

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet

DATE: 20 June, 2022

SUBJECT: Improvement & Recovery – Asset disposals programme

CHIEF OFFICER: Richard West

CONTACT OFFICER: Fin Garvey

WARD(S): All

PORTFOLIO: Financial Oversight & Council Assets - Cllr Rob Anderson

KEY DECISION: NO

EXEMPT: NO

DECISION SUBJECT TO CALL IN: YES

APPENDICES: None

1. Summary and Recommendations

- 1.1. The Corporate Plan (Improvement and Recovery Plan) describes the current financial crisis of the Council and those fundamental changes immediately required that will allow it to ensure financial sustainability in the near future.
- 1.2. A key element in the Council's financial recovery is the disposal of property assets. This report describes the next critical steps in the advancement of the Asset Disposal Programme.

Recommendations:

Cabinet is recommended to agree to:

- a) A report to full Council recommending amendments to Part 3.5 - Responsibility for Executive Functions and Part 4.4 Executive Procedure Rules of the Constitution to require decisions on disposal of an asset via a lease at less than best consideration to be a reserved function of Cabinet and to set up a new cabinet committee to oversee the asset disposal programme.
- b) The *Cabinet Committee – Asset Disposal Programme* will provide Cabinet with a regular progress report on the disposals programme (standing agenda item) including recommendations for disposal for those assets that are deemed key decisions.

Cabinet is recommended to note:-

- a) The process being followed in the consideration of asset disposals.
- b) The decision to market the assets located out of the borough of Slough.

Reason:

- 1.3. Timely proceeds from the sale of Council assets are fundamental to the fiscal recovery of the Council and providing long term financial stability.

Commissioner Review

“Asset disposal is a fundamental component of the Improvement and Recovery Plan. This process will need to be managed at pace to avoid adverse financial consequences.”

2. Report

Introduction and Context

- 2.1. The proposals within this report update Cabinet on new governance structures which establish an effective, robust and transparent assets disposals programme to ensure the Council maximises value from disposal of its assets and follows due process. It is expected that a report will be taken to full Council in July on the new cabinet committee following consideration of the changes by the Member Working Panel on the Constitution.
- 2.2. The Council’s financial position is unsustainable. The Council has developed a significant asset portfolio, both within and outside the Borough, which has been financed by debt. A phased asset disposal programme could realise capital receipts in the region of £600m over the next five years to finance Capitalisation Directions, repay external loans and reduce borrowing to sustainable levels by 1 April 2027.

Governance

- 2.3. The effective delivery and governance of the Asset Disposal Programme will also require the Council to put in place additional measures which will enable the Council to deliver these capital receipts in a timely manner with effective oversight. It is proposed that the formal governance structures of the Council are amended in two ways to ensure elected members have proper oversight:
 - (1) The constitution be amended to set up a Cabinet Committee focused specifically on the Asset Disposals Programme to allow a more focused review and debate on specific proposals and to make recommendations to Cabinet.
 - (2) For decisions to enter into a lease for land at less than best consideration to be a reserved function of Cabinet, with the exception of land which is being disposed of in accordance with a statutory obligation, for example HRA residential properties disposed of under the Right to Buy or leases to academies as part of an academy conversion
- 2.4. The responsibility for executive functions confirms that Cabinet will make certain more strategic decisions unless these are specifically delegated to an officer on a case-by-case basis. This includes disposal, acquisition and/or appropriation of property for rationalisation of the Council property portfolio or for the facilitation of development initiatives outside of agreed disposal or acquisition policies and making key decisions as defined by Article 13. A key decision is defined as:

an Executive decision which:

- (a) is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates,
or
- (b) is likely to be significant in terms of its effects on communities living or working in an area of two or more wards of the Borough.

2.5. At Cabinet on 21 June 2021, members took the following decisions in relation to property assets held in the General Fund:

- Delegate authority to the Executive Director of Place in consultation with the appropriate lead member, after consultation with the S151 and Monitoring Officer to dispose of assets up to a value of £1m (exclusive of any applicable VAT) subject to proper legal and valuation advice.
- All asset disposals above £1m will be presented to Cabinet under separate report(s), for approval.

2.6. Cabinet should therefore take decisions to dispose of all assets over £1 million as well as any assets where the disposal is deemed to be significant in terms of its effect on communities living or working in an area of two or more wards. Officers will consult with ward members, as well as relevant lead members, to understand the importance of a particular asset to the local community to inform whether an officer should take a decision under delegated authority or not.

2.7. To ensure further oversight, it is proposed to set up a cabinet committee to receive update reports on officer delegations and to review proposals and make recommendations to Cabinet. This committee will be able to take decisions on disposals that are not deemed to fall into the category of a key decision but are deemed to be one that requires a decision at member level.

Options considered

A) To retain the delegated authority agreed at Cabinet on 21 June 2021.

B) To retain the delegated authority agreed at Cabinet on 21 June 2021, namely, but have an additional oversight by setting up a cabinet committee. In addition it is recommended that Cabinet takes decisions to dispose of any asset under a lease where this is at less than best consideration, with the exception of disposals that are required to fulfil a statutory obligation.

2.8. Option B is recommended, and the relevant parts of the Constitution will be amended and presented to full Council for a decision at its July meeting. The Leader will appoint members to this committee.

Asset Disposals Working Group

2.9. An Asset Disposals Working Group has been established to exercise additional oversight of the disposal programme, ensuring that sufficient evidence of how best consideration will be obtained is produced and to ensure that disposal targets are on track to be achieved.

- 2.10. The group will review all lease renewals, rent reviews and all proposed disposals, and will make recommendations. It has established pro-forma templates for the presentation of information evidence “packs” for consideration.
- 2.11. The group will review property assets identified as surplus and may recommend assets to be marketed for sale in advance of the Disposal Strategy approval.
- 2.12. All disposal decisions will be either under delegated authority to the Executive Director of Place or by elected members. All decisions taken under delegated authority will be reported to the Cabinet Committee and/or Cabinet.
- 2.13. The Asset Disposals Working Group has set up a group mailbox (AssetDisposalsTeam@slough.gov.uk) to list and manage all expressions of interest on specific sites.
- 2.14. The working group will provide regular update reports to both the Finance Board and the Improvement and Recovery Board for the purposes of oversight. These boards, together with the working group, are corporate groups to ensure that there is proper debate and consultation of assets. The working group is currently chaired by the Lead Commissioner; however, it is envisaged that this will change once additional officer resource is brought in at a senior level. None of these groups are decision-making and therefore all decisions will be made by the Executive Director of Place or by elected members.
- 2.15. Officers with the assistance of the Strategic Property Advisor, Avison & Young, will prepare regular updates for Cabinet summarising progress made to date on asset disposals together with details of recent completions, sites under offer and current marketing activities and proposed disposals for approval.

Asset disposal processes

- 2.16. The Council is required to obtain best consideration for each disposal, the June 2021 Cabinet report set out the following process for the disposal of General Fund land.
 - 1) Identify Assets for Disposal
 - 2) Legal – Report on Title
 - 3) Asset Valuation
 - 4) Methods of Disposal
 - 5) Officer Delegation/Member Approval
- 2.17. Where assets are currently being used for delivery of services in accordance with statutory duties, the Council will undertake a service review and where required take a decision on changes to the service prior to making any decision to dispose of the asset.
- 2.18. It is further incumbent on the Council to retain sufficient evidence to demonstrate how best consideration demonstrate has been achieved. Such evidence may include:
 - Report into the title of the asset and any legal site constraints.
 - An independent valuation report confirming what the best consideration reasonably obtainable is for the site taking account of the legal site constraints report. The valuation should be an unrestricted valuation as required by the Technical Appendix to Circular 06/2003.

- An option appraisal, to confirm which marketing and disposal strategy is likely to yield best results by correctly targeted marketing to identify and inform all potential buyers.
- 2.19. Marketing and negotiations with potential purchasers should not be entered into until the outcome of the legal due diligence is known and unsolicited offers from prospective purchasers should not be accepted without the above process having been fully undertaken and sufficient evidence obtained.
- 2.20. All disposal decisions should also consider the wider financial implications to the Council before proceeding with a transaction. e.g. revenues receivable, associated costs and borrowing costs.
- 2.21. To ensure that the Council's asset disposal processes meet these key requirements, the following will be completed, carried out and take place respectively:
- Deeds and documents - all property records are indexed, accurate and up to date, to expedite future asset disposals.
- 2.22. The evidence to support the disposal decision will differ per site and be dependent on the legal status of the land, however this evidence should be sufficient to show that due process has been followed and that the Council has achieved best consideration for the asset.

Strategic Property Advisor

- 2.23. On 20 September 2021, Cabinet agreed that the Council should seek external support from organisations with a successful track record in developing and implementing asset disposal strategies across a range of asset types, values and geography. The Council does not have the capacity or the required experience to oversee a large-scale asset disposal programme of this nature.
- 2.24. A business case for securing external support was approved by the Procurement Board on 7 October 2021 and the Homes England Framework was selected as representing the most appropriate procurement route. This Framework lists 19 suppliers who have already been vetted in terms of:
- Technical competency
 - Previous experience of working with local government, and
 - Capacity to successfully manage complex, high-profile disposal projects.
- 2.25. Following expressions of interest from five suppliers, an Invitation to Tender was issued and a Procurement Evaluation Team was established to evaluate formal tenders once received.
- 2.26. A selection of preferred candidate was made on 21 February 2022 and further to a standstill period, Avison & Young were confirmed as the Strategic Property Advisor.
- 2.27. The Avison & Young appointment has been commissioned in two phases.

Phase I - to prepare, for approval, a Disposal Strategy that will consider all Council property assets. Note the Disposal Strategy is planned to be complete by the end of June 2022.

Phase II – Implement the sale of assets as instructed by the Executive Director for Place & Community on consideration of recommendations from the Asset Disposals Working Group.

- 2.28. Avison Young have commenced work on the Phase I strategic review of our total asset portfolio which will inform the Council in organising, categorising and structuring a suitable and considered disposals programme. This will result in a substantial number of assets being brought forward for approval to dispose. Each proposed disposal will be robustly scrutinised to ensure that Best Consideration relevant to the circumstances of each case is achieved and that the Council's wider financial implications are considered.
- 2.29. In order to realise capital receipts of at least £100m in the current financial year, a short-list of 'Assets Held for Sale' is being identified to be in the first wave of this programme. This list includes the four Out-of-Borough assets and a number of more recently acquired assets which have now been instructed for legal due diligence and progressing to market. Other assets will be identified as part of the Disposals Strategy and additional reports.

Out of Borough and other Assets

- 2.30. Following an initial consideration to reduce the Council's capital debt, a review of the 4 Council owned Out of Borough Assets has been carried out by Avison Young.
- 2.31. On the 25 April, Avison & Young were instructed by the Executive Director of Place to bring forward the marketing of the 4 Out of Borough Assets.
- 2.32. It is also expected that other sites that have had a number of enquiries, may be brought forward for marketing in the short term.
- 2.33. It is recognised that some sites that have a community value will need to be considered for disposal. This includes sites where there are rent arrears and where action needs to be taken to recover the property from the current occupants. One particular site is Windmill Road occupied by a voluntary sector body. The Council will consider its equality duties when making decisions and where the disposal of the asset is deemed to be significant in terms of its impact on more than one ward, the decision on disposal is reserved to elected members.
- 2.34. Some assets can be classified as assets of community value. These are buildings or land where the main use has recently been or is presently used to further social wellbeing or social interests of the local community and could do so in the future. Social interests include cultural, recreational and sporting interests. The Council maintains a list of assets of community value, which can include assets in the ownership of the Council or third parties. Community or voluntary groups can nominate an asset to be included in the list by completing an application form which is available on the Council's website.

Assets held for Sale

- 2.35. Further to analysis carried out by Avison & Young, a shortlist of assets which are ready for disposal in the current financial year is being compiled.
- 2.36. The criteria for classifying an Asset as Held for Sale are set out in paragraphs 4.9.2.12-14 of the Code of Practice on Local Authority Accounting in the United Kingdom. These are:

- 1) The carrying amount will be recovered principally through a sale transaction rather than through continued use;
- 2) The asset (or disposal group) must be available for immediate sale in its present condition subject only to terms that are usual and customary for sales of such assets (or disposal groups)
- 3) The sale must be highly probable which means:
 - i. the appropriate level of management must be committed to a plan to sell the asset (or disposal group),
 - ii. an active programme to locate a buyer and complete the plan must have been initiated
 - iii. the asset (or disposal group) must be actively marketed for sale at a price that is reasonable in relation to its current fair value
 - iv. the sale should be expected to qualify for recognition as a completed sale within one year from the date of classification, except as permitted by paragraph 9 of IFRS 5, and actions required to complete the plan should indicate that it is unlikely that significant changes to the plan will be made or that the plan will be withdrawn

Office Accommodation

- 2.37. A key asset category requiring substantial analysis internally is the Council's requirement for office accommodation. Work has commenced on developing a specification of office space which will overlay current space requirements with future service reviews to determine actual need. This will inform business cases on current assets including Observatory House and St. Martin's Place. These business cases will also be informed by reports prepared by Avison Young on these assets.

SUR

- 2.38. Following an Options Review undertaken at the end of 2021, significant progress has been made on the disposal strategy for a number of key sites including Montem, Stoke Wharf and NWQ. All of these sites are subject to an Options Agreement between the Council and SUR. An update report will be provided in July 2020 which will set out the Council's revised strategy for each site, key decisions required, critical milestones in FY 22/23 and the financial and legal implications to the Council.

3. Implications of the Recommendation

3.1. Financial implications

- 3.1.1. Fees paid to external consultants (Avison Young) have already been competitively set through the procurement process. The fees associated with the delivery of the first phase of work are fixed and will be paid on the satisfactory completion of this work. Fees associated with the disposals themselves will be paid on completion and will be deducted at source from disposal proceeds obtained.
- 3.1.2. The financial implications of each asset disposal will be considered on a case by case basis. This will consider capital receipts in addition to the impact on the Council's revenues, costs and borrowing costs.

3.2. Legal implications

- 3.2.1. Local authorities hold land and buildings on behalf of their local communities. In that sense they can be seen as akin to trustees in relation to such land. For this reason, local authorities are under a duty to sell land at the best price reasonably obtainable. Section 123 of the Local Government Act 1972 states that a local authority cannot dispose of its land for a consideration less than the best that can be reasonably obtainable in the market, except with the consent of the Secretary of State. A disposal includes sale of the freehold, granting a lease of 7 years or more, assigning an unexpired term of a lease and granting an easement. Case law has determined that entering into an option to purchase the freehold or a lease is also a disposal and removal of a restrictive covenant may constitute a disposal.
- 3.2.2. There are further procedural requirements to be complied with for specific types of land. For instance if land is deemed to be open space, the Council must advertise its intention to dispose in a local newspaper and consider any objections received. For this reason, it is critical that the Council has a legal report on title and site constraints before considering its disposal strategy for a specific site. This report must be considered by the independent valuers when determining the valuation of the site.
- 3.2.3. In determining best consideration, the only consideration that can be taken into account is that which has commercial or monetary value to the Council. The following are examples of considerations that cannot be taken into account:
 - 3.2.3.1. An undertaking to create a number of jobs for people in the area or the desire to retain a particular use that would create jobs for the area
 - 3.2.3.2. The desirability of the proposed use of the land for a specific purpose
- 3.2.4. In recognition of the fact that there are certain circumstances when land will be disposed of at an under value, the Secretary of State has issued a number of general consents. However, as the Council is in a very difficult financial situation, consideration would need to be given to the reasons for such a disposal, as it could be legally challenged on rationality grounds. For this reason, all decisions to enter into leases of land at less than best consideration will be reserved to cabinet in the future, unless the disposal is to fulfil a statutory obligation, for instance to comply with the right to buy or to dispose of education land as part of an academy conversion.
- 3.2.5. The Council holds some of its land within its Housing Revenue Account. Section 32 of the Housing Act 1985 provides a power for local authorities to dispose of land held for housing purposes. Disposals cannot be made without consent of the Secretary of State, although there are a number of general consents that can be relied upon. Section 105 of the Housing Act 1985 confirms that local authorities, in their capacity as landlord, shall maintain arrangements to enable those of its secure tenants who are likely to be substantially affected by a matter of housing management to be informed of proposals, to make their views known and for any representations to be considered prior to any decision being taken. Housing management is defined as a matter which relates to (a) the management, maintenance, improvement or demolition of dwelling-houses let by the authority or the provision of services or amenities in connection with such dwelling-houses.
- 3.2.6. The Localism Act 2011 sought to give communities more power to become involved in the way local services were being delivered through community asset

ownership. This introduced a right to bid for and buy local land that is considered to have a community value. If land is listed as an asset of community value, the community will be given the opportunity to develop a bid and raise capital to buy the land, before it can be disposed of. The Council has to maintain a list of assets of community value and must consider community nominations to include land on the list.

3.3. Risk management implications

- 3.3.1. No key risks have been identified as a direct result of this report, however:-
- failure to reduce external loan debt could compromise the Council's ability to produce a balanced revenue budget in future years,
 - failure to meet best value considerations will expose the Council to the risk of legal challenge, and
 - failure to establish robust governance arrangements will expose the Council to risk of impropriety.
- 3.3.2. Implementation of the processes outlined in this report should mitigate these risks and the Assets Disposal Group will play a key role in ensuring that processes are adhered to, activities are prioritised and performance against disposal receipts targets are monitored.

3.4. Environmental implications

- 3.4.1. No environmental implications have been identified as a direct result of this report. The workstreams resulting from this report and subject to future Cabinet reports will fully consider environmental implications.

3.5. Equality implications

- 3.5.1. The workstreams resulting from this report and subject to future Cabinet reports will fully consider equality implications for residents, communities, partners and stakeholders.

3.6. Procurement implications

- 3.6.1. Support from external support consultants were secured in compliance with:
- The Public Contracts Regulations 2015
 - Council procurement policies, 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. The workstreams resulting from this report and subject to future Cabinet reports will fully consider workforce implications.

3.8. Property implications

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

4. Background Papers

None