

## Slough Borough Council

<b>Report To:</b>	Cabinet
<b>Date:</b>	18 September 2023
<b>Subject:</b>	Recommendations of the Cabinet Committee: Asset Disposal Programme Update
<b>Lead Member:</b>	Councillor Chahal, Deputy Leader of the Council – Financial Oversight, Council Assets, Procurement and Revenue & Benefits
<b>Chief Officer:</b>	Pat Hayes, Executive Director Property & Housing
<b>Contact Officer:</b>	Mark Halligan - Assistant Director (Property)
<b>Ward(s):</b>	Central
<b>Key Decision:</b>	<u>YES</u>
<b>Exempt:</b>	NO, except the Appendices which contain business and finance information of the Council and is exempt by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972.
<b>Decision Subject To Call In:</b>	<u>YES</u>
<b>Appendices:</b>	Appendix 1 – Progress Review Appendix 2 – Asset Disposal Strategy

### 1. Summary and Recommendations

1.1 This report sets out the progress made in delivering the first phase of the Asset Disposal Programme and the approach proposed for the second phase of the programme. The report was considered by the Cabinet Committee for Asset Disposals on 14<sup>th</sup> September 2023 and it was agreed to make the recommendations to Cabinet as at paragraph 1.2.

#### Recommendations:

1.2 Cabinet is recommended to:

- a) Note the positive progress that has been made in delivering the first phase of the Asset Disposal Programme as set out in Appendix 1;

The Cabinet Committee recommends to Cabinet:

- b) Approval of a new Asset Disposal Strategy as set out in Appendix 2.

## **Reason**

- 1.3 The Council's financial position means that it has to be clear about the future use of its assets as a number of these need to be disposed of to stabilise its budget and meet the requirements of the Capitalisation Direction agreed with DLUHC.
- 1.4 This report provides an updated strategic context for future decisions to ensure that the approach taken with the second phase of the Asset Disposal Programme is appropriate for the council's current circumstances and delivers best value.

## **Commissioner Review**

- The Asset Disposal Programme is of significant importance to the Council's financial recovery, and an integral part of the approved financial strategy and 'minded to' Capitalisation Direction. All disposals should be on commercial terms, subject to legal and financial due diligence and demonstrably evidence that the disposal is for best consideration reasonably obtainable. Each site will be unique and any decision to dispose of an asset for less than best consideration, except for disposals to comply with statutory obligations, should be considered on a case-by-case basis with a separate business case justifying the approach and report approved by Cabinet.
- The commissioners are content with this report.

## **2. Report**

### **Introduction**

- 2.1 Members are aware the Council received a formal direction from DLUHC made under s.15(5) and (6) of the Local Government Act 1999, including a direction that prescribed functions are to be exercised by Commissioners; and the appointment of Commissioners from 1 December 2021.
- 2.2 A key component of the Directions is the need for the Council to demonstrate it is able to achieve financial sustainability.
- 2.3 Asset disposals have been a core element in the drive towards financial sustainability. The first phase of the Asset Disposal Programme has delivered good results, which has helped to create an improved financial position.
- 2.4 An amended approach is recommended for the second phase of the programme, which recognises the improved financial position of the Council and the nature of the remaining property assets.

### 3 Options considered

3.1 The following options have been considered:

- Option 1 – continue with the approach taken for the first phase of the Asset Disposal Programme – **this is not recommended**. The current strategy was appropriate at the time when the focus was on disposing of out of borough and investment assets. The new strategy has taken account of progress and been updated to reflect the nature of assets in Phase 2.
- Option 2 – adopt a new Assets Disposal Strategy, which, together with a proposed Estate Strategy, will drive the formation and delivery of the second phase of the Asset Disposal Programme. This is the RECOMMENDED option.

3.2 Any final decision on the disposal of individual assets needs to be subject to due diligence.

#### Background

3.3 A report was brought to Cabinet on 21 June 2021 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 will seek to dispose of surplus assets to support the following objectives:

- Provide capital receipts to contribute to the 2022/23 budget
- Provide capital receipts to meet Capitalisation Directive commitments and align with the Medium Term Financial Strategy (MTFS)
- To reduce overall borrowing costs

3.4 On 17 October 2022 Cabinet approved an Asset Disposal Strategy informed by advice from its procured commercial property advisors, Avison Young. The agreement of the strategy was to contribute to the reduction in the Council's financial commitments, generate disposal receipts at the earliest opportunity and reduce the Council's borrowing and Minimum Revenue Provision (MRP).

3.5 Avison Young, alongside other commissioned property advisors for specific sites, have supported delivery of the Asset Disposal Programme. The focus of the initial stage of the commission was a full appraisal of the Council's asset base with the purpose of providing a market facing valuation along with an orderly disposal strategy that enabled the Council to realise potential capital receipts that can firstly be utilised to finance any Capitalisation Directions, and secondly to repay existing external debt.

3.6 The first phase of the Asset Disposal Programme has focused on the sale of properties that had been held for 'Development' or 'Investment' purposes. These are the assets that are the easiest and most obvious to release.

3.7 Excellent progress has been made in delivering the first phase of the Asset Disposal Programme, as detailed in Appendix 1 and summarised in the table below [correct as at July 2023].

1	Sales Completed – 2022/23	£196m
2	Sales Completed – 2023/24 (to date)	£11m
3	Sales Exchanged (not yet Complete)	£11m
4	Assets Under Offer	£29m
5	Assets Being Formally Marketed	£16m
6	Assets Being Prepared for Marketing	£49m
		<b>£312m</b>

3.8 There are further assets that can be considered for disposal that will form Phase Two of the programme, which will be in addition to the assets that make the £312m total above. This will come from the 'Operational' portfolio – i.e. the properties that are currently used to deliver Council services from.

3.9 Identifying assets to dispose of from the Operational portfolio requires more detailed review work than for assets from the Investment or Development portfolios. An Estate Strategy is currently being developed that will inform the shape and size of the retained Operational portfolio and therefore, the assets that can be released and added to the Asset Disposal Programme (Phase Two).

3.10 The other factor to consider in determining the Phase Two Assets Disposals Programme is the current financial position. The Council's financial position continues to be challenging. Asset disposals achieved to date have helped to support the broader financial improvement plan and the on-going review of the ability to restore the General Fund revenue budget to a balanced position.

3.11 For Phase One the capital receipts had been the primary driver. For Phase Two, other benefits should be considered, as part of the Estate Strategy, such as revenue benefits and social value. This may result in some assets being transferred to community organisations, as opposed to being sold on the open market.

3.12 An amended Disposal Strategy is set out in Appendix 2. This amended strategy reflects the following:

- Lessons learnt from Phase One
- Changes in market conditions
- The nature of the assets that will form Phase Two (i.e. Operational)

## **4 Implications of the Recommendation**

### **Financial implications**

4.1 The Asset Disposals Strategy contributes significantly to the financial recovery of Slough Borough Council, releasing capital receipts to support the General Fund revenue funding gap. There continues to be a requirement for on-going disposals to support the financial recovery programme.

4.2 The volume and value of asset disposals feeds into the capitalisation direction discussions undertaken with Commissioners and ultimately with the Department for Levelling Up, Housing & Communities (DLUHC) to determine the extent to which Slough Borough Council is permitted to utilise capital receipts for this purpose.

4.3 Elsewhere on this agenda are separate reports regarding the draft Outturn for the financial year 2022/23 and the outturn forecast as at the end of the first quarter of 2023/24, which together with the progress in delivering the asset disposals strategy reflected within this report will inform further discussions with Commissioners and DLUHC about the updating of the financial recovery programme. The outcome of these discussions will be reported to a future Cabinet meeting.

4.4 Progress achieved in realising capital receipts in 2022/23 was good, however it is anticipated that in 2023/24 it will be more challenging to achieve the same value of capital receipts in recognition of the market conditions faced.

4.5 The pipeline of assets to be disposed of may have assets that fall within the ring-fence of the Housing Revenue Account (HRA). These assets need to be declared surplus to the needs of the HRA and transferred to the General Fund (at a cost to the General Fund) via due governance, including a business case, before they can be disposed of. The process to ensure that this due governance takes place and is correctly accounted for is being reviewed and may impact upon the scheduling of the disposal of any associated assets.

4.6 The progress in achieving asset disposals and the associated realisation of capital receipts will be incorporated into the quarterly reporting of budget management outturn forecasts to Cabinet.

## **Legal implications**

4.7 The Council has statutory powers to dispose of land, including under Section 123 of The Local Government Act 1972, the Housing Act 1985 and the Town and Country Planning Act 1990.

4.8 When disposing of land, the Council has a duty to obtain best consideration reasonably obtainable under section 123 LGA 1972. What is reasonable in any particular case depends entirely on the facts of the transaction. Although there is no absolute requirement to market the land being disposed of, or to obtain an independent valuation, in order to comply with the best consideration duty, the Council should obtain professional valuation advice, as a failure to take proper advice can constitute a breach of section 123 LGA 1972.

4.9 It is for the Council to demonstrate that it has achieved best consideration; if best consideration is not obtained, Secretary of State approval will be required. A local authority may dispose of land at less than best consideration where the Secretary of State has given permission to do so or under the Local Government Act 1972: General Disposal Consent (England) 2003 in circumstances where the local authority considers the disposal is likely to contribute to the social, economic or environment wellbeing in its area and the undervalue does not exceed £2 million.

4.10 No disposal terms should be settled without assessing the legislative requirements arising as a result of the manner in which the relevant land is held (e.g. open space, allotment land, HRA land etc) and concluding any appropriate legal and financial due diligence. Each site will need to be considered on a case by case basis in the form of a report on title, which shall advise on any restrictions or impediments to the disposal of the land.

4.11 In relation to assets held as part of the Slough Urban Renewal (SUR) joint venture, the Council's existing joint venture (JV) obligations are governed by legal documents, including the SUR Partnership Agreement (PA) and options agreements. The Council must comply with all relevant legal and governance requirements under the JV arrangements to enable the disposal of SUR assets to take place

## **Risk management implications**

4.12 The table below sets the key risks

<b>Risk</b>	<b>Summary</b>	<b>Mitigations</b>
Financial	To summarise 4.1	
Legal	<p>Failure to obtain best consideration from the disposals could expose the Council to risk of legal challenge</p> <p>Failure to establish robust governance arrangements could expose the Council to risk of impropriety and legal challenge</p>	<p>The Council has employed external property advisors to manage and market the properties, having access to wider markets than officers locally. The Council has also commissioned specialist advice on a case by case basis to take account of specific assets. This process should continue so that specialist valuation advice can be obtained in relation to particular types of asset. In addition the Council's internal team consists of surveyors with industry experience.</p> <p>The Council has established sound governance processes and kept its strategy under review to ensure that decisions are made at the right level and informed by relevant information.</p>
Reputational	The Council has been criticised for the manner in which decisions to acquire and dispose of assets has been taken	A more comprehensive and transparent approach to future decisions

## **Environmental Implications**

4.13 Re-shaping and re-purposing the Operational portfolio provides opportunities to improve the environmental performance of the retained estate.

## **Equality implications**

4.14 The Council has a duty contained in section 149 of the Equality Act to have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The protected characteristics are:

- age
- disability;

- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

The broad purpose of this duty is to integrate considerations of equality into day-to-day business and to keep them under review in decision making, the design of policies and the delivery of services.

### **Procurement implications**

- 4.15 One of the Directions includes specific reference to the procurement and contract management function. Any element of this project that requires procurement will be subject to our usual procedures.

### **Workforce implications**

- 4.16 The key implication for the workforce is the extent to which decisions on the future use of assets impact on their place of work. A separate report is submitted to Cabinet on the future of Observatory House and whether this is retained as the council's headquarters. A consultation with staff is planned to agree the principles and refresh approach to hybrid working.

### **Property implications**

- 4.17 The Estate Strategy and Asset Disposal Programme are key to establishing the future of the council's operational estate.

## **5 Background Papers**

None.