

SLOUGH BOROUGH COUNCIL

REPORT TO:	Cabinet Committee
DATE:	17 November 2022
SUBJECT:	Disposal of Council Asset in Wolverhampton,.
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):	None
PORTFOLIO:	<u>Councillor Rob Anderson</u> <u>Lead Member for Financial Oversight and Council Assets</u>
KEY DECISION:	NO
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
APPENDICES:	Confidential Appendices: Appendix 1– Briefing Note 10 November, 2022 recommending disposal of Wickes, Wolverhampton Appendix 2 – Financial implications

1. Summary and Recommendations

- 1.1. Cabinet has previously approved the sale of the Wolverhampton property asset on 19 September 2022. This report seeks approval to enter into contract and legal documentation in connection with the disposal subject to the Heads of Terms previously approved by Cabinet being amended in accordance with Confidential Appendix 1 in this report.
- 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 both:

- a) net savings to the revenue budget; and
- b) capital receipts which will be applied to reduce borrowing and the Council's Minimum Revenue Provision (MRP).

Recommendations:

1.3. Cabinet Committee is recommended to:

- a) Agree to the disposal of the Wickes, Wolverhampton asset in accordance with the changes to the negotiated arrangement as set out in the Confidential Appendix 1 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 enter into the contract and other legal documentation in connection with the disposals subject to the Heads of Terms previously approved by Cabinet being amended in accordance with Confidential Appendix 1 in this report.

Reason:

- 1.4. The early disposal of the out of Borough 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, 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 enable the Council to simplify the property portfolio and enable the Council to focus on its core activities and services. Since the decision in September due diligence has been undertaken which has resulted in some proposed changes to the purchase terms. As these are different from the terms proposed in the original Cabinet papers, officers have declined delegation and are seeking Cabinet approval to enter into legal documentation to conclude the sale.

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- 1.6. Ensuring that the Council obtain a price certifiable as best value in volatile market conditions is a challenge. In this instance, there was an original competitive offer and the opportunity to test the market position again so that Members can be satisfied that the revised lower price can be accepted. The financial implications, which rightly set out the overall position, are not the key consideration. However, what this makes clear is that the original recommendation to acquire the site breached the policy and financial rules the Council had approved for such transactions. It is not yet clear how the Council is learning the lessons from this series of failures.
- 1.7. The recommendation is supported.

2. Report

Context

- 2.1. On the 19 September 2022 Cabinet approved the disposal of four out of Borough assets including the Wickes site in accordance with the agreed Heads of Terms

and Recommendation from Avison Young, the Council's property advisors. The market conditions, and bidder appetite, have changed significantly in the months since marketing the asset and Cabinet approval in September.

- 2.2. Avison Young have updated their advice, referenced in Confidential Appendix 1, with regard to the current offer. Their advice is that disposing of the site in accordance with the new terms still represents best consideration reasonably obtainable for the asset.

Options considered

- 2.3. Option A - To retain this out of borough investment asset. Whilst this would retain the rental income stream, the costs of servicing the debt outweigh the income generated and AY advise that there is no certainty that the value of the asset would recover in the medium-term.
- 2.4. Option B - To agree to delegate authority to the Executive Director (Housing and Property), in consultation with the appropriate lead member and the S151 Officer, to dispose of the asset on the basis of the agreed Heads of Terms and terms in the confidential Appendix and subject to legal and valuation advice. This option produces a capital receipt which will support the Council's corporate priorities.
- 2.5. **Option B is recommended** to Cabinet for approval.

3. Implications of the Recommendation

Financial implications

- 3.1. Whilst selling the asset will result in the loss of rent income to the Council of £0.483m, nonetheless this is outweighed by the reduction in interest charges and minimum revenue provision, such that the disposal will yield a net saving of £0.196m per annum.
- 3.2. The detailed financial implications from disposing of the asset are reported in Confidential Appendix 2.
- 3.3. The sale will realise a net loss on disposal of the asset, which is set out in Confidential Appendix 2. The net loss is written off to the Capital Adjustment Account in the Council's balance sheet.

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 assets identified for disposal.
- 4.5. Following a marketing exercise on the open market reported by AY in the original Cabinet report, and further negotiation following due diligence, AY have confirmed that the offer prices for the asset received by AY reflects best consideration in accordance with Section 123 LGA 1972. Independent valuation evidence has been obtained, which is a relevant consideration, although the market conditions in the UK at present are volatile as evidenced by examples given in the confidential Appendix XX. Members should therefore consider what weight to place on the independent valuation compared to the AY advice and the market conditions, which represent a significant change in circumstances.

5. Risk management implications

- 5.1. 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 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	<p>Delay in realising capital receipts from assets sales will delay the Council’s financial recovery</p> <p>Market conditions are such that it is difficult to determine the optimum time to sell and to weight up the benefits of obtaining capital receipts quickly to reduce the borrowing, compared with waiting to see if market conditions improve (or worsen).</p>	<p>Cabinet to approve officers to proceed with the sales</p> <p>All sales to be informed by specialist advice.</p>
Governance	<p>Failure to obtain best consideration from the disposals could expose the Council to risk of legal challenge</p>	<p>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</p>

		valuations for the sites for comparison purposes.
Legal	Failure to ensure legal title/deeds etc which could delay or halt sale Delay to contract negotiations	Legal title reports obtained for all disposals Bi-weekly monitoring of asset disposals by commissioners and officers
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, nor is it located in Slough. 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.

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