

Slough Borough Council

Report To:	Cabinet
Date:	17 October 2022
Subject:	Recommendations of the Cabinet Committee - Disposal of Council Asset at Montem Lane
Portfolio:	Councillor Anderson, Lead Member for Financial Oversight and Council Assets
Chief Officer:	Richard West, Executive Director Place and Community Steven Mair, Executive Director Finance and Commercial (s151)
Contact Officer:	Dean Tyler, Associate Director Strategy Carmel Booth, Financial Advisor
Ward(s):	All
Key Decision:	YES
Exempt:	Public with exempt appendices under paragraphs 3 and 5 of Schedule 12A to the Local Government Act 1972 Act (as amended), as the appendices contain information relating to the financial and business affairs of Slough Borough Council and Muse and Slough Urban Renewal LLP, and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
Decision Subject To Call In:	YES
Appendices:	Confidential Appendices 1 - Summary of the Commercial and Financial Implications 2 – Draft Formal Site Development Plan to be Adopted 3 - Haslam's Best and Final Offer Tender Review Report which also including appendices relating to: Haslam's Land Valuation Report, Haslam's Market Report, Haslam's First Round Tender Offer Summary and BAFO letters from final two bidders 4 - Heads of Terms

1. Summary and Recommendations

- 1.1 This report seeks approval for the disposal of land assets at Montem Lane which is one of a series of sites that are owned by the Council and opted to Slough Urban Renewal (SUR).
- 1.2 The proposed asset sale has been subject to option review and a due diligence process and reflects the best consideration reasonably obtainable for the disposal of the asset in accordance with section 123 of the Local Government Act 1972. The asset sale will generate a capital receipt which will be applied to reduce borrowing and the Council's Minimum Revenue Provision (MRP).

Recommendations:

- 1.3 The Cabinet is recommended to:
 - a) Agree to the disposal of the Montem Lane asset and to delegate authority to the Executive Director of Housing and Property, in consultation with the Lead Member for Financial Oversight and Council Assets and the Executive Director of Finance and Commercial, to enter into the sale contract and the related legal documentation in connection with the disposal in accordance with the Heads of Terms and Site Development Plan (SDP) appended at Appendix 4 and 2.
 - b) Approve the Draft Formal Site Development Plan for Montem Lane so that this document can be considered to be "Adopted" in accordance with the terms of the SUR Partnership Agreement (PA).

Reason

- 1.4 The early disposal of surplus assets is a key element of the Council's new Corporate Plan, which includes a strategic priority to be "a Council that lives within its means, balances the budget and delivers best value for taxpayers and service users." Agreement to the recommendations in this report will contribute to the reduction in the Council's future financial commitments/liabilities, generate disposal receipts at the earliest opportunity and reduce the Council's borrowing and MRP. The proposed asset sale has been subject to a due diligence process and reflects best consideration for the disposal of the asset in accordance with section 123 of the Local Government Act 1972.
- 1.5 The disposal of this asset will also enable the Council to simplify its property portfolio and enable the Council to focus on its core activities and services.
- 1.6 The site is subject to a lengthy option agreement therefore the Council's options to dispose of the site and are very limited. The utilisation of the On-Site Sale Mechanism within the SUR Partnership Agreement is considered to be the best option to realise early receipts and capitalise on market conditions.
- 1.7 On 18 July 2022, Cabinet agreed that the Council should pursue a disposal strategy via SUR, to generate receipts, reduce future financial commitments/liabilities and to best enable the delivery of a number of strategic objectives; including the delivery of new housing (including affordable housing). The recommendations in this paper are aligned with the disposal strategy previously approved by Cabinet.

Commissioner Review

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

2. Report

Introduction

- 2.1 On 21 June 2021, Cabinet approved the Asset Disposal Programme which outlined the principles and process for disposing of surplus General Fund land and property assets to reduce borrowing costs. The report highlighted that the Council would seek to dispose of surplus assets to support the following objectives:
- Provide capital receipts to contribute to the 2022/23 budget through reducing MRP and borrowing costs; and
 - Provide capital receipts to meet Capitalisation Directive commitments and align with the Medium-Term Financial Strategy (MTFS) to reduce overall borrowing costs.
- 2.2 The Asset Disposal Programme approved in June 2021 set out the following sequential steps for disposing of assets:
- Identify assets for disposal;
 - HB Public Law to produce detailed Reports on Title for each asset identified for disposal;
 - Asset valuation – obtain up to date independent valuations to provide a benchmark for assessing best consideration;
 - Methods of disposal - take advice on the most advantageous method of disposal; and
 - Officer Delegation – authorise the Executive Director (Place), subject to proper legal/valuation of advice to dispose of assets up to £1m in value after consultation with the S151 and Monitoring Officers.
- 2.3 As part of the Council’s budget setting process for 2022/23, the Council approved a Treasury Management Strategy (TMS) for the period 2022/23 to 2026/27 on 10 March 2022. A key element of the TMS is the need to reduce borrowing to bring the Council back onto a more sustainable financial footing.
- 2.4 The TMS includes a target to generate capital receipts from asset disposals of £50m in 2022/23 with an aspiration to realise £100m of receipts by 31st March 2023. This forms part of an overall target to generate between £400m and £600m by 31 March 2027 set out in the Debt Repayment Strategy.

Montem Context

- 2.5 In August 2021, the Council commissioned an Options Review to consider the options available to the Council with regards to the Council owned sites that are optioned to SUR. The contractual obligations and restrictions imposed on these assets means that whilst the principles of the Asset Disposal Programme steps above remain valid, the asset disposal approach and associated considerations are more complex.

2.6 The SUR Partnership Agreement sets out the mechanism for onward disposal of a site to a third party rather than the site being developed by the JV. This includes, for example, the mechanism to be used to agree the valuation of the Council's land before planning permission is secured plus the tender process and partners distributions that will apply following the successful sale of the site. Both partners share in the uplift in land value as a result of the Planning Difference / uplift in value that SUR achieves. The Site Development Plan sets out the mechanism and financial distributions.

2.7 In the context of the disposal of the Montem site:

- Montagu Evans were appointed to undertake the Options Review and recommend a preferred option for the Council (sale of site);
- Bevan Brittan has provided legal advice to the Council on the transaction, including advice on title and other legal documentation as set out in the Site Development Plan. Their advice has been overseen by HB Law and the SUR COB which includes representation from Treasury and HB Law;
- The SUR DM has managed the marketing, tendering and evaluation process in line with the On-Site Sale Mechanism, with instruction and oversight from both JV partners (the Council and Muse) throughout;
- Haslam's were appointed to provide valuation advice on the Council's land to determine the Market Value without Planning Permission (MVWPP). They have also acted as lead property advisor on the disposal and have produced a valuation report, marketing report and tender report (included in the Confidential Appendices).
- The PA sets out the disposal methodology which is in line with best practice – a competitive tender process with full transparency with both partners support the demonstration of best consideration; and
- As the value is over £1m, approval is sought from the Cabinet to dispose of the site. In addition, the SUR Board will also be asked to approve the disposal in line with the governance requirements as set out in the PA.

2.8 The Cabinet decision of 18 July 2022 resolved:

- That the updated Site Development Plan for Montem Lane which recommended a disposal strategy be agreed and that delegated authority be given to the Executive Director Place and Community in consultation with the Lead Member for Financial Oversight and Council Assets and the section 151 officer to pursue that disposal strategy (including the negotiation and agreement of all legal documents that give effect to the Sale) and to report back to Cabinet for approval of the [to be] Adopted Site Development Plan and the final agreed disposal terms, subject to the demonstration of best value consideration for the disposal: and
- That it be noted that those parts of the Montem site which belong to the Council were no longer required for the purposes for which they were presently held, and recommend to full Council that officers be authorised to take all necessary steps to appropriate the site (shown edged red on the plan in Appendix 5 to the original report) for planning purposes to facilitate the carrying out of development, re-development or improvement on or in relation to that land.

2.9 On 22 September 2022 Council resolved to appropriate the Montem site to planning under section 226 of the Town and Country Planning Act 1990 on the

grounds that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land, and the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the whole, or any part, of their area.

Montem Disposal

The Site

- 2.10 The total area under the Option was 6.46 ha and included two expansion zones, the Ice Arena, Montem Leisure Centre, Stabmonk Park and public open space. The planning red line area is 5.5 ha and excludes the Ice Arena and Montem Mound. The net usable area for development is 2.4 ha; the remainder will be released under the option and areas of open space that are due to be enhanced will continue under the Council's ownership and management.
- 2.11 Planning was granted in January 2021 and the S106 formal decision notice was issued in August 2022. The Judicial Review Period expired on 13 September 2022 without challenge. The consented scheme provides for 212 new homes and includes 20% affordable housing.

Marketing

- 2.12 A Draft Indicative Site Development Plan was approved by Cabinet in July 2022 which set out the disposal and marketing strategy. Haslam's were appointed to advise on the disposal including the preparation of a marketing document, oversight of the tender process and production of a tender report.
- 2.13 In line with the marketing strategy, sixteen potential purchasers were initially identified which was reduced to a shortlist of five following the consideration of a range of criteria. Formal marketing of the site commenced on 11 July and initial offers were sought from all parties by 18 August. Offers were sought on an unconditional basis in the region of £13,575,000. Best and final offers (BAFO) were submitted by 16 September and a preferred bidder has been identified following an evaluation of bids.
- 2.14 The marketing approach was designed to maximise the level of interest from purchasers locally, regionally and nationally with an ability to progress at pace and deliver a scheme of this nature.

Valuations

- 2.15 All of the Council's assets were valued at 31 March 2022 by the Council's independent valuers, Wilks Head and Eve LLP. Assets are held at fair value in line with accounting standards. Fair value measures the "highest and best" value in the most advantageous market for an asset (i.e. this method of valuation includes considering alternative uses for the asset as well as its current use).
- 2.16 In addition, for the purposes of establishing a guide price for sale, Haslam's were commissioned to undertake a valuation for SUR (with a duty of care to both JV partners). Valuation details are set out in Appendix 1.

Preferred bidder

- 2.17 Details of the preferred bidder are set out in the Confidential Appendices. This bidder was selected on the basis of a higher financial receipt, funding in place, strong delivery track record and ability to complete before the end of 2022. There are no material conditions to the offer. Details are set out in Confidential Appendix 1.

Options considered

- 2.18 Option A – Council to retain the site and consider options for site disposal opportunities following the winding up of the Partnership.

This option does not generate a capital receipt in the medium term as the Partnership is not scheduled to terminate until March 2028 and will effectively mothball the site with no delivery/new housing.

- 2.19 Option B - Terminate the Option Agreement and the Council seeks to sell the site at the earliest opportunity (not via SUR).

Based upon legal advice a termination case would be difficult to demonstrate and this is likely to be a lengthy process with significant costs and uncertainty of outcomes.

- 2.20 Option C - Restructure the Council's participation in the site such that Muse develop the scheme and the Council's land value is secured at the earliest opportunity with reduced or no equity.

This option has been *actively considered and explored although the Council's receipt would be substantially reduced and Muse do not wish to pursue this option, rendering this option undeliverable.*

- 2.21 Option D - Dispose of the site now utilising the SUR On-Site Sale Mechanism, producing a substantial capital receipt for the Council in 2022, plus MRP saving.

This option is quick and simple to achieve (with buy-in from both partners), this achieves earlier receipts for the Council and greater receipts compared to Option C plus this approach should unlock the site to enable delivery.

- 2.22. **Option D is recommended** to Cabinet for approval.

3. Implications of the Recommendation

Financial implications

- 3.1 The site was acquired in the 1930s and as such there are no acquisition costs or debt associated with the site. The former leisure centre on the site was demolished in 2019/20 at a cost in the region of £500k. There are no ongoing revenue costs/income streams associated with this site.
- 3.2 The terms of the offer remain subject to contract and as such the detailed financial implications are reported in Confidential Appendix 1 only.
- 3.3 However it is estimated that the Council will have a MRP saving in the region of £350-400k in each of the next five years. Plus the valuation for accounting purposes (at fair value) is less than the preferred offer.
- 3.4 The site has increased in value since the Council acquired the site and the valuation in the accounts is significantly less than the market valuation/BAFO received.

Legal Implications

- 3.5 The Council has statutory powers to dispose of land, including under:
- Section 123 of The Local Government Act 1972;
 - Housing Act 1985;
 - Section 233 of the Town and Country Planning Act 1990;

- Local Authorities (Land) Act 1963;
 - Housing and Planning Act 2016; and
 - Localism Act 2011.
- 3.6 Under section 123 of the Local Government Act 1972 (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.
- 3.7 What is reasonable in any particular case depends entirely on the facts of the transaction. Case law has determined that whilst there is no absolute requirement to market the land being disposed of, or to obtain an independent valuation, to comply with the duty, the Council should obtain independent professional valuation advice, as a failure to take proper advice can constitute a breach of section 123 of the LGA 1972. The Council has received independent professional valuation advice that the proposed sale is at the best price reasonably obtainable (see Appendix 1).
- 3.8 The Council's joint venture with Muse was procured in 2012 under a compliant public procurement procedure. The JV is governed by (amongst other documents) a combination of the SUR Partnership Agreement, and the individual site Option Agreements (OA). The Council (as JV Partner) has to date complied with the relevant legal and governance requirements under the JV arrangements to enable the disposal of the Montem Lane Asset to take place and by making the resolutions referred to in paragraph 1.3 (Recommendations) the Council will take the final steps in this regard.

Risk Management Implications

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

Risk	Summary	Mitigations
Financial	<p>Delay in realising capital receipts from assets sales will delay the Council's financial recovery</p> <p>Failure to agree a deal may result in Council liabilities (Site WIP)</p>	Cabinet to approve officers to proceed with the sale to achieve the stated exchange/completion date
Governance	Failure to obtain best consideration from the disposals could expose the Council to risk of legal challenge	SUR has appointed external property advisors (with a duty of care to Muse and the Council) to advise on land valuation (for the purposes of calculating the land value under the

Risk	Summary	Mitigations
		<p>terms of the PA) and the marketing and bidder evaluation process</p> <p>Council Officer oversight of the valuation, marketing and sales process via the SUR Board and the Council's COB. Plus at least weekly programme meetings between the Council, SUR and Muse</p> <p>Advance agreement of the Council's land value in advance of marketing process based upon a range of valuations</p> <p>Independent assessment of best consideration</p>
Legal	<p>Failure to ensure legal title/deeds etc which could delay or halt sale</p> <p>Delay to contract negotiations</p> <p>Non compliance with the terms of the Partnership Agreement</p>	<p>Legal title reports obtained for all disposals in advance</p> <p>SUR Corporate Oversight Team meet bi-weekly to discuss progress and compliance</p> <p>Weekly meetings between the Council and SUR to monitor critical requirements to enable exchange/completion</p> <p>Independent assessment of compliance with the terms of the PA (including waterfall payments)</p>
Governance	<p>Failure to establish robust governance arrangements could expose the Council to risk of impropriety and legal challenge</p>	<p>The Council has established sound governance arrangements for SUR asset disposals to ensure that the Council achieves best consideration from asset disposals, including the COB</p>
Reputational	<p>Unable to agree a way forward causing delay to asset disposals and failure to deliver capital receipts within the timescales set out in the Debt Reduction/Asset Disposal Strategy</p>	<p>Governance, project management and decision-making operate effectively to deliver asset disposals on time and best consideration for the Council</p>

Environmental Implications

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

Equality implications

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

Procurement implications

No issues have been identified for the Council.

Workforce implications

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

Property implications

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

4. Background Papers

July cabinet report – Part 1 and Confidential