

Slough Borough Council

REPORT TO: Cabinet

DATE: 2nd November 2022

SUBJECT: Disposal of Council Asset – Former Akzo Nobel site

PORTFOLIO: Councillor Rob Anderson
Lead Member for Financial Oversight and Council Assets

CHIEF OFFICER: Pat Hayes, Executive Director Housing and Property
Steven Mair, Executive Director Finance and Commercial (s151)

CONTACT OFFICER: Fin Garvey, Group Manager – Place Delivery
Peter Worth, Finance Lead Technical Advisor

WARD(S): All

KEY DECISION: YES

EXEMPT: Public with exempt appendices under paragraph 3 of Schedule 12A Local Government Act 1972 – Information relating to the financial or business affairs of the Council

DECISION SUBJECT TO CALL IN: YES

APPENDICES:

- 1 – Avison Young Disposal Report (13 October, 2022) outlining Marketing and Bidding.
- 2 – Planning Advice
- 3 – Independent valuation report for Akzo Nobel site

Confidential Appendices:

- 4 – Avison Young – Asset Disposal Recommendation, 13 October, 2022
- 5 – Heads of Terms for the sale of the former Akzo Nobel site
- 6 – Detailed Financial Implications

1. Summary and Recommendations

- 1.1. This report seeks approval for the disposal of the former Akzo Nobel site.
- 1.2. The proposed asset sale has been subject to a due diligence process and reflects the best consideration reasonably obtainable for the disposal of the asset in

accordance with section 123 of the Local Government Act 1972. The asset sale will generate a capital receipt which will be applied to reduce borrowing and the Council's Minimum Revenue Provision (MRP).

Recommendations:

1.3. Cabinet is recommended to:

- a) Agree to the disposal of the former Akzo Nobel site and to delegate authority to the Executive Director of Property and Housing, in consultation with the Lead Member for Financial Oversight and Council Assets and the Executive Director of Finance and Commercial, to negotiate the terms of and enter into the contract and other legal documentation in connection with the disposal in accordance with the Heads of Terms appended at Appendix 5.

Reason:

- 1.4. The early disposal of this significant asset is a key element of the Council's new Corporate Plan, which includes a strategic priority to be "a Council that lives within its means, balances the budget and delivers best value for taxpayers and service users." Agreement to the recommendations in this report will contribute to the reduction in the Council's future financial commitments, generate disposal receipts at the earliest opportunity and reduce the Council's borrowing and MRP. The proposed asset sale has been subject to a due diligence process and reflects best consideration reasonably obtainable from the disposal of the asset in accordance with section 123 of the Local Government Act 1972.
- 1.5. The disposal of this asset will enable the Council to simplify the property portfolio and enable the Council to focus on its core activities and services.

Commissioners Review

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

2. Report

Introduction and Context

- 2.1. The Council acquired the site in 2020/21 as part of the Council's then plans to re-develop the site of the former Akzo Nobel works for a mixture of commercial and residential development.
- 2.2. The January 2021 Cabinet report which approved the purchase of the former Akzo Nobel site envisaged up 1,000 residential units to be delivered with at least 25% affordable housing. The report set out that the project would yield the following economic benefits:

- increased population and labour force – 1,220 additional economically active people;
- enhanced local spending power – total income of circa £29.0 million per annum, one-off expenditure in excess of £5.5 million upon first occupation of new homes;
- residents' annual combined retail and leisure expenditure will equate to £22.9 million, supporting 210 jobs;
- Local Authority Revenue – £1.7 million in Council Tax £5.4 million in New Homes Bonus payments;

and potential wider economic benefits of:

- 25% affordable housing: £12.9 million in wider economic benefits, or
- 50% affordable housing: £25.2 million in wider economic benefits

2.3. However, the financial implications of the project were not reported in the public Cabinet report in January 2021. Instead, the public report stated that the financial implications were considered in the Confidential Appendix C.

2.4. Furthermore, the project was not properly costed in the Confidential Appendix C report. The only costs reported were the cost of acquiring the site (£38m) and remediating the site to address contamination issues (£1.3m) with a vague estimate of over £200m to develop the site. The Confidential Appendix C report provided:

- no detailed assessment of the total project cost. The development costs were reported in Confidential Appendix D to the January 2021 report at £217m. When added to the purchase price of the land took the total project cost to the Council to over £250m;
- no assessment of the cost risks associated with the project – for example, the report did not explain that the purchase price of £38m was predicated on securing Homes England funding, which if not available would increase the purchase price by £2.4m in respect of Stamp Duty Land Tax;
- no detailed assessment of how the project was to be funded. In particular, it was unclear whether this was to be a General Fund project or within the HRA, whether Right to Buy capital receipts were to be used, what external funding had been obtained or was being obtained such as Homes England grant, what level of external borrowing would be required and what the impact would be on council tax and/or housing rents.

2.5. Confidential Appendix C stated:

The acquisition and project costs will be funded through a combination of existing HRA capital budget and funding agreed for Strategic Acquisition (General Fund). This would be reflected in the 'Treasury Management Strategy 2021/22' and 'Capital Strategy 2021 to 2025' reports to Cabinet in February 2021.

However, neither of the above reports included the Akzo Nobel purchase nor how it was to be funded. In other words, the Council agreed to purchase a site and potentially embark on a project which would have committed the Council to at least £250m without any clear idea about how this was to be paid for or from where.

- 2.6. On 2 July 2021, the s.151 officer issued a s.114 Notice in response to the Council's adverse financial position. As part of the response to the s.114 Notice, the capital programme was fully revised, and in March 2022, the Council approved a capital programme which focused on projects which attracted external funding and minimised the need for any new borrowing. Consequently, the project, as originally reported, had no financial means of being delivered and the current position is that funding could not be provided in the foreseeable future. The asset is therefore surplus to requirements and needs to be disposed of.

Context

- 2.7. 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.

- 2.8. The Asset Disposal Programme approved in June 2021 set out the following sequential steps for disposing of assets:

- Identify assets for disposal
- HB Public Law to produce detailed Reports on Title for each asset identified for disposal
- Asset valuation – obtain up to date independent valuations to provide a benchmark for assessing best consideration,
- Methods of disposal - take advice on the most advantageous method of disposal
- Officer Delegation – authorise the Executive Director (Place), subject to proper legal/valuation advice to dispose of assets up to £1m in value after consultation with the S151 and Monitoring Officers.

- 2.9. In the context of the former Akzo Nobel site disposal in this report:

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

- 2.10. 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.
- 2.11. The TMS includes a target to generate capital receipts from asset disposals of £50m in 2022/23 with an aspiration to realise £100m of receipts by 31st March 2023.

Asset Review

- 2.12. Following a detailed procurement exercise, Avison Young (AY) were appointed to support the delivery of the Asset Disposal Programme in March 2022. The appointment included advising on an asset disposal strategy and marketing of assets for disposal in a way that would secure the best consideration reasonably obtainable.
- 2.13. As the site is non income producing, was not used for operational or service delivery, but could yield a high capital receipt it was agreed this should be brought to market as a priority to help alleviate Slough Borough Council's ("the Council") current financial burden.

The Site

- 2.14. The site is 11.5 acres of brownfield land with outline planning consent for up to 1,000 dwellings and flexible commercial use. The site is currently designated for industrial use reflecting its former use by Akzo Nobel.
- 2.15. The Council has sought planning advice contained in Appendix 2. The planning consent for residential is a material planning consideration but is a departure from adopted Local Plan Policy. Use of the site for business and industrial purposes, including storage distribution and data centres is planning policy compliant as set out in the planning background.
- 2.16. It is recognised that the proposed development of the site as a data centre complex will generate limited employment and that there are potential environmental impacts which will be addressed within the planning process.

Marketing

- 2.17. The site was marketed with a technical pack that included tenancy information, title information and an environmental report. The site was formally launched to market on 2 July 2022 with a half page advert in the Estates Gazette. A marketing mailshot was sent out at the same time to 3,000+ developers, investors, and agents across the South-East. A bespoke marketing brochure was produced and circulated to all parties on request. 114 expressions of interest were received.
- 2.18. Three inspection days were arranged on 14, 20 and 27 July, and a number of parties viewed the site externally.
- 2.19. The site was well received by the market with many credible parties contacting AY and requesting more information concerning the sale.
- 2.20. In response to an initial bid deadline of 12 noon 9 August, 14 bids were received from 13 parties.
- 2.21. Appendix 1 provides AY's detailed report on the marketing process for the asset.

Valuation

- 2.22. Following Cabinet approval on 18 January 2021 the asset was acquired for a total of £38,530,552 from Panattoni on 1 February 2021.
- 2.23. The asset was held in the Council's balance sheet at cost as it was a development site included within Assets under Construction. However, since the asset was declared surplus, the asset has been revalued 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).
- 2.24. The asset was valued on 25 October 2022 to reflect current market conditions by WHE to provide a guide price for sale. The valuation report from WHE is at Appendix 3.
- 2.25. This site is identified within the overall strategic review of Council assets and included within the Disposal Strategy approved by Cabinet on 17 October 2022. Advice from AY that informed the Disposal Strategy recommended the current timeframe for disposal to secure the current favourable market conditions.

Preferred bidder

- 2.26. Details of the preferred bidder are set out in the Confidential Appendix 4. The bidder was selected based on the highest financial receipt, funding in place and ability to complete before the end of November 2022. There are no material conditions to the offer.
- 2.27. Heads of Terms have been agreed with the preferred bidder and will be ready to simultaneously exchange and complete subject to approval of Cabinet and the purchaser's board approval. Details are set out in Confidential Appendix 5.

Options considered

- 2.28. Option A - To retain the asset for future development. The site is a non-income producing site originally acquired for mixed residential and commercial development. Had the project progressed as originally envisaged, then the total costs of the residential development alone would have committed the Council to a capital project of at least £250m. The Council does not have any internal resources to fund a project of this magnitude and would have to rely upon external borrowing.
Assuming no external funding (e.g. Homes England grant), this would increase the Council's debt charges by £27.5m per annum at current interest rates. This is unaffordable to the Council. Just holding the site as an undeveloped site is costing the Council £4.1m in MRP and interest at current rates. A holding strategy would put the Council at the risk of the current unstable and unpredictable investment market and presents the Council with financing costs which it cannot afford
- 2.29. Option B - To dispose of the asset based on the agreed Heads of Terms and subject to legal and valuation advice. This option produces a capital receipt which will support the Council's corporate priorities and reduces the Council's future capital financing costs.
- 2.30. **Option B is recommended** to Cabinet for approval.

3. Implications of the Recommendation

Financial implications

- 3.1. When the Council purchased the site in 2021, the purchase price paid was exempted from Stamp Duty Land Tax (SDLT) on the transaction, as the Council planned to attract public grant to part fund the cost.
- 3.2. Given that the Council intends to dispose of the site and no grant funding will be involved, the conditions for relief from SDLT are no longer met, and the Council will be liable to pay SDLT of circa £2.3m plus interest of £0.1m. HMRC have the power to impose a penalty if they determine that relief was claimed inappropriately. However, as the Council claimed the relief relying on appropriate tax advice and plans to make a voluntary disclosure by submitting an amended return to HMRC, a fine may be avoided. These costs form part of the cost of acquiring the site (albeit two years after the acquisition), and will therefore be met from the capital receipt, but take the total cost of acquiring the site to £40.9m.
- 3.3. By disposing of the site, the Council will generate a £4.1m saving from reducing the borrowing costs of holding the site as set out below.

	£000s
MRP reduction	2,047
Interest reduction	2,047
Net saving/(cost) to the Council	4,094

- 3.4. In addition, to the extent that the bid price offered exceeds the Council's cost of acquiring the site originally of £40.1m, the Council will generate further savings from reducing interest charges and MRP. Further details are contained in Confidential Appendix 6.

4. Legal implications

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

- 4.5. Following a marketing exercise on the open market reported by AY in Appendix 1, the agreed offer price for the former Akzo Nobel site exceeds the latest valuation as at 25 October 2022 carried out WHE. AY have confirmed that the best and final offer sale price for the site received by AY following a competitive disposal process by AY exceeds both the valuation carried out on 25 October 2022 and exceeds the original acquisition cost and reflects the best consideration reasonably obtainable in accordance with Section 123 LGA 1972.

5. Risk management implications

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

Risk	Summary	Mitigations
Financial	Delay in realising capital receipts from assets sales will delay the Council's financial recovery	Cabinet to approve officers to proceed with the sales
Governance	Failure to obtain best consideration from the disposals could expose the Council to risk of legal challenge	The Council has employed external property advisors to manage and competitively market the properties, having access to wider markets than officers locally and has obtained up to date valuations for the sites for comparison purposes.
Legal	<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 obtained for this site.</p> <p>Bi-weekly monitoring of asset disposals by commissioners and 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 management and decision-making operate effectively to deliver asset disposals on time and best consideration for the Council.

6. Environmental implications

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

7. Equality implications

7.1. The asset is not used for operational or service delivery. There are no identified equality implications with the disposal of this site, however the opportunity to secure economic benefits in accordance with the original intended housing scheme will not be met. By reducing the level of Council borrowing, the Council will reduce its MRP, which will reduce the level of savings required from services, albeit significant savings will continue to be needed. This is likely to have a positive impact on protected groups who are more likely to utilise the services of the Council.

8. Procurement implications

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

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

9. Workforce implications

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

10. Property implications

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

11. Background Papers

11.1. None