

Slough Borough Council

Report To:	Cabinet
Date:	15 July 2024
Subject:	Asset Disposal Programme – Surplus Housing Revenue Account (HRA) Assets
Lead Member:	Councillor Chahal, Deputy Leader of the Council – Financial Oversight, Council Assets, Procurement and Revenue & Benefits
Chief Officer:	Pat Hayes - Executive Director (Regeneration, Housing and Environment)
Contact Officer:	Mark Halligan – Programme Director (Property Transformation)
Ward(s):	All
Key Decision:	YES
Exempt:	NO
Decision Subject To Call In:	YES
Appendices:	Appendix A – List of assets already sold or declared ‘surplus’ Appendix B - Schedule of Non-Residential HRA Assets to be marketed for disposal Appendix C – Schedule of Assets to be subject to consultation or other statutory process to inform decision on whether to dispose. Appendix D – site plans for the assets listed in Appendix B and C

1. Summary and Recommendations

- 1.1 This report provides an update on HRA assets already sold Appendix A, seeks approval to market the assets identified on Appendix B for disposal and seeks approval to commence consultation and other statutory processes on those assets listed in Appendix C to inform a future decision. Decisions to dispose of assets will be brought back to Cabinet for those assets of £1m or more and are delegated to the Executive Director for assets to be disposed of at a value of under £1m, subject to these assets meeting the test for best consideration reasonably obtainable.

Recommendations:

- 1.2 Cabinet is recommended to:
- Note the progress on disposal of HRA assets, as set out in Appendix A.

- b) Agree that those assets listed in Appendix B should be marketed for disposal subject to property, legal and financial due diligence being completed
- c) Agree that those assets in Appendix C should be subject to consultation with tenants and statutory processes in relation to open space to inform a future decision on whether they should be disposed of following property, legal and financial due diligence.

Reason

- 1.3 There are non-residential assets currently held within the HRA that are no longer required to fulfil the purpose that they were originally acquired for. It is likely that greater benefit to the HRA can be derived by selling them, than continuing to hold them, as this will reduce the financial burden for maintaining the land. The benefits from selling them will allow the HRA to be recompensed for any capital costs of acquiring or improving the asset. Selling them will also enable development / regeneration in the Borough, which the Council is no longer in a position to deliver internally.

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 surplus asset disposals should be on commercial terms, subject to legal and financial due diligence and demonstrable evidence provided that the disposal is for best consideration reasonably obtainable."

"Where the net capital receipt is proposed to be utilised to benefit wider corporate priorities, the Council should consider the 'who benefits' principle, ensure that as a minimum tenants should not suffer a detriment and confirm that the net capital receipts are in excess to the requirement of the 30-year life of the HRA business plan."

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 can achieve financial sustainability.
- 2.3 Asset disposals have been a core element in the drive towards financial sustainability. Much of the emphasis to date, has been on delivering disposals from the General Fund. The overall target for the Asset Disposal Programme is extremely challenging and it is necessary to generate capital receipts from the HRA as well as GF.

- 2.4 There is a housing shortage within the Borough, particularly of affordable and social housing. Disposing of HRA development sites will contribute to housing delivery where these sites are capable of being developed for residential housing by the private sector.

3 Options considered

- 3.1 The development sites listed in Appendix B and C could potentially be developed / re-purposed internally and continue to be held within the HRA. There isn't however the capability or funding to deliver such work. This option would also result in missing a significant opportunity to generate capital receipts. **This is not recommended.**
- 3.2 Within the HRA there are non-residential assets, that are not required for housing purposes. Some assets listed in Appendix C are connected with housing estates, such that there should be consultation with tenants in advance of any decision and for some land this may be classed as open space, requiring publication of a notice and consideration of any representations in advance of a decision. Assets listed in Appendix B should be brought to the market for disposal. This would simplify the HRA portfolio, reduce the costs and liabilities associated with managing it and deliver capital receipts that provide a financial benefit to both the HRA and GF. **This is the recommended option.**

Background

- 3.3 The Housing Revenue Account (HRA) refers to the expenditure and income account relating to property listed in section 74 of the Local Government and Housing Act 1989 ("the 1989 Act"). By law, such property must be accounted for in this separate ring-fenced account. The properties comprise mostly of housing, but also include other property provided by authorities under Part II of the Housing Act 1985 ("the 1985 Act"). At a basic level, the purpose of the ring-fencing is to avoid housing tenants and leaseholders subsidising Council taxpayers and vice versa. When deciding which assets should be "held" within the HRA, the Government guidance refers to a "who benefits" test and in certain circumstances, the expenditure may be apportioned to take account of shared benefit.
- 3.4 By law, all properties and land fitting within s.74 of the 1989 Act should be accounted for within the HRA and no other properties should be accounted for within the HRA without Secretary of State consent. There will be occasions when an asset no longer fulfils its original purpose and in this situation the Council should consider removing it from the HRA by appropriating the property to a different purpose or to determine that it can be disposed of. Assets which may no longer be required or no longer fulfil the original purpose often include commercial premises such as estate shops, banks, post offices, industrial estates and surgeries. This is particularly the case when redevelopment of an estate or sale of housing properties has changed the proportion of properties

owned and rented by the Council on a particular estate reducing the connection between the commercial properties and the Council's housing stock.

- 3.5 Some HRA assets have already been approved as 'surplus' by Cabinet. Some of these assets have already been sold and a list of these are included in Appendix A. The Council's record keeping on assets and the recorded rationale for assets being held in the HRA has some inherent weaknesses. The Government guidance makes clear that there should be a clear basis for any decision to remove an asset from the HRA, such that this can be explained to external auditors and tenants if required. It is therefore important that the rationale for any decision on an HRA asset is clearly set out at the point a decision is made.
- 3.6 The assets listed in Appendix B fall into the following categories to justify a decision to market them for disposal:

Retail Units

- 3.7 The Council has several shopping parades in various wards across the Borough. These have flats above them. There is no intention to sell the freehold, but as the mixture of tenure on the estates has changed over time, there is limited benefit in these retail units remaining in the Council's ownership and accounted for in the HRA. It is proposed to market the retail units in blocks on a long leasehold, with the intention that the units continue being used as shops to serve the local community.

Garages

- 3.8 The Council owned several garage blocks across the Borough. Many of these are now vacant sites and those that have garages remaining on the site are in a poor state of repair. None of the garages are rented out. The garage blocks provide development opportunities for the private sector and could be utilised to meet housing demand.

Tower and Ashbourne Houses

- 3.9 In January 2018 Cabinet agreed to demolish the Tower House and Ashbourne House, allocate HRA capital from the 2017/18 carry forward and 2018/19 HRA capital programme and submit a planning application for the site. Delegated authority was given to determine funding for the remodelling of the site.
- 3.10 An update report was presented in July 2018 confirming that Savills had been appointed to project manage the planning application and architects had also been appointed. The intended proposal was to provide 195 homes with no net loss of social rented homes on the site.
- 3.11 This meant the assumption was for 104 homes for social rent. There was also an expectation of a small café/commercial unit and a housing management office. The expectation was for planning to be determined by March / April 2019. In relation to financing, the estimated cost of the development was cited

to be £30-35m with an outline timeframe for a preferred partner set out to align to the planning process.

- 3.12 In February 2019, Cabinet resolved to make a compulsory purchase order for the acquisition of land and delegated all future decisions in connection with this to officers. An update was provided to Cabinet in November 2019 seeking decisions regarding appropriation and update on planning process. The report also noted that a private lender had agreed substantive heads of terms with the Council to finance the development. The report confirmed that the land included open space, which needed to be subject to advertisement before any appropriation decision can be made. This opportunity was not progressed and there is no longer any intention to develop this site internally.
- 3.13 The last update was provided to Cabinet in July 2020. This requested decisions on procurement of a contractor for development works, funded via the HRA, subject to consideration of this being “re-imbursed” once institutional funding is in place. Cabinet also agreed to the principle that the tenancy strategy for the development is to set affordable rents below LHA, with active use of 1-4-1 RTB received and s.106 funding or Homes England grant to reduce rent levels to lowest possible viable level. Bids for development were expected to come in below £48m.
- 3.14 The Council does not have the in-house capability or funding to self develop this site, or to procure and manage a development partner. It is therefore proposed to market the site for disposal. Any future report recommending disposal will need to set out the costs that have been incurred by the HRA to date and properly account for any losses if the capital receipt is not sufficient to cover these costs.

Land at Langley College

- 3.15 This site was acquired in around 2020, following Cabinet authority on 20 February 2020. The intention was to develop the land for provision of 122 new homes, due to the college being in financial difficulty. It appears that the intention was to fund the acquisition and development from the HRA, with an expectation that a full options appraisal would be completed. The report was brief and had a lack of detail on financing and risks to support a decision to delegate to an officer the decision to acquire the site.
- 3.16 The Council has no funding source or in-house expertise to develop a site of this nature and there are site constraints which place challenges on sale of the whole site.

Lessons Learned

- 3.17 There are lessons to be learned for the Council in relation to previous decisions to acquire land for self development. Some of these have been previously reported and have been included in reports by the Council’s external auditors and a recent report by Ernst Young. These include the following:

- Decisions on acquisition and sale of property must be informed by valuation evidence based on realistic plans for use;
- A detailed business case is required, with options and costings, before land is acquired for development;
- Reports to elected members must contain sufficient evidence and advice to support the decision;
- Delegated authority should have clear constraints in terms of purchase price and other conditions;
- Update reports need to be provided to elected members when a project is delayed or its original aims are unable to be fulfilled;
- Detailed finance and legal advice is required on potential options, including in relation to use of ring-fenced revenue funds and capital.

- 3.18 Assets listed in Appendix C are those assets that officers believe may no longer be required for housing purposes, but which are either open space requiring a specific statutory process or require consultation with tenants before a decision can be made. Under s.105 of the 1985 Act, the Council, as landlord, must maintain appropriate arrangements to inform and consult secure tenants on matters of housing management which are likely to substantially affect them.
- 3.19 Housing management is wider than management of dwellings and includes provision of services or amenities in connection with dwellings, change in practice, new programme of maintenance, improvement or demolition or policy of the Council, where these are likely to substantially affect a group or all secure tenants. Services or amenity refers to those provided by the Council when acting in its capacity as landlord.
- 3.20 If the Council has a duty to consult secure tenants, as a group or a whole, such consultation must be undertaken prior to any decision to dispose of the asset and representations must be taken into account by the decision-maker.
- 3.21 Appendix D provides site plans for the assets listed in Appendix B and C, so that the location and extent of these sites is clear to Cabinet.
- 3.22 Further asset review work is to be undertaken and it is anticipated that this will identify further surplus HRA assets, which will be brought back to members for a decision.
- 3.23 The proposal to sell surplus HRA assets has other financial benefits. Disposing of surplus sites reduces the costs, liabilities and management burden associated with owning them, permitting HRA income be utilised for other purposes. The HRA Business Plan made clear that projects such as decarbonisation are challenging to finance, and rationalising the estate by disposing of surplus assets allows resources to be utilised more efficiently.
- 3.24 Selling surplus HRA assets also delivers non-financial benefits. Transferring the ownership of these assets is likely to enable investment in them (by the new

owners). This should mean development coming forward (e.g. additional housing) and investment in assets where there is not likely to be a change of use arising from a sale (e.g. shops). This provides benefits to existing housing tenants and the wider community (e.g. residents of the Borough).

4 Implications of the Recommendation

Financial implications

4.1 The report seeks approval for a number of HRA owned assets to be deemed surplus to requirements and commence arrangements for their disposal, and to further agree to progress proper process for determination of further HRA assets for consideration as surplus to requirements, The disposal of surplus assets is a key tenet of the Council's approved Treasury Management Strategy, both to support the Council's cash position and reduce debt. In a separate report on this agenda, Cabinet approval is sought to agree the principle that to utilise any excess HRA capital receipts to support general fund debt reduction, in accordance with the principle of no detriment to the HRA. This is a prerequisite to supporting the delivery of financial sustainability for the Council. However, the decision to dispose of any asset must follow a formal best value appraisal.

4.2 The capital receipts arising from the disposal of these surplus assets will firstly be accounted for within the HRA on the basis of, as a minimum, no detriment. That is to ensure compliance with statutory HRA ring-fencing requirements. In a separate report on this agenda, Cabinet is asked to approve the principles of accounting for surplus HRA (non-dwelling) receipts. It should be noted that disposal of land must generally be for best consideration reasonably obtainable.

Disposing of the identified surplus assets should eliminate any current management, maintenance and security costs associated with the assets. It will also provide capital receipts that can primarily be applied towards paying off outstanding HRA debt associated with the assets, as well as providing resources for improving existing residential stock, developing new affordable housing. , As set out above, subject to approval of the separate report on this agenda, any excess capital receipts from the disposal of HRA assets will be used to offset against General Fund capital expenditure. The capital receipts arising from the sale will be reflected in the next update to the HRA 30yr Business Plan.

4.3 Appendix A sets out those assets either disposed of (with gross receipts of £149.7m, including the Akzo Nobel site sale), currently in the process of disposal or designated surplus to requirements and hence available for disposal. These are anticipated to generate over £7m of income. Appendix B highlights those assets which officers now seek approval to be designated surplus to requirements, subject to them having gone through the appropriate statutory processes. Where appropriate a clear justification is set out for determination as surplus to requirements. Appendix C sets out a schedule of those which require review and where appropriate statutory processes need to be undertaken, with identified value of both Appendices B and C to be some £13m.

4.4 Care will need to be taken as part of the individual asset appraisal to ensure the nature of funding for site acquisition or development, through the sale process does not render the authority subject to further liabilities. Any losses on sale would fall as an in-year impairment charge to the HRA.

Legal implications

4.5 The ring-fencing of the HRA is established in law. The HRA must be self-sufficient and not operate at a loss. It cannot subsidise the General Fund. Government guidance was last provided in 2020 (Operation of the HRA ring-fence and HRA – Information and advice on HRA and consents for disposal of land from HRA), setting out further detail and the consents available to dispose of land from the HRA. Collectively these documents confirm and clarify the statutory provision:

(a) Expenditure and income relating to property listed in s.74 of the Local Government and Housing Act 1989 must be accounted for in the HRA. This comprises mainly of housing and other property provided under Part 2 of the Housing Act 1985.

(b) The HRA is primarily a landlord account containing income and expenditure arising from a housing authority's landlord function;

(c) The "Who benefits?" test should be used to establish who should bear the cost and the ability for costs to be shared on a shared benefit principle;

(d) A property has to be accounted for within the HRA if it is currently provided under Part 2 or any other powers specified in s.74 of the 1989 Act – the account extends to any outstanding debts or receipts which arose when a property was so provided and which are still outstanding following its disposal.

(e) If a property is not provided under the powers listed in s.74(1) or covered by a direction under this section, the authority must not account for it in the HRA;

(f) If an authority wishes to include in the HRA property which is ancillary to Part 2 housing, but not provided under Part 2, it will be necessary to obtain consent from the SoS under s.12 of the 1985 Act.

(g) If a property was originally provided under one of the powers in s.74 of the 1989 Act, but no longer fulfils its original purpose, the authority should consider its removal from the HRA by appropriating the property to a different purpose. Examples include estate shops and other commercial premises, such as banks, post offices, workshops, public houses, industrial estates and surgeries where there is no longer any connection with the authority's housing.

(h) Any transfer between the HRA and other revenue accounts will involve an adjustment to the HRA and other revenue accounts in accordance with paragraph 5(1) of part 3, Schedule 4 to the 1989 Act and HRA capital financing requirements.

4.4 Consent is required from the Secretary of State for any appropriation or disposal decision for housing assets. General Consents are provided to dispose or appropriate land or property under s.32 Housing Act 1985. These include

(a) Disposal for consideration equal to its market value and where no tenancies are impacted. Market value is defined as "an amount for which a property would realise on the date of the valuation on a disposal between a willing buyer and a willing seller in an arm's length transaction after proper marketing where the parties had each acted knowledgeably, prudently, and without compulsion and

where the market value is assessed no earlier than 3 months before the buyer applies or agrees to an offer in writing.

(b) A local authority may dispose of vacant land. Land is defined as buildings (which could include dwelling-houses, houses and flats) and other structures, land covered with water and any estate, interest, easement or right over land. Vacant is defined as land on which no dwelling-houses have been built or where dwelling-houses have been built, such dwelling houses have been demolished or are no longer capable of human habitation and are due to be demolished.

4.5 In order to make a decision that a housing asset should be disposed of, the Council should take the following steps:

(a) determine the historic use of the land to ensure it is properly held in the HRA;

(b) determine that it is no longer required for the original housing purpose. Reasons could include the asset no longer being sufficiently linked to Council tenancies, the level of tenanted properties compared to privately owned properties meaning the land is not sufficiently benefitting tenants, insufficient demand from Council tenants for services or amenities, eg. Garages.

(c) determine the value of the site and this represents market value or best consideration reasonably obtainable. If there is a proposal to dispose of land at less than market value, members should consider the rationale for this, including the social or environmental value.

(d) Determine the accounting arrangements for the disposal.

Risk management implications

4.6 The table below sets out the key risks:

Risk	Summary	Mitigations
Market / Economy	Challenging market conditions having an impact on the values that can be achieved	Continue to receive and react to market intelligence
Abortive Sales	Sales aborted where the best market offer could not be supported by SBC Finance	A new methodology for calculating minimum sales values is being adopted
Programme Target	The clarified target appears to be unachievable	Establishing what an achievable target would be
HRA Disposals	The process for disposing of HRA assets and recognising an element of the capital receipt in the General Fund had been unclear	Clarified through an EY commission which is the subject of a separate Cabinet report (May 2024), presented by Finance

Risk	Summary	Mitigations
Skills / Capability	Programme outcomes limited by the capacity and capability of resources	Additional surveyors recruited into Property team in April 2024

Environmental Implications

4.7 Bringing forward the development of vacant sites reduces the risks of environmental crime (e.g. fly tipping) and enables modern, energy efficient homes to be created.

Equality implications

4.8 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.

There are no material adverse equalities impacts arising from these proposals.

5 Background Papers

Item 54, Appendix D

[Agenda for Cabinet on Monday, 17th October, 2022, 6.30 pm \(slough.gov.uk\)](https://www.slough.gov.uk/agenda-for-cabinet-on-monday-17th-october-2022-6.30-pm)

Item 28, Appendix 3

[Agenda for Cabinet Committee - Asset Disposals on Thursday, 12th January, 2023, 4.30 pm \(slough.gov.uk\)](#)