

Date of issue: Friday 12th May 2023

MEETING:	URGENCY PROCEDURE - EXECUTIVE FUNCTIONS Stephen Brown Chief Executive
DATE AND TIME:	FRIDAY, 12TH MAY, 2023 AT 4.00 PM
VENUE:	VIRTUAL DECISION
DEMOCRATIC SERVICES OFFICER: (for all enquiries)	NICHOLAS PONTONE 01753 875120

Decision to be taken under Urgency provisions – Executive functions in Part 3.6 of the Council's Constitution:

“Subject to consultation with the Leader of the Council (or in his/her absence the Deputy Leader) where possible, the Chief Executive (and his or her appointed deputy in the case of absence) shall have the power to exercise executive functions in cases of emergency or urgency.

- *When deciding whether a matter is an emergency or urgent, consideration should be given to the following:*
- *whether it is prejudicial to the Council's interest to delay*
- *whether it is practicable to call an emergency member meeting or use the Leader's Action process*
- *whether it is appropriate to refer the matter to a member meeting following the action.”*

<u>AGENDA</u> <u>ITEM</u>	<u>REPORT TITLE</u>	<u>PAGE</u>	<u>WARD</u>
1.	Declarations of Interest	-	-
2.	Disposal of 233-249 High Street, Slough	1 - 26	Slough Central

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Slough Borough Council

Report To:	Chief Executive – Urgent Procedures
Date:	12 th May 2023
Subject:	Disposal of 233-249 High Street, Slough
Portfolio:	Financial Oversight & Council Assets
Chief Officer:	Pat Hayes - Executive Director Property, Planning & Housing
Contact Officer:	Mark Halligan, Property Director
Ward(s):	Central
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:	No. The Chair of the Overview & Scrutiny Committee has agreed that call-in can be waived on the grounds of urgency.
Appendices:	Confidential Appendices: 1 – Avison Young – Asset Disposal Recommendation Report

1. Summary and Recommendations

- 1.1 This report relates to a building which has been marketed and seeks approval for disposal under the Council's Asset Disposal Strategy. The approval being sought is time critical and so, to protect the Council's commercial interests, the 'urgency' procedures are being applied and the call in provisions waived.
- 1.2 The proposed Asset sale has been subject to a due diligence process and reflects best consideration reasonably obtainable for the disposal of the assets 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).
- 1.3 The decision is to be taken by the Chief Executive under Urgency Provisions for Executive Functions as at Part 3.6 of the Council's Constitution.

Recommendations:

1.3 The Chief Executive is recommended to:

- a) Agree to the Council sale of 233 – 249 High Street, Slough with the bidder named in Appendix 1 – Heads of Terms;
- b) Delegate authority to the Executive Director of Property, Planning 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 any associated documentation in connection with the disposal consistent with the disposal report and Heads of Terms appended at Confidential Appendix 1.

Reason:

1.4 The disposal of 233 – 249 High Street Slough is in accordance with the Council's Asset Disposals Strategy, in that it has previously been agreed as 'surplus' and identified for disposal. 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 due diligence process and reflects best consideration reasonably obtainable for the disposal of the assets in accordance with section 123 of the Local Government Act 1972.

1.5 The disposal of such assets supports the priority of the new Corporate Plan for "a Council that lives within its means, balances the budget and delivers best value for taxpayers and service users."

1.6 The disposal of such assets will enable the Council to simplify the property portfolio and enable the Council to focus on its core activities and services.

Commissioner Review

The recommendations are supported. Disposal of this site is essential as part of the journey back to financial stability.

2. Report

Introduction

2.1 The disposal of such assets supports the priority of the new Corporate Plan for "a Council that lives within its means, balances the budget and delivers best value for taxpayers and service users." This enables the Council to simplify the property portfolio and focus on its core activities and services.

2.2 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 2023/24 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.
- 2.3 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
- 2.4 Given the thorough open marketing exercise (described in the appendix) and the level of the recommended bid (in line with the ‘book’ value and in excess of the Avison Young pre-marketing assessment) a further valuation was not deemed necessary. This would have added unnecessary cost and time to this disposal case.

Options considered

- 2.5 Option A – To retain 233 – 249 High Street, Slough. Whilst this would retain an income stream, the costs of servicing the Council debt outweigh the income generated. **This is not recommended.**
- 2.6 Option B – To dispose of the asset by way of freehold disposal to an investment purchaser.
- 2.7 **Option B is recommended** to Cabinet for approval for the reasons given in the confidential Appendix 1. Sale to an investment purchaser should allow the Council to receive a capital receipt in July 2023, which will allow it to reduce its borrowing and contribute to its capital receipts target.

Background

- 2.8 The Council acquired 233 – 249 High Street, Slough in 2019 as part of the then Council strategy to acquire assets within the Council’s boundaries.

The Asset

- 2.9 The site is located on High Street in Slough Town Centre. The property fronts directly onto the High Street adjacent to the Observatory Shopping Centre. The property totals 44,990 sq ft over ground, first, and second floor with no car parking and is currently let to Wilko Retail Limited (Wilko). The lease has an unexpired term of approx. 6 years. Notwithstanding this, the site was identified for disposal as it is not required for service delivery, subject to ensuring that the best consideration requirements were met.

Valuation

- 2.10 The site was purchased in 2019 as an investment purchase in accordance with the Council's strategic acquisitions strategy. The purchase price was £3.775m
- 2.11 The asset is held 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 (ie. this method of valuation includes considering alternative uses for the asset as well as its current use).
- 2.12 Avison Young have provided professional advice on the market conditions and recommended disposal to the bidder named in Appendix 1 for the reasons contained in that appendix.

Marketing

- 2.13 The asset was marketed with the benefit of a legal pack that included existing tenancy information, title information, EPC and planning documentation. The Property was formally launched to the market on Thursday 15th March 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.
- 2.14 Also on the 5th March 2023, Avison Young (AY) sent out a marketing mailshot detailing the opportunity to approximately 1000 investor contacts. The mailshot included a link to a bespoke marketing brochure. The brochure was circulated to around 81 parties upon request, from a mix agents and buyers direct. The potential buyers ranged from mainly local private individuals to small family offices, and some owner occupiers, such as Sports Direct. 2.4 AY also posted the property on Propex and their LinkedIn page to increase traction and market exposure/penetration.
- 2.15 AY arranged for a couple of parties to carry out a formal inspection of the property. However, most of the parties inspected the property as customers therefore no formal inspection had to be arranged at the initial stage.

Bids Received

- 2.16 9 unconditional bids during the first round of bids given the number of bids received from reliable parties and 6 parties being at quote or above AY's quoting price. As expected, offers were received from a range of bidding parties comprising property companies, private individuals, family offices, and an owner occupier.
- 2.17 During the best and final round of bids, 4 parties raised their initial bids.
- 2.18 The preferred bidder is buying the property as an investment with the benefit of the current lease.

Summary of Proposed Terms

2.19 Heads of Terms have been agreed as set out in Confidential Appendix 1. The Heads of Terms anticipate exchange within 6 weeks of receipt of the legal pack and completion will take place 2 weeks after exchange of contracts.

3. Implications of the Recommendation

3.1 Financial Implications

3.1.1 The current passing rent for the site being sold is £259,608 per annum. This has been allowed for in the Council's 2023/24 commercial rent income budget.

3.1.2 The disposal of this property has revenue implications in terms of loss of rent, but 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.

3.1.3 Details on the amount of the disposal proceeds are set out in the confidential appendix.

3.2 *Legal implications*

3.2.1 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. When considering the duty under section 123 LGA 1972, what is reasonable in any particular case depends entirely on the facts of the transaction.

3.2.2 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.

3.2.3 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. It has advised that the bid represents the best consideration reasonably obtainable based on the short timescale in which the receipt will be received and risks with other bids in relation to timescale and changing market conditions.

3.2.4 A report on title was not commissioned. As legal due diligence has not been carried out for this asset, it is unclear whether there are any impediments to the disposal of the asset.

3.3

Risk management implications

3.3.1 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 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 the assets will delay the Council’s financial recovery.	Cabinet to approve officers to proceed with the sale.
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	<p>Failure to ensure legal title/deeds etc which could delay or halt sale.</p> <p>Delay to contract negotiations.</p> <p>Failure to establish that the buyer is a reputable business and that the buyer’s funds are from acceptable sources.</p>	<p>Legal title reports usually obtained. Please see comments at 3.2.4.</p> <p>Regular meetings between officers.</p> <p>Due diligence on buyer to assess their business and funding, including anti-money laundering checks.</p>
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/programme management and decision making operate effectively to deliver asset disposals on time and best consideration for the Council.
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3.4 *Environmental implications*

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

3.5 *Equality implications*

3.5.1 The asset is not used for operational or service delivery. 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.

3.6 *Procurement implications*

3.6.1 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.

3.7 *Workforce implications*

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

3.8 *Property implications*

3.8.1 This report will directly impact on the Council's property holdings however it meets the Council's objective to reduce borrowing and the Council's MRP.

4. **Background Papers**

None

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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