing financial viability.

Commissioner Review:

"Commissioners note the content of this report, special resolutions giving directions to JEH Board and expressly the associated financial and governance challenges for the Company and the Council.

Under the statutory directions the Council needs to consider the case for continuing with each subsidiary company of the Authority (except Slough Children First) and whether it has the organisational capacity to maintain adequate oversight. It is critical that whilst a resolution and clear plan is awaited, the shareholder representative needs to provides the Committee with the assurance around the approach being taken to the company's property portfolio or early warnings of alterations to the strategic direction. This should include the financial implication, highlight issues and opportunities around Company/Council governance, conflict of interest, and that the necessary steps are being taken to ensure that risks are managed effectively, and that public funding is used efficiently."

2. Report

Introduction

2.1. JEH was set up in 2017 with the primary objective of improving the supply of affordable housing for key workers and those within the lower bands of the Council's waiting lists who are unlikely to receive a Council property; as well as temporary accommodation for homeless families. .

2.2. The decision to establish JEH was informed by a business plan, prepared by Savills in November 2016, and agreed by Cabinet in December 2016. The business plan assumed that JEH would acquire properties over a five-year period and that properties would be rented at a mix of market rents (60% of properties) and Local Housing Allowance ("LHA") rent (40% of properties). A revised business plan is due to be received by the council in October for onward approval by members.

Current Situation

2.3. Despite the original plan for the focus of JEH to be on key worker and Band C clients in its first years of operation at least 121 families in temporary accommodation (TA) were placed into JEH properties. This has meant that at present about 80% of properties are being rented at LHA level or below so bringing in significantly less income than envisaged in the original plan.

2.4. All the properties are managed by the Council under a Service Level Agreement (SLA) with all tenancy management, property maintenance and general management undertaken by the Council. The charges levied should have covered the cost of staff time etc, but it appears charging was historically haphazard, and no detailed accounts were kept for the company. The JEH property portfolio includes 168 individual properties and 46 leased to the Council and used for Temporary Accommodation. Of the 168 circa 130 are currently housing tenants placed by SBC to discharge homelessness duty.

2.5. The freehold assets were valued as of 31 March 2022 at £50m (assuming vacant possession) and as of 31 March 2023 at £55m. All properties were acquired on the open market, not built, by SBC/JEH, and financed by the Council. During 2021/22, JEH's housing acquisition programme was stopped, and no further purchases have been made after this date.

2.6. The JEH stock is a mixture of second-hand street properties and some new build flats. Many of the homes were or are in poor condition and have required investment to ensure compliance with fire safety and other private sector housing standards. Much of this work has been carried out in 2023/24 following the reestablishment of a Housing Department and will continue in 2024/25.

2.7. Once a new business plan has been developed, further information will be shared in relation to the investment in properties to improve the condition.

2.8. Historically management of the properties has been poor with tenants being allowed to build up very large levels of rent arrears and most licences not being renewed or cancelled. Originally all tenants were on ASTs most of which have become rolling periodic tenancies.

2.9. Most tenants now therefore enjoy a level of security and would have to be evicted legally which may prove difficult if no fault eviction is outlawed.

3. **Governance requirements**

3.1. In 2021 Grant Thornton, the Council's external auditors, made several s.24 statutory recommendations. These were reported to Audit and Corporate Governance Committee in 2021 and updates were provided in Finance Action Plan reports to Cabinet. However there has been no stand alone reporting on JEH, an extract of the original recommendations and management response is below:

Area	Recommendation	Management Response/ Responsible Officer/ Due Date
Financial governance. Monitoring and controls relating to Group entities	The Council should review and implement effective financial governance and monitoring arrangements for its group relationships to mitigate exposure to additional financial risk. • As a commercial entity subject to separate legal, tax and accounting considerations, there should be clear separation financial transactions of Slough Council and James Elliman Homes, in a separate financial ledger, with clear and distinct financial controls and monitoring in place for both the Council and the company. • The Council should review its overall approach to using council officers on the boards of its group companies and other similar organisations. This should be informed by a full understanding of the role of and legal requirements for company board members. • When allocating roles on Council-owned organisations to individual officers, the Council should ensure that the scope for conflicts of interest is minimised, with a clear divide between those in such roles and those responsible for holding them to account or overseeing them. • The Council should ensure it is actively and routinely monitoring the financial performance of its group entities to consider and protect any unintended financial exposure on the Council's financial position	The Council has begun reviews of its management of third party organisations and will be implementing a series of changes which will include among other matters appointing appropriate Senior Responsible Officers to ensure that companies meet their objectives, put in place new arrangements for holding companies to account, reviewing how the companies meet the Council's objectives, a review of the work undertaken by the companies, developing a clear approach to testing value for money etc. This will include a clear separation of all financial transactions, a review of Council officers on all boards, a review of all financial performance information and actions for all boards and identification of any risks the Council is facing. The responsible officer for this work is the S151 officer. The work will be completed during 2021-22.

3.2. The Government's commissioned governance review by Jim Taylor in 2021 highlighted concerns about company governance leading to a specific direction from the Secretary of State as follows:

3.3. Following the review by the Authority of their companies within six months consider the roles and case for continuing with each subsidiary company of the Authority (except Slough Children First). For those companies that it is agreed to continue, make sure that the Directors appointed by the Authority are appropriately skilled in either technical or company governance matters to make sure each Board functions effectively under the terms of an explicit shareholder agreement and a nominated shareholder representative. For those companies which it is determined not to continue with in this form, to establish a plan to internalise, close or sell as appropriate.

3.4. In 2022 the Council commissioned a review of JEH by Local Partnerships, an entity jointly owned by HM Treasury, the Local Government Association and the Welsh Government. This report was not formally accepted by the council although the issues raised will feed into the refresh of the options and development of the business plan.

Next Steps

3.5. JEH has clearly provided a valuable route by which the Council could discharge its duty to homeless applicants and a source of good value temporary accommodation. These clients having been removed from the housing register.

3.6. Having a housing company able to acquire assets outside of the Council could, if properly managed, be a useful resource in reducing Homelessness costs particularly in the light of policy changes by the Government. However, there has been insufficient oversight and governance of JEH by the Council, roles and responsibilities not defined and no properly functioning board running JEH.

3.7. This immediately crystalised when Companies House issued a notice that JEH would be struck off due to a failure to file audited accounts for 2022/23. This is the second year in which JEH has failed to file its accounts with the statutory framework and JEH has had to seek two extensions this year.

3.8. To avoid JEH being struck off, the Executive Director of Regeneration, Housing and Environment as the Council's shareholder representative, having consulted with statutory governance officers, taken legal advice and consulted with key cabinet members, issued a letter of support and special resolutions to enable the company to continue to operate for the next 12 months, at the same time issuing directions to the board to improve governance. Even with this action, JEH's auditors have made a statement of material uncertainty in relation to the going concern basis for accounting.

3.9. Page 9 of the filed company accounts quotes the following auditor's statement:

"In auditing the financial statements, we have concluded that the director's use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

However, we draw your attention to Note 1.2 of the financial statements, which indicates that the company incurred a net loss of £1,010,517 (2022: £1,448,282) and net assets of £1,615,890 (2022: net liabilities £2,481,408), which includes a net property revaluation of £5,107,815 (2022: £nil).

As stated in Note 1.2. Slough Borough Council, the shareholders are supporting the company in developing a business plan for the medium term to enable the company to return to profitability. These events or conditions, along with other matters set forth in Note 1.2, indicate that a material uncertainty exists that may cast significant doubt on the company's ability to continue as a going concern. Our opinion is not modified in respect of this matter."

3.10. The above action has dealt with the immediate issue, however the board will need to undertake further work to improve governance and have been directed to do the following:

- (1) Submit a draft business plan for the accounting year 2024/25, with a view to the Council's Cabinet approval to this being sought by the end of November 2024 or a later date as agreed by the Council. The draft should be submitted by 18 October 2024 and should set out options for returning JEH to profitability, alongside risks and mitigations.
- (2) Undertake a skills audit of the board and identify any gaps in skills and knowledge, to allow the Council to consider making additional appointments to the Board. Such a skills audit should be submitted to the Council by 30 September 2024;
- (3) Submit evidence of a review of the services provided by the Council under the service level agreement and identify any risks or issues by 31 October 2024;
- (4) Submit minutes of JEH board meetings held in the last 6 months, together with management accounts by 30 September 2024;

- (5) Submit an up-to-date risk register with mitigating actions by 30 September 2024;
- (6) Submit evidence that conflicts of interest are being appropriately managed, including details of any conflict of interest protocol and declarations of interests by 30 September 2024;
- (7) Submit details of any further support required to run JEH effectively, including details of cost of such support if this is required to be externally sourced by 30 September 2024;
- (8) Submit details of all governance documentation and evidence of approval by the Board and by the Council as sole shareholder and/or service provider by 30 September 2024;

3.11. The Board will only be able to fulfil these directions if it is of a size and skill set to properly run a company of this type and size. Therefore the Council need to take the following steps:

- Recruit and appoint an executive director/chief executive who will be a direct employee of JEH – appointment is a decision of the Chief Executive or officer acting under their delegation, with appropriate commissioner oversight;
- Support JEH to commission specialist finance support, either by way of an independent non-executive director with a background in finance, a finance officer or a commissioned service;
- Review the arrangement for company secretariat support.
- Review the articles of association and other governance documents with a view to Cabinet Committee being asked to approve any amendments;
- Conduct an options appraisal informed by the recommendations made by Local Partnerships and to inform JEH's business plan;
- Consider the role of JEH as part of a wider review of the Council's housing and homelessness prevention strategies;
- Review the use of Homeless Prevention Grant as part of the wider review of housing services;

3.12. At present, it appears that most JEH tenants may have acquired housing rights, and it would not be possible to simply evict them to gain vacant possession. The TA discharge scheme being in effect an adhoc Temp to Perm scheme.

3.13. Given the large number of JEH residents who seem to have been placed there to discharge duty by SBC there is a real danger they will re-present and need to be rehoused if evicted from JEH properties.

3.14. This complicates any potential disposal of the stock and effectively limits the field of potential buyers to social landlords as majority of tenants will be unable to pay significantly more than LHA rent levels.

3.15. At the moment 8 JEH properties are void and being worked on by the Council's contractors and 7 are void and in a state to be relet but are being held pending discussions on what cause of action to take regarding reletting.

Current financial position

4. The profit and loss account for JEH shows the following performance:

£m	2020/21	2021/22	2022/23	2023/24

	Actual	Actual	Actual	Draft Outturn
Turnover	2.30	2.46	2.55	2.71
Operating costs	(2.43)	(1.07)	(0.41)	(1.48)
Operating profit/(loss)	**(0.13)**	**1.39**	**2.12**	**1.22**
Depreciation	(1.02)	(1.14)	(1.0)	(1.0)
Interest payable to the Council	(1.47)	(1.56)	(1.55)	(1.55)
Net profit/(loss)	**(2.62)**	**(1.31)**	**(0.43)**	**(1.33)**

** The 2022/23 accounts have been prepared and are currently being audited at the time of writing this report.*

4.1. In 2020/21 the Company reported an operating loss of £0.1m due to significant repair costs on incurred on properties.

4.2. In 2021/22 JEH reported an operating profit and is forecasting a similar level in 2022/23, However this surplus does not take account of interest payable to the Council in relation to the £51.7 million paid to the Company under various loan agreements to buy property. The forecast loss after interest payable in 2022/23 is £0.21m. This may be less than the costs avoided by the Council from using JEH properties for TA and discharge of duty. Historically rent collection from JEH tenants has been poor which has placed additional pressure on the Company's financial performance.

Future Strategy

5. Taking the earlier draft report undertaken by Local Partnerships in March 2022, the current position outlined in this report, the company business plan is due to be received by the council in October 2024 for onward approval. A refresh of options will be undertaken during Autumn.

Implications of the Recommendations

Financial implications

5.1. The financial position shown earlier in this report highlights that the company whilst generally maintains an operating profit, there is a net loss each year after accounting for interest and depreciation. The balance sheet as at 31 March 2023 has cumulative retained losses of £6.9m although equity in the company at the balance sheet date is £1.6m when accounting for the revaluation reserve. For the company to be sustainable in the future and provide a return on investment for the Council, a robust business plan is required that can be evidenced to provide assurance to the Council that the company has financial sustainability and recover cumulative retained losses.

5.2. The Council has provided a loan to the company of £51.7m which is repayable including interest by October 2028. Based on the latest set of accounts, there is sufficient assets to repay the loan and meet all liabilities providing that market value on disposal could be achieved. However, this is only one option on deciding the future strategy for the company and would need a full risk assessment to be completed to limit any financial exposure the Council may find itself subject to.

5.3. The company is also subject to late filing penalties for two successive years of filing statutory accounts late, this will need to be addressed to ensure there is a plan in place to deliver audited approved accounts within the filing deadline going forward.

Legal implications

6. JEH is a company limited by shares. The Council is the sole shareholder. The Council has provided financing to allow JEH to purchase properties. At present there are considerable risks that this financing will not be repaid and that interest charges are also not capable of being paid. JEH is currently loss making. Company directors have various statutory duties, including a duty to promote the success of the company for the benefit of its members as a whole, in this case the Council as sole shareholder. The directors must also exercise independent judgement. This means outside of reserved matters or written resolutions by the shareholder, they cannot be directed by the Council (either at officer or member level) to take certain decisions. The directors also owe a duty to exercise reasonable care, skill and diligence and avoid conflicts of interest. Relying solely on Council officers to act as directors makes it particularly difficult for the board as a whole and individual directors to fulfil their statutory duties.
7. The Council, as shareholder, should hold JEH to account, but it should not seek to take operational decisions on behalf of JEH. Doing this risks the Council (and individual officers and members) acting as shadow directors. Shadow directors are recognised by law as directors because of the influence and control they exercise over a company. Therefore the same legal duties would apply and any disqualifications or restriction orders applicable to directors could also apply to shadow directors. Several activities could lead to a view that an individual or legal entity is a shadow director including approving expenditures, securing loans or borrowings on behalf of the business, participating actively in board meetings and managing the business activities of the company.
8. The Council has commissioned and received a number of reviews and reports setting out improvements it needs to make to improve its company governance. The Council needs to ensure that recommendations have been implemented and keep its systems and processes under review to ensure it meets is best value duty. In addition the Council needs to learn from failures elsewhere. This includes the public interest reports by Grant Thornton in relation to Croydon Council's use of housing and development companies. Recommendations included need for cabinet reports to clearly set out legal powers and how the Council's interests are protected, regular review of financial business cases and financial rationale for investment arrangements, improved record keeping, including ensuring legal documents are properly executed and that any loan covenants are complied with, regular review of governance arrangements for subsidiaries including ensuring there is clarity and reporting back mechanism for nominated representatives and arrangements in place to consider inherent conflicts of interest for executive officers, ensuring clear terms of reference for officer and member bodies that oversee significant projects and capital/revenue expenditure.

Risk management implications

9. This report articulates a number of challenges the company faces in its current operational state and therefore the Council as Shareholder has issued two special resolutions as outlined in this report to address which will also mitigate risk.

10. JEH maintains a detailed risk register which is reviewed by the Board monthly. The Board has also been directed to submit an up to date risk register and the Council needs to ensure its own risks are properly considered and where appropriate, recorded in the Council's corporate risk register.

Environmental implications

11. There are no direct environmental implications because of the recommendations contained in this report.

Equality implications

12. There are no equality implications from this report. Any future business case should consider the impact on existing tenants and whether these tenants are more likely to have specific protected characteristics.

Procurement implications

13. Should the decision be to dispose of the stock, JEH will need to determine how best to select a Registered Provider or other purchaser.

Workforce implications

14. JEH has no directly employed staff. The Council provides staffing resources under an SLA.

Property implications

15. The properties are owned by JEH. Two hostels have been let to the Council under 30 year leases at annual rent of £1.

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Slough Borough Council

Report To:	**Cabinet Committee (Asset Disposals)**
Date:	12 September 2024
Subject:	Property Capital Programme Review
Lead Member:	Councillor Chahal, Deputy Leader of the Council – Finance, Council Assets and Transformation
Chief Officer:	Pat Hayes – Executive Director (Regeneration, Housing & Environment) Annabel Scholes Executive Director Finance & Commercial
Contact Officer:	Peter Hopkins – Director of Property and Assets
Ward(s):	All
Key Decision:	NO
Exempt:	NO
Decision Subject To Call In:	No, noting report only
Appendices:	Appendix A – Assets Sold - Phase 1

1. Summary and Recommendations

This report sets out the progress made, and issues encountered in delivering the first phase (Phase I) of the Asset Disposal Programme from 2021.

The report outlines the methodology utilised for the internal assessment of likely capital receipt, and the criteria used in establishing a RAG status as set out in section 2.16 of this report.

It should be noted that the information within this report is at this point in time and that each asset will be periodically reviewed and assessed on its suitability to be put forward for the inclusion on the disposals programme.

This report sets out what previous disposals has been achieved and highlights the current methodology and assessment underway to revise the future capital receipt programme.

Recommendations:

1.1. Cabinet Committee are asked to note:

a) That the value of the remaining property estate within the General Fund has changed since 2021 due to a number of external factors such as market conditions and interest rates borrowing. This causes a challenge in achieving the existing financial targets.

b) That a similar exercise is being undertaken on the Housing Revenue Account (HRA) Assets and an update report will be brought back to Asset Cabinet during Quarter 4 of 2024/25.

c) The progress that has been made in delivering General Fund Phase I of the Asset Disposal Programme and the issues that have impacted on this.

d) That following a planned new valuation of the General Fund portfolio a revised overarching future Capital Disposal programme will be presented to Cabinet for approval during Quarter 2024/25.

e) The information in this report is current as of this report but is subject to change due to fluctuations in the council's finances, the property market, and the implementation of key property initiatives and strategies that relate to the emerging new Targeted Operating Model and the future Medium Term Financial Strategy.

Reason:

1.2. Cabinet in September 2021 noted that following a report carried out by the councils procured external property advisors that post an initial evaluation the council had circa £600m of disposable assets, a subsequent budget report for 2023/24 assumed asset sales of £400m would be delivered by 31 March 2024 with future sales of £200m following.

1.3. The council currently owns and is responsible for multiple buildings that serve as back offices, front-facing facilities, community spaces, or are vacant. Approving a new more refreshed General Fund Capital Receipt target will enable the council to have greater visibility and reliability of proposed receipt generation.

1.4. The review has identified a number of challenges such as impairment values, i.e. the current value of some assets is significantly below the carrying value in the council accounts. while other assets make a significant revenue contribution which outweighs the financial benefit of sale.

1.5. Some assets have not been valued externally for a number of years and an updated value is required.

1.6. A new commission of independent asset valuations of the Councils General Fund Portfolio needs to be undertaken to validate the current asset values held by the council. The existing arrangement has been long standing and predominately undertaken as a desk top value only. It is felt necessary to commission a new set of valuers that can independently assess asset values and undertake site visits and reports rather than a pure desk top assessment. This work would then provide a high level of confidence to the council in determining the actual estate valuation.

1.7. At this stage there should be no impact on any current or immediately planned approved disposals in the pipeline as separate valuations can be obtained if required if the current book values appear to out of step with the Red Book Valuations that are commissioned prior to any final decision to market a site for disposal. A report will come back to Cabinet Committee following the procurement to advise on the outcome.

1.8. The initial assessment of the valuations will focus on the retained Investment and Operational Portfolio initially and then on the remaining assets held for community use. This work is expected to be commissioned by the end of November and completed by the end of March 2025.

1.9. The property market remains in a challenging position across a number of asset classes particularly office and retail though residential and B8 (industrial) commercial remain strong. The appointment of external consultants will help professionally undertake an assessment of the councils property portfolio and work across the whole of the market to facilitate the ability to move those assets currently marked as red and amber to amber and green status.

1.10. The assessment review above will also take into the use of assets that could provide wider community use and provide additional value around social, economic and environmental values.

Commissioner Review

"The asset disposal programme is of significant importance to the Council's financial recovery, and an integral part of the approved financial strategy and 'minded to' Capitalisation Direction. There are substantial risks inherent in this programme as forecasting likely values to be achieved will depend on a stable overall economy, local market conditions, the estate required to effectively deliver the Council's future operating model and a Medium-Term Financial Strategy that can be balanced without exceptional financial support. Where the Council's capital financing requirement is increased as a result of the capitalisation of expenditure under a Capitalisation Direction, any further borrowing must be borrowed from the Public Works Loan Board at a premium of 1% on the interest rate above the rate the loan would otherwise be subject to.

To inform member decision-making in developing the revised asset disposal strategy and medium-term net asset disposal target for 2024/25 and beyond, it is strongly recommended that the Council ensures sufficient resources are available to promptly undertake the valuations and due diligence required, and bring forward as quickly as possible, a report with all relevant information and options available to the Council."

2. Report

Introduction

2.1 Members are aware the Council received a formal direction from Secretary of State for Levelling Up, Housing and Community in December 2021 (updated in September 2022) made under s.15(5) and (6) of the Local Government Act 1999, including a direction that prescribed functions are to be exercised by Commissioners; and the appointment of Commissioners from 1 December 2021.

2.2 A key component of the Directions is the need for the Council to demonstrate it is able to achieve financial sustainability.

2.3 Asset disposals to date have been a core element in the drive towards financial sustainability. Having a clear financial target in place for the programme, together with plans to deliver to that target, would help to provide some assurance on the Council's recovery.

Options Considered

2.4 Do nothing, carry on with the aim to deliver the Capital income target of £400m-£600m. Given the requirement to seek a fresh appraisal of the portfolio the Council might dispose of assets that might be better used to support front line service delivery or where the loss of income or impairment outweighs the benefit of disposal at this time. **Not recommended**.

2.5 The Council can seek to optimise the value remaining withing the General Fund property asset portfolio, by the establishment of an updated portfolio valuation, leading to a new estates strategy that will embed the creation of a community asset transfer strategy, and robust corporate landlord model, whilst working with services to ensure they can continue to deliver to residents in suitable and accessible buildings and by the periodic re-assessment of each property asset.

Recommended.

Background

2.6 A report was brought to Cabinet on 21 June 2021 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.
- Provide capital receipts to meet Capitalisation Directive commitments and align with the Medium-Term Financial Strategy (MTFS)
- To reduce overall borrowing costs.

2.7 On 17 October 2022 Cabinet approved an Asset Disposal Strategy informed by advice from its procured commercial property advisors. The agreement of the strategy was to contribute to the reduction in the Council's financial commitments, generate disposal receipts at the earliest opportunity and reduce the Council's borrowing and Minimum Revenue Provision (MRP).

2.8 The first focus area for the Asset Disposal Programme, was an initial review of the Council's asset base. The purpose being to provide assessments of market values, along with an orderly disposal strategy that enabled the Council to realise potential capital receipts that could firstly be utilised to finance any Capitalisation Directions, and secondly to repay existing external debt.

2.9 The decisions in that paper were based on a council asset value of £1.3bn comprising:

C. £750m non – residential assets and

C £550m of HRA residential assets,

And summarised in the following table 1.

Asset Category	Valuation £m	Valuation Basis
Council Dwellings (HRA)	551	Existing Use Value
Other land & Buildings	418	Nonspecialised assets – Existing Use Value & Specialised Assets – Depreciated Replacement Cost
Investment Property	163	Fair Value
Plant, Vehicle & equipment	15	Depreciated Historic Cost
Infrastructure (ie Bridges etc)	118	Depreciated Historic Cost
Assets Under Construction	22	Depreciated Historic Cost
Surplus Assets	10	Fair Value
Community Assets	10	Depreciated Historic Cost
Total	1,307	

2.10 From the £1.3bn asset valuation, it was identified that the property portfolio could deliver £400-£600m of capital receipts. In coming to this target, an optimistic approach was taken, both to what could be achieved by way of development on each asset, as well as the strength of market and economic conditions at the time and the expectation that the market would remain stable and prices would possibly continue to increase.

2.11 It is possible that due to turnover of staff within the organisation during the time of the external review that the correct analysis of the then total property costs were not accurate, which may have been a contributing factor to the current situation.

2.12 The Property disposal programme was then split into to two phases. Phase I contained assets that Cabinet provided authority to launch to market having been declared 'surplus'. The Second phase being assets that required further due diligence before they could be declared surplus.

2.13 These were generally assets that have been held for 'financial' reasons (i.e. 'Investment' assets whose aim is to generate revenue returns) or assets that have been held for 'development' reasons (e.g. to support regeneration objectives and/or increase housing numbers). These assets are spread across both the General Fund and Housing Revenue Account.

2.14 Disposals to date achieved within Phase I as at 31st July 2024 created a net benefit to the General Fund of £175m. (Appendix A). There is additional value to still be realised through assets that are currently within the disposals process for this financial year.

2.15 The remaining investment assets have been retained due to the impairment values being larger than the capital receipt that would be generated from disposal and would cause a financial detriment to the council.

Internal Review of Property Assets

2.16 Historically the council had relied on Net Book Value (NBV) as a guide to the value of an asset. The NBV is the recording of the value of an asset on a company's accounting record and takes in to account original purchase price and expectation of market movement. Given that most book valuations were out of date or inconsistent in implementing the disposal strategy AY's valuations were utilised.

2.17 In determining the NBVs, the council provided asset specific information to the valuer, which at times was inaccurate or not available. As a result, as part of the due diligence process in the disposal of an asset, the weighting of the NBV should only form part of the assessment and not wholly be relied upon.

2.18 To support recommendations for disposals as part of the assessment toolkit going forward "Red Book "valuations will be used, alongside the AADF (Asset Appraisal and Disposal Framework) model, internal assessment and NBV. .

2.19 Officers from Property and Finance have reviewed each asset and produced an expected capital receipt using their expertise of the estate and a methodology consisting of a review of local and recent sales comparables and/or by way of capitalisation of the commercial rental income.

2.20 Officers have then allocated a RAG rating against each asset that was based on the Assets operational status, known service need, constraints on site, or the requirement to review as part of the planned wider estates strategy.

2.21 The assessment of the assets also included the Councils prudential borrowing, outstanding balance, income and revenue income/ expenditure. The assessment at this time does not include future Planned Programme Maintenance assessments as this area of activity has not been undertaken since the issuing of the Section 114 notice.

2.22 A RAG rating for each asset was assigned based on current use, be that operational, community or income producing and any borrowing or other metric that impacts against the asset value,

- **Red:**

Property Assessment:

- Consists of Investment Assets, operational buildings, community leased buildings, and sites that have technical constraints. These sites would not be able to be sold within the next 12 months and will be reviewed in line with the Target Operating Model, the implementation of the Corporate Landlord function and future Community Asset Transfer strategy, to assess the ability and suitability to move to Amber or Green.

Finance:

- The asset is carrying an outstanding balance higher than could be achieve by sale and/or the income generated over the residual life of the asset, resulting negatively financially and would not be in the interest of the council to dispose.

- **Amber:**

Property Assessment:

- Assets that are in the pipeline and have the ability to be put on the market within the next 12 months. These Assets currently have technical constraints and/or are occupied but with a plan in place to enable disposals.

Finance:

- Assets that could be disposed of subject to a further review of the likely capital receipt and on the basis that the achievable receipt delivers best value to the council.

- **Green:**

Property Assessment:

- Assets that are either currently on the market for disposal or have the ability to be put on the market within the next 6 months.

Finance:

- Sites that could be disposed of and have no negative impact on the council's financial position.

2.23 For the council to have a high level of confidence of the internal assessment, an audit needs to be undertaken by a third party, to assess and agree/challenge the assumptions used.

2.24 By carrying out the audit and establishing an agreed position, work can be undertaken to assess and release further assets for disposal.

2.25 Establishing the number and value (£) of assets that could potentially be sold is a key element in setting the financial target for the programme. However, it is not the only consideration, the Council also has to consider other factors such as the delivery of statutory services and ensuring accessibility of services to residents.

Implications of the Recommendation

3. Financial implications

3.1 In September 2021 the Council agreed a Debt Repayment Strategy, recognising it was holding unaffordable level of debt, which was predicated on an orderly programme of asset disposals which could be used "firstly to finance any Capitalisation Directions that may be received from the Government and secondly to repay existing external debt." The aim of this course of action was to reduce both interest costs and Minimum Revenue Provision (MRP) charged to revenue budgets.

3.2 The objective of the strategy was to realise £200m of disposal by March 2024, with further disposals of between £200m and £400m by end of March 2027. A total of some £400m of disposals has been assumed in the Treasury Management and Medium-Term Financial Strategies up-to and including the 2024/25 Budget.

3.3 3.1.3 Net General Fund disposals (i.e. after cost of sales) to date since 2022 total £175million. The assumption has been that, in accordance with the principles set out in the Debt Reduction Strategy that those receipts would be utilised primarily to finance the Capitalisation Directions (for which our current assumption is £298.6m to end of March 2024). The position is being reviewed in the context of assets being disposed of for which debt was still outstanding. It should be noted that the financing of capitalisation directions from capital receipts is financially advantageous in the medium term than financing of debt on fixed assets because MRP is spread over a much shorter period.

3.4 Officers have been conducting a detailed evaluation of the future programme as set out in paragraphs 2.15 to 2.21 above. In addition a review of a number of investment assets, which were assumed in the disposals programme - if disposed of at this juncture would render significantly higher impairment costs than is likely to be achieved in the current market. That would mean a significant net cost to the Council's Income and Expenditure Account. The Council continues to face a very significant financial challenge and so continuing with their sale would not be practicable.

3.5 Completion of the review is essential in order that the Treasury Management Strategy (TMS) and Medium-Term Financial Strategy (MTFS) can be refreshed with a realistic programme of asset disposals. It is anticipated that the TMS will be refreshed by the end of September and the MTFS by November 2024. Changes to the deliverability of the programme impact upon the Council's cashflow assumptions, the trajectory of debt reduction and consequential revenue implications arising from the cost of financing that debt (both interest and MRP), plus any net operational costs.

3.6 **Legal implications**

3.7 The Council has duties in relation to securing best consideration and achieving best value in delivery of its services. This includes ensuring the members are presented with all relevant information to inform decision-making, including background and historic information on acquisitions. There should be an opportunity to identify any lessons to be learned in relation to historic decisions, including the quality of information to inform the decision, the risk analysis and options appraisal and the availability of specialist advice.

3.8 When making decisions on operational assets, the Council must first review the services and identify alternatives to service delivery to determine whether the asset is surplus to requirements. This will require consideration of alternative options for a particular asset, as well as alternative options for delivery without reliance on buildings or use of alternative buildings. These decisions may need to be informed by public consultation.

3.9 To enable any future sale of assets, having first declared that the assets are surplus to requirements, the Council has a statutory duty under section 123 of the Local Government Act 1972 to obtain the best consideration reasonably obtainable. It is for the authority to demonstrate that it has achieved best consideration; if best consideration is not obtained, Secretary of State approval is required, although there are some general consents that can be relied upon, including where the disposal will contribute to the social, economic or environment wellbeing in its area and the under-value is below £2m. Decisions to dispose of assets which are below best consideration, unless required to fulfil a statutory obligation, are reserved to Cabinet. Decisions to dispose of any asset at £1m or more are also reserved to Cabinet.

3.10 Certain assets have specific constraints or usage which restricts the Council's options or requires a specific process to inform any decision. For instance land may be held in trust, be classed as open space, be held in the HRA or be deemed education land. It is important to ensure a site constraints report is prepared taking account of current usage, land records and historic decision-making.

3.3 Risk management implications

3.3.1 The table below sets out the key risks:

Risk	Summary	Mitigations
Market / Economy	Challenging market conditions having an impact on the values that can be achieved	Continue to receive and react to market intelligence. Review all assets periodically to assess valuation changes
Abortive Sales	Sales aborted where the best market offer could not be supported by the organisation	Ensure confidence and strategy in place to take assets to the market at the right time and to target the right bidders
Programme Target	The current financial target is unachievable	Re-establishing a realistic target and continual monitoring of what can be achieved
Skills / Capability	Programme outcomes limited by the capacity and capability of resources	Restructure of property department and assessment of workforce and skills that will be required

3.4 Environmental implications

3.11 Re-shaping and re-purposing the Operational portfolio provides opportunities to improve the environmental performance of the retained estate.

3.5 Equality implications

3.12 The Council has a duty contained in section 149 of the Equality Act to have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The protected characteristics are:

- age
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

3.13 The broad purpose of this duty is to integrate considerations of equality into day-to-day business and to keep them under review in decision making, the design of policies and the delivery of services. When considering the use of operational assets and potential community assets, the Council should consider the current or potential users of the service and whether individuals with a particular protected characteristic are more likely to be impacted.

3.14 *Workforce implications*

3.15 A reshaping of the operational portfolio will have some impact on SBC staff. It could change their work location and/or their working patterns. The full impact of this cannot yet be assessed.

3.16 *Property implications*

3.17 The Estate Strategy and Asset Disposal Programme are key to establishing the future size, nature and management arrangements for the future retained property portfolio.

4. Background Papers

Asset Disposal Strategy - Cabinet June 2021
Debt Repayment / Asset Disposal Strategy - Cabinet - September 2021
Asset Disposal Strategy Cabinet October 2022

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Phase I - GF Sold Asset Schedule as of 31/07/2024

Asset Name	Asset Type	Actual Completion	Capital Receipts Actual (Net) (£)	Disposal Route
21 Roydsdale Way Euroway Bradford	Investment	15/11/2022	£14,460,977.65	Informal tender
Akzo Nobel GF	Development	24/11/2022	£101,741,815.11	Informal tender
Odeon, Churchill Way West, Basingstoke	Investment	25/11/2022	£3,543,441.48	Informal tender
Wickes Wolverhampton	Investment	09/12/2022	£6,754,047.24	Informal tender
129 Stoke Road, Gosport, Hampshire	Investment	16/12/2022	£1,670,844.19	Informal tender
SUR - North West Quadrant site (former Thames Valley Uni) P1	Development	17/03/2023	£22,218,780.95	SUR
3 Bath Road (Buzz Bingo)	Development	05/06/2023	£4,975,845.11	Informal tender
233 - 249 High Street (Wilkos)	Retail	05/07/2023	£2,832,368.87	Informal tender
380 Bath Road	Development/Investment	04/05/2023	£4,046,262.82	Informal tender
SUR - Montem	Development	03/08/2023	£6,411,606.98	SUR
3/5 Mackenzie St	Retail	10/08/2023	£443,787.08	Auction
7 Mackenzie St	Retail	11/08/2023	£350,807.46	Auction
314 High Street	Retail	11/08/2023	£236,186.64	Auction
17 Trelawney Avenue Ind Court	Industrial	06/09/2023	£561,655.17	Auction
4 Ragstone - school house	Residential	29/08/2023	£349,846.87	Auction
100a Wexham Road	Industrial	31/08/2023	£422,903.50	Auction
150 - 160 Bath Road	Development	04/10/2023	£924,761.12	Informal tender
22- 26 Windsor Road	Development	10/10/2023	£904,761.91	Informal tender
26 Wexham Business Village	Industrial	02/11/2023	£412,488.82	Auction
Serena Hall	Development	02/11/2023	£863,747.41	Informal tender
27-28 Wexham Business Village	Industrial	30/11/2023	£539,626.12	Informal tender
10-12 Wheelwrights	Mixed	28/03/2024	£418,275.00	Auction
		TOTAL :	**£175,084,837**	

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