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DATE: 29 September 2020

To: Members of the
**RENEWAL, RECREATION AND HOUSING
POLICY DEVELOPMENT AND SCRUTINY COMMITTEE**

Councillor Michael Rutherford (Chairman)
Councillor Suraj Sharma (Vice-Chairman)
Councillors Gareth Allatt, Julian Benington, Kim Botting FRSA, Josh King,
Alexa Michael and Gary Stevens

Non-Voting Co-opted Members
Tajana Reeves, Bromley Youth Council

A special meeting of the Renewal, Recreation and Housing Policy Development and Scrutiny Committee will be held on **TUESDAY 6 OCTOBER 2020 AT 8.30 AM**

PLEASE NOTE: This is a 'virtual meeting' and members of the press and public can see and hear the Sub-Committee by visiting the following page on the Council's website: –

<https://www.bromley.gov.uk/councilmeetingslive>

Live streaming will commence shortly before the meeting starts.

MARK BOWEN
Director of Corporate Services

Copies of the documents referred to below can be obtained from
<http://cds.bromley.gov.uk/>

PART 1 AGENDA

Note for Members: Members are reminded that Officer contact details are shown on each report and Members are welcome to raise questions in advance of the meeting.

STANDARD ITEMS

- 1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS**
- 2 DECLARATIONS OF INTEREST**
- 3 QUESTIONS FROM COUNCILLORS AND MEMBERS OF THE PUBLIC ATTENDING THE MEETING**

In accordance with the Council's Constitution, questions at special meetings are restricted to reports on the agenda and must be received by the Democratic Services Team within two working days of the normal publication date of the agenda - by **5pm on Thursday 1st October 2020.** Written replies will be provided.

4 CALL-IN: REDEVELOPMENT OF CHISLEHURST LIBRARY
(Pages 3 - 26)

PART 2 (CLOSED) AGENDA

5 LOCAL GOVERNMENT ACT 1972 AS AMENDED BY THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) (VARIATION) ORDER 2006, AND THE FREEDOM OF INFORMATION ACT 2000

The Chairman to move that the Press and public be excluded during consideration of the item of business listed below as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the Press and public were present there would be disclosure to them of exempt information.

Items of Business

Schedule 12A Description

6 CALL IN: REDEVELOPMENT OF CHISLEHURST LIBRARY – PART 2 APPENDICES
(Pages 27 - 46)

Information relating to the financial or business affairs of any particular person (including the authority holding that information)

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Report No.
CSD20

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: RENEWAL, RECREATION AND HOUSING
POLICY DEVELOPMENT AND SCRUTINY COMMITTEE

Date: Tuesday 6th October 2020

Decision Type: Non-Urgent Executive Key

Title: CALL-IN: REDEVELOPMENT OF CHISLEHURST LIBRARY

Contact Officer: Graham Walton, Democratic Services Manager
Tel: 0208 461 7743 E-mail: graham.walton@bromley.gov.uk

Chief Officer: Mark Bowen, Director of Corporate Services

Ward: Chislehurst

1. Reason for report

- 1.1 On 17th September 2020, the Leader published a statement of decision in respect of the Redevelopment of Chislehurst Library (and the disposal of Land at 36 Vinson Close, Orpington). The report (a part 2 document) had previously been scrutinised by this Committee at the meeting on 2nd September 2020, and was available for scrutiny by Executive, Resources and Contracts PDS Committee on 10th September 2020. After pre-decision scrutiny and consultation with other members of the Executive, the Leader decided to approve the proposals as recommended in the report.
- 1.2 The decision on Chislehurst Library has been called in by Councillors Angela Wilkins, Ian Dunn, Vanessa Allen, Kathy Bance, Kevin Brooks and Josh King, and other members of the Labour Group. This Committee is requested to consider what action should be taken in response to the call-in of this decision; the options are to refer the decision back for re-consideration, or to take no further action on the call-in, in which case the decision may be implemented without any further delay.

2. RECOMMENDATIONS

The Committee is recommended to agree one of the following options in response to the call-in:

- (i) to take no further action on the call-in;
- (ii) to refer the decision to the Executive giving reasons why it should be reconsidered.

Impact on Vulnerable Adults and Children

1. Summary of Impact: It is considered that there will be an impact on Vulnerable Adults and Children as users of the service.
-

Corporate Policy

1. Policy Status:: Existing Policy
 2. BBB Priority: Vibrant, Thriving Town Centres, Regeneration, Excellent Council
-

Financial

1. Cost of proposal: Estimated Cost: See section 6 in the attached report
 2. Ongoing costs: Not Applicable
 4. Total current budget for this head: Not Applicable
 5. Source of funding: Not Applicable
-

Personnel

1. Number of staff (current and additional): Not applicable
 2. If from existing staff resources, number of staff hours: Not applicable
-

Legal

1. Legal Requirement: Not applicable
 2. Call-in: Applicable: The decision has been called in.
-

Procurement

1. Summary of Procurement Implications: See attached report
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Well managed buildings will improve customer experience.
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Ward members support the proposals

3. COMMENTARY

- 3.1 On 17th September 2020, the Leader of the Council published a statement of decision in respect of the Redevelopment of Chislehurst Library (and the disposal of Land at 36 Vinson Close, Orpington). The decision on Chislehurst Library was to dispose of the site to Prime Redevelopments Ltd to create a new Medical Health Centre and replacement Library on the site. The report (attached as a part 2 appendix) had previously been scrutinised by this Committee at the meeting on 2nd September 2020, and was available for scrutiny by Executive, Resources and Contracts PDS Committee on 10th September 2020. This Committee supported the proposals in the report, but requested that a part 1 version be made available, without sensitive commercial information – this is attached as appendix 4. After pre-decision scrutiny and consultation with other members of the Executive, the Leader decided to approve the proposals as recommended in the report, both for Chislehurst Library and 36 Vinson Close.
- 3.2 The decision on Chislehurst Library has been called in by Councillors Angela Wilkins, Ian Dunn, Vanessa Allen, Kathy Bance, Kevin Brooks and Josh King, and other members of the Labour Group. The reason for the call-in is set out in appendix 1 (with exempt information removed) and in full in appendix 5. This Committee is requested to consider what action should be taken in response to the call-in of this decision.
- 3.3 The two options before a PDS Committee when considering a call-in are –
- (i) to take no further action on the call-in (in which case the decision may be implemented); or
 - (ii) to refer the decision to the Executive giving reasons why it should be re-considered.

In exceptional circumstances, a decision may be referred to full Council for full Council to consider whether to refer it to the Executive, but only where the Committee believes, on appropriate officer advice, that there is an intention by the Executive to take action that is contrary to law or the policy and budget framework of the Council. This does not apply in this case.

- 3.4 Members are requested to note that some of the information relating to this matter is exempt from publication under paragraph 3 of Schedule 12A of the Local Government Act 1972 - this should not be discussed in public.

Comments from the Director of Housing, Planning, Property and Regeneration

3.5 Summary of reasons for call in:

Inadequate evidence that the disposal of this land to the chosen bidder (for 30% less than the highest bid) complies with the legal requirement on the Council to deliver the best possible return for sale of its assets.

- 3.6 Under section 123 of the Local Government Act 1972, a local authority has the power to dispose of land. The main caveat to this power is that the council must not do so for “a consideration less than the best that can be reasonably obtained”. This is often interpreted as being the best price achievable in the open market.
- 3.7 Key principles on a lawful approach and factors a court will take into account are usefully set out in the case of *Faraday Development Limited v West Berkshire* [2016] EWHC 2166:
- a. The Court is not entitled to substitute its own view on the facts and merits for that of the local authority. The Court may only interfere if there was no material upon which the authority's decision could have been reached, or if in reaching that decision, the authority

disregarded matters it ought to have taken into consideration, or if it took into account matters which were irrelevant, or if its decision was irrational.

- b. In the case of the best consideration duty the Court is only likely to find a breach where an authority has failed to take proper advice, or (b) failed to follow proper advice for reasons which cannot be justified, or (c) although following advice, it followed advice which was so plainly erroneous that in accepting it the authority must have known, or at least ought to have known, that it was acting unreasonably.
 - c. That duty does not mandate the authority to have regard to any particular factors nor is there any need for the authority's decision-making process to refer to it explicitly, provided that the Court is able to see that the duty has in substance been performed. The duty is not to conduct a particular process, but to achieve a particular outcome. However, process may have an important or even determinative, evidential role in deciding whether the authority has complied with that duty.
 - d. "Consideration" is confined to those elements of a transaction which are of commercial or monetary value. Therefore the Court will quash a decision to sell property where the authority has taken into account an irrelevant factor, e.g. job creation, when assessing whether it is obtaining the best "consideration" reasonably obtainable.
 - e. The deliverability or credibility of a bid, or the care with which it has been prepared, are commercial factors which are relevant to an assessment of whether the "consideration" offered is the best reasonably obtainable. Likewise, the highest offer on the table need not represent the best "consideration", because an authority may conclude that "a bird in the hand is worth two in the bush".
 - f. There is no absolute requirement to market the land being disposed of, or to obtain an independent valuation.
- 3.8 Therefore the focus of the duty is on the outcome rather than any particular process being followed. That said, if a disposal were to be challenged, the Courts as set out in Faraday are likely to find the duty to obtain best consideration has not been complied with where:
- there is a failure to take proper advice;
 - proper advice has been obtained but there has been a failure to follow it for reasons that cannot be justified; or
 - advice has been obtained and followed, but the advice is so plainly wrong that the Council either knew or ought to have known it was acting unreasonably
- 3.9 Whilst the Prime Offer was not the highest bid received, careful consideration and legal advice was sought in light of Section 123 best consideration obligations for the disposal of the site. It was decided that the Prime bid should formally be accepted, since although it was not the highest offer in financial terms, it was not conditional upon extraneous factors such as the exercise of an option to acquire additional land or on obtaining finance for the development at some unspecified time in the future following further marketing of the site to a developer as proposed in the bid from the highest bidder and was therefore perceived to be the best offer reasonable obtainable.
- 3.10 It should also be noted that as the Prime offer was based around the provision of a new medical centre, then the application of General Consent (the General Disposal Consent (England) 2003) can be factored in, which gives consent to the disposal of any interest in land at less than best consideration where the Council considers it will help it to secure the promotion or improvement of the economic social or environmental well-being of its area, subject to the condition that the undervalue (i.e. the difference between the consideration

obtained and the best consideration that can reasonably be obtained) does not exceed £2million.

- 3.11 The Chislehurst Library disposal would fall within this consent as it is considered that the provision of a new Medical Centre will promote or improve the economic and social well-being of the Chislehurst area and the disposal receipt is well within the threshold. Therefore given uncertainties evident in the highest bid, the second best bid was selected and recommended to Members on the basis of the general consent, decision to select the Prime bid was reached.

3.12 Transparency/scrutiny

Options for Chislehurst Library were first discussed in September 2014, culminating in a decision in November 2016 to grant the lease to Milngate for redevelopment of the site, to include retail and housing provision. Officers were instructed and delegated to agree the lease thereafter.

This issue did not appear again before any committee until 2 September 2020; the imminence of this decision had not been reflected in the council's Forward Plan, as is required by the Council's own procedures. No committee papers were available to the public until after RR&H PDS had met and made its recommendations on 2nd September.

- 3.13 The Part 2 Report on Chislehurst Library was scrutinised at the RR&H PDS on 2 September 2020. Members requested that elements of the Report relating to the process of evaluation should be contained within a Part 1 format. The minutes of that meeting together with the Part 1 Report were then published – please see attached Appendixes’.
- 3.14 The Executive agreed at its meeting on 10th September 2014 that Chislehurst Library, together with the adjoining pay and display car park, should be marketed, on the basis that a replacement library would have to be provided as part of the consideration for the site. Members were advised at that time that the current library is poorly laid out, leading to access issues. It is also significantly dated in its appearance. A development opportunity potentially allows for the provision of a new library, but constructed with modern materials, which will reduce the Council's long-term maintenance and revenue running costs. Experience elsewhere has shown that where libraries are renovated and improved use significantly increases and remains higher than prior to any improvement works. Chislehurst Library plays an important part in the overall library delivery strategy and it is envisaged that this will continue over the long term.
- 3.15 The library element of every proposal put forward was a key criteria when assessing the offers received. The selected purchaser will be providing a library of no less than 695 sq m as advertised. The site was also marketed on the basis that any prospective bidder would be responsible for the provision of a temporary library facility at their cost (save running costs). The key point is that the proposal required a replacement library within any proposed development scheme and a capital receipt for the land disposal.

- 3.16 **Furthermore, numerous issues arise from the Part Two report presented to RR&H PDS on 2 September, namely:**

1. No explanation is provided as to why the instructions to officers made in November 2016 has not been implemented

- 3.17 The Part 2 report presented to RR&H PDS on 2 September detailed the outcome of a marketing exercise undertaken by the Council, following the collapse of negotiations between

the previously identified preferred bidder where it was not possible for the Council to enter into a Development Agreement. That bidder was also the highest bidder in the marketing exercise the subject of the Part 2 report scrutinised on 2 September 2020. It should be noted that their offer was not compliant from the start of the process as they wished to pursue a scheme that included land outside of the Council's ownership, however in order to ensure that the Council receives best consideration it was not dismissed and pursued to see if it could be delivered.

- 3.18 A core objective of the Council is certainty of delivery. The process was run in a way that provided parties ample opportunity (first round/second round/clarification stage) to detail their proposal, answer clarification questions, and provide any additional information that they deemed helpful to support their proposal and demonstrate that this core objective would be met. The bidder in this case failed to adequately provide the information needed to give assurance that their scheme was deliverable in terms of planning risk, detailed financial funding, timing and clarity of who the occupier of the scheme would be.
- 3.19 Specifically, the highest bidder did not offer proof of funds for the scheme other than providing an undated letter of support from their bank. Whereas Prime provided detailed accounts demonstrating they held sufficient funds for the purchase, planning and development stages as requested as did the third highest bidder who was also considered. All bidders were asked to undertake a pre-app as to the viability of their scheme, which the shortlisted bidders did, so that their final offers could reflect any Planning issues. The highest bidder chose not to do so and relied upon their previous pre-app. Their previous pre-app raised considerable concerns about their proposed scheme.
- 3.20 The highest bidder was looking to secure the contract on the site to enable them to act as Development Manager for a scheme which extends beyond the Council's site and is conditional on the exercise of an option on the adjoining land by a fixed date. They could not demonstrate funding, a delivery partner or an exit strategy at this stage meaning that the headline land price of their offer was founded on several high- risk assumptions and certainty of delivery could not be guaranteed to the Council.

2. There is no record of the PfH or members authorising Cushman & Wakefield to go to the market again in 2019/20; on whose authority did they do so?

- 3.21 The decision to instruct Cushman & Wakefield was taken following consultation and agreement with both Ward Members and the Portfolio Holders for Resources and Regeneration following the collapse of negotiations between the previously identified preferred bidder where it was not possible for the Council to enter into a Development Agreement. A formal member decision was not required. Cushman & Wakefield were instructed as the TFM Contract with the Council allowed for such instruction.

3. There is no adequate explanation why Cushman & Wakefield recommended a shortlist of 8 bidders should be reduced "to 5 or less" and why only 3 bidders are named in the report

- 3.22 C&W received a total of 17 expressions of interest, with the primary use classes being pursued by interested parties to be delivered in conjunction with the Council's library primarily being either residential accommodation, or retail (food store), whilst a single submission was received for a medical use. Of these interested parties 8 were deemed to meet the base requirements for further dialogue/consideration.
- 3.23 The initial shortlist stood at 8 and C&W encouraged the reduction of this shortlist to 5 parties. C&W advised that formulating fully worked offers for the opportunity requires parties to invest time, resources and money into advancing their schemes. To ensure the shortlisted parties

undertake the level of work required to allows them to conclude on a preferred party, they advised the need to reduce the number of participants sufficiently that shortlisted parties feel there is a high enough chance of them being selected to speculatively pursue the opportunity.

- 3.24 A shortlist of 5 or less parties was deemed suitable to achieve this, whilst also enabling the Council to engage with each party to ensure that their key objectives and requirements are being accommodated for as scheme designs advance. However, following further discussions with the Council, the decision to proceed with 8 parties was made.
- 3.25 Following the selection of the shortlist, eight parties were informed that they were invited to participate in the second stage process and informed of their requirements to conduct a pre-application. During the course of the pre-application process required of shortlisted parties, 3 of the 8 shortlisted parties withdrew for various reasons personal to each party and 5 second round bids were received in total. Of these 5 offers, two were discounted as they were not financially viable options for the Council leaving 3 shortlisted parties for further consideration. The other bidders ranged from residential schemes which upon closer scrutiny were deemed unviable.
- 3.26 The report focused on the outcome of the marketing exercise and the above process. The three highest bids were ultimately the ones which were taken forward for more detailed consideration in any event.

4. The report makes reference to “further questions need to be asked of ... future provision of medical facilities and whether this may [well] be seen as an essential function” (para 3.24). No responses to this question have been provided

- 3.27 As previously stated the Prime offer was based around the provision of a new medical centre, then the application of General Consent (the General Disposal Consent (England) 2003) can be factored in, which gives consent to the disposal of any interest in land at less than best consideration where the Council considers it will help it to secure the promotion or improvement of the economic social or environmental well-being of its area, subject to the condition that the undervalue (i.e. the difference between the consideration obtained and the best consideration that can reasonably be obtained) does not exceed £2million.
- 3.28 The Chislehurst Library disposal would fall within this consent as it is considered that the provision of a new Medical Centre will promote or improve the economic and social well-being of the Chislehurst area and the disposal receipt is well within the threshold. The Part 2 report paragraph 3.24 should have linked this point – in that a new medical centre would be seen as a use which could be legitimately considered under the General Consent (the General Disposal Consent (England) 2003).

5. Para 3.25 makes reference to [the proposal for medical facilities requiring] “CCG support”. No such evidence is provided in the report.

- 3.29 The bid received by Prime contained a letter from the CCG supporting the Prime bid. Officers also checked directly with the CCG who confirmed that they were supportive of this bid and that it was included within their strategic direction for delivery of services for Bromley/Chislehurst.

Appendices

3.30 The following appendices are attached to this report in part 1 -

Appendix 1: Part 1 Reasons for Call-in

Appendix 2: Statement of Decision by the Leader of the Council on 17th September 2020

Appendix 3: Part 1 Minutes of RR&H PDS Committee on 2 September 2020

Appendix 4: Part 1 Report to RR&H PDS Committee on 2 September 2020

3.31 The following appendices are not for publication, but are attached in part 2 -

Appendix 5: Part 2 Reasons for Call-in

Appendix 6: Part 2 Minutes of RR&H PDS Committee on 2 September 2020

Appendix 7: Part 2 Report to RR&H PDS Committee on 2 September 2020

Non-Applicable Sections:	Impact on vulnerable adults and children/Policy/Financial/Personnel/Legal/Procurement
Background Documents: (Access via Contact Officer)	None

Redevelopment of Chislehurst Library

Request to call decision in

Summary of reasons for call in:

- Inadequate evidence that the disposal of this land to the chosen bidder (for less than the highest bid) complies with the legal requirement on the Council to deliver the best possible return for sale of its assets.
- Lack of scrutiny and transparency

Best value

The Council is required to obtain the best possible value when disposing of its land and property. The 'winning' bid in this instance is for less than the highest bid. The report provides no adequate or proportionate justification for this large loss of potential capital receipt.

Transparency/scrutiny

Options for Chislehurst Library were first discussed in September 2014, culminating in a decision in November 2016 to grant the lease to Milngate for redevelopment of the site, to include retail and housing provision. Officers were instructed and delegated to agree the lease thereafter.

This issue did not appear again before any committee until 2 September 2020; the imminence of this decision had not been reflected in the council's Forward Plan, as is required by the Council's own procedures. No committee papers were available to the public until after RR&H PDS had met and made its recommendations on 2nd September.

Furthermore, numerous issues arise from the Part Two report presented to RR&H PDS on 2 September, namely:

1. No explanation is provided as to why the instructions to officers made in November 2016 has not been implemented
2. There is no record of the PfH or members authorising Cushman & Wakefield to go to the market again in 2019/20; on whose authority did they do so?
3. There is no adequate explanation why Cushman & Wakefield recommended a shortlist of 8 bidders should be reduced "to 5 or less" and why only 3 bidders are named in the report

4. The report makes reference to “further questions need to be asked of ... future provision of medical facilities and whether this may [well] be seen as an essential function” (para 3.24). No responses to this question have been provided
5. Para 3.25 makes reference to [the proposal for medical facilities requiring] “CCG support”. No such evidence is provided in the report.

LONDON BOROUGH OF BROMLEY

STATEMENT OF EXECUTIVE DECISION

The Leader of the Council, Councillor Colin Smith, has made the following executive decision:

REDEVELOPMENT OF CHISLEHURST LIBRARY AND DISPOSAL OF LAND AT 36 VINSON CLOSE, ORPINGTON

Report: [Annex B - Chislehurst Library and Vinson Close Part 1 Report](#)
Part 2 report – not for publication

Decision:

(1) The marketing exercise undertaken by Cushman & Wakefield in respect of the disposal of the Chislehurst Library site and the evaluation of bids received be noted and the disposal of the site, subject to planning, to Prime Developments be approved for the sum set out in the part 2 report.

(2) Authority be delegated to the Director of Housing, Planning and Regeneration, with agreement from the Portfolio Holder for Resources, Commissioning and Contract Management, to conclude the Heads of Terms and enter into a Development Agreement with Prime Developments for a new Medical Centre and Library, conditional upon the grant of planning permission being approved by the Council and completion by the Tenant of the construction works for the consented scheme.

(3) The Heads of Terms will include an obligation on Prime Developments to transfer the new Library, constructed to shell and core specifications, to the Council on a 999 year lease at a peppercorn rent.

(4) The future fit out of the new library be agreed at an estimated cost of £1m and this scheme be added to the Capital Programme, funded from the disposal capital receipt; in the event that costs of the library fit-out exceed the estimated £1m, a subsequent report will be submitted to the Executive.

(5) The payment of disposal and legal fees detailed at 3.26 to the report (3.31 to the part 2 report) be noted and agreed.

(6) The sale of land at 36 Vincent Close to Acklam Developments on an unconditional basis for the sum set out in the part 2 report be agreed.

(7) The independent valuation confirming that the purchase price offered by Acklam exceeds the open market valuation be noted.

(8) It is noted that the Council will receive the benefit of nomination rights to the Socially Rented element of the Affordable Housing provision within the consented Acklam Development Scheme.

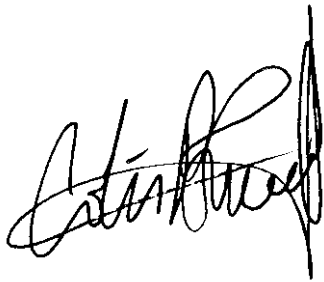
Reasons:

Disposal of the Chislehurst Library site will enable the Council to secure a replacement library and Medical Health Centre. The site has been subject to an extensive marketing and selection process to choose the most suitable scheme and

offer from those submitted. During the construction period an interim library will be provided.

The Council has been approached by Acklam Developments to purchase a piece of land at 36 Vinson Close, Orpington to enlarge the site of their proposed development at 208-212 High Street. The sum offered is reasonable, and the Council will have nomination rights for the socially rented affordable element of their proposed development.

The proposed decision was considered by Renewal, Recreation and Housing PDS Committee at a virtual meeting on 2nd September 2020 and the Committee supported the proposals.

A handwritten signature in black ink, appearing to read 'Colin Smith', with a vertical line extending downwards from the end of the signature.

Councillor Colin Smith
Leader of the Council

Mark Bowen
Director of Corporate Services
Bromley Civic Centre
Stockwell Close
Bromley BR1 3UH

Date of Decision: 17 September 2020
Implementation Date: 24 September 2020
Decision Reference: Exec 20044

**RENEWAL, RECREATION AND HOUSING
POLICY DEVELOPMENT AND SCRUTINY COMMITTEE**

Minutes of the meeting held at 6.30 pm on 2 September 2020 (Extracts)

Present:

Councillor Michael Rutherford (Chairman)
Councillor Suraj Sharma (Vice-Chairman)
Councillors Gareth Allatt, Julian Benington,
Kim Botting FRSA, Josh King, Alexa Michael and
Gary Stevens

Also Present:

Councillor Yvonne Bear, Councillor Aisha Cuthbert,
Councillor Ian Dunn, Councillor Peter Morgan and
Councillor Kieran Terry

PART 2 (CLOSED) AGENDA

**13 PRE-DECISION SCRUTINY OF PART 2 (EXEMPT) EXECUTIVE
REPORTS**

The Committee considered the following reports on the Part 2 agenda for the meeting of the Executive on 16 September 2020:-

**13b REDEVELOPMENT OF CHISLEHURST LIBRARY AND DISPOSAL
OF LAND AT 36 VINSON CLOSE, ORPINGTON**

Report HPL2020/00

This report contained confidential information in relation to the redevelopment of Chislehurst Library and the disposal of land at 36 Vinson Close, Orpington.

The Chairman announced that it was in the public's interest for the background details contained in the report to be made available to the public. It was therefore decided that those details be brought forward and discussed in the Part 1 public section of the agenda. The remaining confidential information would still be considered under the Part 2 (Exempt) section of the agenda. The public information (Part 2 redacted report) can be viewed as Annex B to these Minutes.

2 September 2020

The Director of Housing, Planning, Property and Regeneration reported that approval to dispose of this site and re-provide the library was originally made in 2014. The site was previously marketed and sold but the deal fell through after many years. Since then, the site had been remarketed and this report confirmed the outcome of the marketing exercise and the Executive Committee would be requested to make a decision on the preferred bidder. Designs and re-provision of the library would be subject to consultation. The actual planning application would be subject to full public consultation in line with planning legislation.

The Portfolio Holder for Renewal, Recreation and Housing assured the Chairman it was always intended that a temporary library would be provided during construction of the new site following which a new library would be established.

Councillor Sharma thanked officers, Cushman and Wakefield and colleagues for consulting with Members throughout this process. The Chislehurst Society had conducted a poll and he was confident that the proposals would be well received by members of the public.

Councillor Stevens was informed by the Portfolio Holder that the temporary library would be situated at the car park site behind the Post Office on the opposite side of the road to the current library. The new library would be comparable to the existing one in terms of book stock etc.

The timescale for the construction of the new build was estimated to be around 18 months.

Members were informed that following consideration of the 16 expressions of interest received (including scrutiny of pre-applications), only three were deemed viable.

RESOLVED that the report be noted and the Committee's comments be provided to Members of the Executive.

Report No.
HPL2020/00

London Borough of Bromley

PART 1 – PUBLIC REPORT

Decision Maker: EXECUTIVE

Pre-decision Scrutiny by RRH PDS (2 Sept 2020)

Date: Wednesday 8 July 2020

Decision Type: Non -Urgent Executive Key

Title: **Redevelopment of Chislehurst Library and Disposal of Land at 36 Vinson Close, Orpington**

Contact Officer: Michael Watkins, Assistant Director - Strategic Property
Michael.Watkins@bromley.gov.uk 0208 313 4178

Chief Officer: Sara Bowery, Director Housing, Planning and Regeneration

Ward: Chislehurst and Orpington

1. Reason for report

- 1.1 This report seeks the Executive`s approval to the disposal of the Chislehurst Library site to Prime Developments to create a new Medical Health Centre and replacement Library on the site.
- 1.2 The report also seeks the Executive`s approval to dispose of a small piece of land at 36 Vinson Close, Orpington to an adjoining landowner, Acklam Developments.

2. **RECOMMENDATIONS**

The Executive is recommended to:

- 2.1 Note the marketing exercise undertaken by Cushman & Wakefield in respect of the disposal of Chislehurst Library site and the evaluation of bids received and to agree to the disposal of the site, subject to Planning, to Prime Developments.
- 2.2 To delegate Authority to the Director of Housing, Planning and Regeneration, with approval from the Portfolio Holder for Resources, to conclude the Heads of Terms and enter into a Development Agreement with Prime Developments for a new Medical Centre and Library, conditional upon the grant of planning permission to be approved by the Council and completion by the Tenant of the construction works for the consented scheme.

- 2.3 The Heads of Terms will include an obligation on Prime Developments to transfer the new Library, constructed to shell and core specifications, to the Council on a 999 year lease at a peppercorn rent.
- 2.3 To delegate Authority to the Director of Housing, Planning and Regeneration, with approval from the Portfolio Holder for Resources, to conclude the Heads of Term and enter into a Development Agreement with Prime Developments for the construction of a new Medical Centre and Library with the contractual provision that once the scheme is developed, Prime Developments will grant 999 year lease of the Library to the Council at a peppercorn rent.
- 2.4 To agree the future fit out of the new library at an estimated cost of £1M and to add this scheme to the Capital Programme, funded from the disposal capital receipt; in the event that costs of the library fit-out exceed the estimated £1M, a subsequent report will be submitted to the Executive.
- 2.5 To note and agree to the payment of disposal and legal fees detailed at 3.26.
- 2.6 To agree to the sale of land at 36 Vincent Close to Acklam Developments on an unconditional basis.
- 2.7 To note the independent valuation confirming that the purchase price offered by Acklam exceeds the open market valuation.
- 2.8 To note that the Council will receive the benefit of nomination rights to the Socially Rented element of the Affordable Housing provision within the consented Acklam Development Scheme.

Impact on Vulnerable Adults and Children

1. It is considered that there will be an impact on Vulnerable Adults and Children as users of the Councils Portfolio to receive services from.
-

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council Quality Environment A Council that Manages its Assets well
-

Financial

1. See Section 6
-

Personnel

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours: N/A
-

Legal

1. Legal Requirement: Statutory Requirement: Section 123 Local Government Act 1972
 2. Call-in: Applicable:
-

Procurement

1. Summary of Procurement Implications: There are no Procurement implications in this Report.
-

Customer Impact

1. Well managed buildings will improve customer experience.
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes
2. Summary of Ward Councillors comments: Ward Members are supportive of these proposals.

3. COMMENTARY

BACKGROUND

3.1 This report seeks the Executive's approval to the disposal of the Chislehurst Library site to Prime Developments to create a new Medical Health Centre and replacement Library on the site and also approval to dispose of a small piece of land at 36 Vinson Close, Orpington to an adjoining land owner, Acklam Developments.

Chislehurst Library

3.2 Cushman & Wakefield were instructed on behalf of Bromley Council to dispose of the Chislehurst Library Site, situated on Red Hill, Chislehurst, BR7.

3.3 The site extends to circa 0.44 acres and currently comprises a part one, part two storey library building and public car parking comprising 36 spaces. There is a 15-year lease (commencing 1st November 2017) to Greenwich Leisure Limited who currently operate the library.

3.4 As part of the disposal, the incoming purchaser will be required to construct a replacement library as part of their scheme with the new library facility to be leased back to the Council on a 999-year lease at a peppercorn rent. During the construction period an interim library facility will be provided by the developer to ensure continuity of services for the local community. The Council has been advised that this is permitted within the terms of the lease with Greenwich Leisure Limited.

3.5 In order to best ensure the Council's key objective of having new library facilities delivered for them on the original site, C&W were instructed to invite offers on a Subject to Planning basis. The selected purchaser would be obliged to build out the consented scheme under a development agreement and on completion of the purchaser's construction works and lease to the Council of the new Library.

3.6 The site has been the subject of an overt marketing process that drew interest via a database, electronic and print publications, resulting in a first stage 'Expressions of Interest' on 20th February 2020 and then a Second Round process on 12th June 2020 following further planning due diligence.

3.7 The period between shortlisting from the expressions of interest stage in February 2020, and the second-round process in June 2020 straddled the Covid-19 Pandemic and subsequent 'lockdown' for the country. The delay between these two bid dates however, was pre-agreed with the Council's planning department to allow them time to provide pre-application response and therefore the pandemic has not had any material impact to the timings of this marketing process to date.

Marketing Campaign

3.8 Bromley Council instructed Cushman & Wakefield to bring the site to the market in December 2019. Due to the proximity to the Christmas and New Year holidays, the site was initially marketed from 13th December 2019 to parties who had previously registered their interest in the site, alongside parties Cushman & Wakefield knew to be active in the area.

3.9 The formal campaign was launched on 7th January 2020, following the Christmas break, and comprised a mailout to the full Cushman & Wakefield database of over 3,000 developers alongside listing on the Cushman & Wakefield website.

3.10 An advert was subsequently published in the Estates Gazette on 18th January 2020, with email advertising also being sent to the Estates Gazette wide contact base of subscriber in the weeks that followed.

3.11 This four-pronged approach ensured that the site had full market exposure before expressions of interest being called for by Thursday 20th February 2020.

Expressions of Interest

3.12 C&W requested the following information was submitted with each expression of interest:

- Initial scheme proposals (use class & tenure mix, massing, initial design etc.)
- Confirmation that the requested Council facilities have been understood and accommodated
- Confirmation of due diligence undertaken to date and due diligence to be undertaken during the next stage, if shortlisted.
- Proof of financial covenant / funding
- Experience and relevant track record

3.13 C&W received a total of 16 expressions of interest, with the primary use classes being pursued by interested parties to be delivered in conjunction with the Councils library primarily being either residential accommodation, or retail (food store), whilst a single submission was received for a medical use.

Shortlist Refinement

3.14 The initial shortlist stood at eight and C&W encouraged the reduction of this shortlist to three parties. C&W advised that formulating fully worked offers for the opportunity requires parties to invest time, resources and money into advancing their schemes. To ensure the shortlisted parties undertake the level of work required to allow us to conclude on a preferred party, the advice received was to reduce the number of participants sufficiently so that shortlisted parties feel there is a high enough chance of them being selected to speculatively pursue the opportunity.

3.15 A shortlist of five or less parties was deemed suitable to achieve this, whilst also enabling the Council to engage with each party to ensure that their key objectives and requirements are being accommodated for as scheme designs advance.

Round 2 Process

3.16 Following the selection of the shortlist, eight parties were informed that they were invited to participate in the second stage process and informed of their requirements to conduct a pre-application.

3.17 A program was agreed with C&W and parties were informed they were to request a pre-application at the earliest possible convenience, with a view to submitting second round submissions by 2nd April 2020. This process was encouraged to give the shortlisted parties the opportunity to undertake significantly more due diligence, advance their scheme design and put forward a financial offer. All shortlisted parties were required to take pre-application advice from the Council, and this would provide the opportunity to make scheme amendments and advance scheme designs. The process was designed to enable the Council and C&W to make a selection based on the most deliverable partner, assessing financial receipt against the proposed scheme and likelihood of success through planning.

Pre-Application Process

- 3.18 As detailed above, the pre-application process took place virtually across May 2020. C&W engaged with the shortlisted parties across this period and fed the advice back to the Council for continuity of reporting across the campaign

Bidder Analysis

- 3.19 A total of three second round bids were received.
- 3.20 Following the submission of the second stage proposals C&W and Officers together with Ward Members and the Portfolio Holder for Regeneration reviewed the bids focusing on the following criteria:
- Council Requirements: Interim library and New Facility provided. Refinement of the grading from Round 1 to indicate location of library. Amber indicates compliant on space but predominantly located other upper floors.
 - Scheme Planning Risk: Further assessment is to be made of these factors. All schemes represent planning risk, particularly in light of the knock down approach. We have made assessments on use, housing tenure and scale to provide a broad assessment. The grades are relative to each other and therefore green is not representative of nil risk.
 - Financial Receipt: Given the disparity in the levels provided we have graded the highest as a green submission, the other positive financial receipts as amber and nil considerations as red. Nil considerations, particularly in light of the bulk and massing required create significant transaction risk.
 - Financial Covenant: Whilst the companies included all provide good track record in delivery and of sufficient scale, we have ranked the proposals by the ability to transact in cash or for the requirement of debt. Whilst debt would be introduced at the point of a planning permission it should still be flagged as a potential risk due to the requirement to hand back the library.
 - Track Record: All parties have a track record of delivering planning and construction for projects of this nature.
- 3.21 Consequently the consensus view arrived at the conclusion of the assessment of all the bids was that Prime was the strongest and most realistic offer with which to progress.
- 3.22 Careful consideration and Legal view was sought in light of Section 123 best consideration obligations for a disposal of the site.
- 3.23 It was decided that the Prime bid should formally be accepted, since although it was not the highest offer in financial terms, it was not conditional upon extraneous factors such as the exercise of an option to acquire additional land or on obtaining finance for the development at some unspecified time in the future and was be therefore perceived to be the best offer reasonable obtainable. In addition the Prime offer included a delivery of a Medical Centre for the benefit of the Chislehurst community.
- 3.24 The Executive are therefore recommended to accept and progress with the Prime offer.
- 3.25 The Executive are further recommended to delegate Authority to the Director of Housing, Planning and Regeneration, with approval from the Portfolio Holder for Resources, to conclude the Heads of Term and enter into a Development Agreement with Prime Developments for the new Medical Centre and Library with the contractual provision that once the scheme is

developed Prime Developments will acquire the site and they in turn will grant a 999 year lease to the Council for the Library at a peppercorn rent.

- 3.26 Disposal fees of £60K and Legal Fees of £25K are to be met by Prime, with 50% of these being paid on Exchange of Contracts together with a 10% Deposit with the remainder being paid on the grant of Planning consent. The Executive is recommended that these will then need to be paid to C&W at these points.

36 Vinson Close, Bromley, BR6 0EG

- 3.27 The Council have been approached by Acklam Developments to purchase a piece of land owned by the Council which is edged by the Red Line in the Plan below. Acklam Developments own the adjoining land edged with the Pink Line and are seeking to enlarge the site with rear access to increase the value of their proposed development.



- 3.28 Acklam Developments have also agreed to provide the LBB with nomination rights for the Social Rented Affordable element within the proposed development at 208-212 High Street, Orpington should their offer for the land purchase be accepted.
- 3.29 Cushman & Wakefield have been engaged to negotiate with Acklam Developments on the proviso any costs incurred with the review and potential disposal of the land sit with Acklam Developments.
- 3.30 The property is 'white land', outside of any specific policies within the Local Plan. The site sits outside of the Town Centre but within an area of archaeological importance. The site is not restricted protected for any specific use and residential led redevelopment looks the most appropriate use for the site given its immediate setting. Orpington Town Centre seeks to encourage mixed use development above an active frontage at ground floor level to the High Street, which we understand is broadly in keeping with the Acklam Development proposals for the neighbouring asset but as stated do not govern the subject site.
- 3.31 Therefore, a residential led approach, with or without the Acklam land looks to be the most appropriate future use for the subject land.
- 3.32 Acklam have proposed the following assessment of the LBB land (red) to derive their proposals. They have proposed an assessment based on both a housing scheme and an apartment scheme:

Option	Accommodation Type	Units	Storeys	Sq ft (NSA)
1	House	1	2.5	1,250
2	Flats	2	2.5	1,300

- 3.33 Cushman & Wakefield have reviewed the LBB ownership and measured the land to extend to 0.1 acres. The site sits in a row of low-rise housing, with a step up in height witnessed on the western side (the Royal Mail facility), albeit set back from the road frontage. The land to the east comprises two semi-detached single storey dwellings, whilst much of the road are two storey residential dwellings.
- 3.34 Cushman & Wakefield are satisfied the assessment of development potential is in line or indeed in advance of the approach adopted for valuation or in the open market.
- 3.35 The Acklam proposals and offer for the subject land seem well reasoned, fair and in the opinion of Cushman & Wakefield provide a fair level of financial upside on the subject property in isolation.
- 3.36 It is considered unlikely the Acklam proposals are to receive a major upside through the inclusion of the Council land, nor does a ransom position exist. Cushman & Wakefield are supportive of the Acklam opinion of OMV for the site.
- 3.37 Therefore, as specialist advice has been sought and a valuations appraisal has been undertaken demonstrating that the Acklam offer is considerably in excess of the Council's advisors view to OMV, the Executive is therefore recommended to dispose of this site to Acklam Developments.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

- 4.1 It is considered that there will be not be an impact on Vulnerable Adults and Children as users of the Councils Portfolio to receive services from these recommendations.

5 POLICY IMPLICATIONS

- 5.1 The Council's aims include being an authority which manages its assets well.

6 FINANCIAL IMPLICATIONS

- 6.1 The recommended financial offer from Prime Developments for the Chislehurst Library site will result in a capital receipt. The Council's estimated disposal costs of £85k will be reimbursed by the developer. Completion of the development is anticipated by March 2023, subject to Planning.
- 6.2 The development includes the delivery of a new library to shell and core finish, with fit out costs estimated to be up to £1m. This scheme, which is expected to commence in post completion and have a duration of circa 3-4 months will need adding to the Capital Programme in and Members are requested to agree to fund the cost from the capital receipt. In the event that the estimated fit out costs exceed £1m as project details are refined, then a further report to the Executive will be submitted.
- 6.3 The library is currently operated by GLL as part of the Library Service contract. The future running costs of the new library are expected to be less than the current facility and are therefore not anticipated to impact on the contract price.

6.4 Completion is anticipated to be in the next 3-4 months.

7. PERSONNEL IMPLICATIONS

7.1 There are no Personnel implications contained within this report.

8. LEGAL IMPLICATIONS

8.1 Under section 123 of the Local Government Act 1972, a local authority has the power to dispose of land. The main caveat to this power is that the council must not do so for “a consideration less than the best that can be reasonably obtained”. This is interpreted as being the best price achievable in the open market.

8.2 The focus of the duty is on the outcome rather than any particular process being followed. That said, if a disposal were to be challenged, the Courts are likely to find the duty to obtain best consideration has not been complied with where:

- there is a failure to take proper advice;
- proper advice has been obtained but there has been a failure to follow it for reasons that cannot be justified; or
- advice has been obtained and followed, but the advice is so plainly wrong that the Council either knew or ought to have known it was acting unreasonably

8.3 In respect of the Chislehurst Library disposal the Council has retained the services of suitable disposal agents to act on its behalf and consequently the risk to the Council would be mitigated in respect of 8.2 above.

8.4 There is a current General Consent (the General Disposal Consent (England) 2003), which gives consent to the disposal of any interest in land at less than best consideration where the council considers it will help it to secure the promotion or improvement of the economic social or environmental well-being of its area, subject to the condition that the undervalue (i.e. the difference between the consideration obtained and the best consideration that can reasonably be obtained) does not exceed £2million

8.5 The Chislehurst Library disposal would fall within this consent as the provision of a new Medical Centre will promote or improve the economic and social well-being of the Chislehurst area.

8.6 In respect of the Vincent Close disposal, again the Council has employed a firm of Chartered Surveyors to provide valuation advice and expertise as to the Acklam development offer.

9. PROCUREMENT IMPLICATIONS

9.1 There are no Procurement implications within this report

Non-Applicable Sections:	Personnel and Procurement
Background Documents: (Access via Contact Officer)	

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Agenda Item 6

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