

Decision Maker: EXECUTIVE

Date: Wednesday 16 September 2020

Decision Type: Non -Urgent Executive Key

Title: Transforming Property - Creation of a £30M Disposal Programme

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

Ward: All

1. Reason for report

1.1 This report seeks the Executive`s approval to the Council to approve the implementation of a programme of asset disposals with the aim of generating a further £30m of Capital receipts by 31 March 2023.

1.2 The aspects of this approval are:

- 1) To agree to dispose of assets which are not core to the Council`s operations or which provide good revenue returns.
- 2) Such disposals will be achieved via open market transactions or by transferring assets to the Council`s Housing Revenue Account.at market value to provide additional funding for other capital schemes.
- 3) All transactions will be at market value referencing the Council`s legal requirement to comply with S123 of the local government Act 1972 to ensure that best consideration is achieved.
- 4) The majority of assets disposed of or transferred to the Council`s Housing revenue Account will facilitate Residential Development in the Borough together with Social Housing provision.
- 5) The proposed Programme approach will require a through evaluation of opportunities including a rationalisation of the Council`s Operational holdings.
- 6) All disposals will be subject to member scrutiny and Executive approval of each proposed transaction whether on the open market or to the HRA or a wholly owned housing company.

- 7) To ensure that the Programme is adequately resourced to deliver its objective within the set timescale.
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2. RECOMMENDATION(S)

The Executive is recommended to:

- 2.1 Adopt the proposal to create a £30M Disposal Programme.
- 2.2 To note the process contained in the report as to the progression and identification of assets and how these will be reported to Members for decision.
- 2.3 Delegate authority to award contracts via competitive tendering for the provision of a panel of Disposal Agents via the Crown Commercial Services Framework on an individual call off basis to the Assistant Director of Strategic Property to be exercised with approval from the Director of Housing, Planning and Regeneration and the Portfolio Holder for Resources.
- 2.4 To note and approve the additional resources of £1.126m identified within the report at 3.34 - 3.36 and to offset these costs against the capital receipts generated by the programme of disposals
- 2.5 To note and agree that all future Reports to the Executive should contain a standard Property Commentary Section in the same way as Personnel, Legal and Procurement so that should there be a need for Property Commentary it can be provided.

Impact on Vulnerable Adults and Children

1. It is considered that there will not be an impact on Vulnerable Adults and Children as users of the Councils Portfolio will continue to receive services from.
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Corporate Policy

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

1. The proposal would see Capital Receipts of £30M being generated.
 2. The resource cost of the proposal has been calculated as follows:
 - a. Marketing Costs estimated at £150K pa,
 - b. Qualified Disposals Surveyor – 2 Year fixed term Contract £70K plus on-costs – assume £100K pa.
 - c. Dedicated Legal resource for Programme – 2 Year fixed term Contract £65K plus on costs – assume £95K pa.
 - d. Operational Portfolio Surveyor - 1 Year fixed term Contract £70K plus on-costs – assume £100K pa.
 3. Budget head/performance centre: Strategic Property
 4. Total current budget for this head: £4.9M
 5. Source of funding: Via the Disposal Programme Capital Receipt generation.
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Personnel

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

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

1. Summary of Procurement Implications: This report seeks to award via competitive tendering a contract for the provision of a panel of Disposal Agents via the Crown Commercial Services Framework or another suitable Framework for a period to the end of the programme at 31 March 2023 on an individual call off basis.

Customer Impact

1. The outcome of a rationalisation of the Council's Operational Portfolio will be well managed buildings which will improve customer experience.

Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: N/A.

3. COMMENTARY

BACKGROUND

- 3.1 Strategic Property are undertaking a high-level review of potential additional properties which could be disposed of to generate a Capital Receipt for the Council. The Capital Programme Monitoring 2020/21 report 2020/21 to the Leader on 8th July identified a reducing level of capital receipts which will have a negative impact on funding the Council's future programme. The additional capital receipts will aim to secure additional funding resources to finance the Council's future capital investment priorities and also potentially generate revenue budget savings from consolidation of operational buildings.
- 3.2 This high-level review has focused on land and buildings where the Council is freeholder and where said properties can be taken to market in a relatively straight forward manner.
- 3.3 The review has also considered the Operational Portfolio of the Council's interests and proposes a methodology of how these properties can be further reviewed to produce an optimal estate to meet the Council's accommodation needs and generate further sites for disposal to generate further capital receipts and in some cases fund the optimisation of this portfolio.
- 3.4 The review has considered the requirement for further sites to be provided for the Council's HRA ambition to deliver its own Housing Development both in terms of Units created and Capital Receipt generation of transfer value from the General Fund to the HRA.
- 3.5 It should be noted that this review is not exhaustive and other assets are yet to be clarified as to their suitability and ability to be disposed of. The review has not looked at assets with Green Belt Planning designation – other than where they could be disposed of with suitable protection in place to ensure said designation is not diminished.
- 3.6 The initial review has identified several individual assets or groupings of assets which could be disposed of and taken to market. However, at this stage substantial further work is required to ascertain their suitability but it is clear that there are significant disposal opportunities.
- 3.7 The initial review has identified that the Council operates or provides services from circa 70 sites. In addition, the Council owns 30 Car Parks, some of which are in development for HRA Housing Development but also produce income. However further work is required to ascertain the Optimal Estate (see Operational Property Review below).
- 3.8 The review undertook a very basic set of valuations against these sites for indicative purposes and further work will be required to validate or amend these estimates. However, a sum in excess of £30M could be achieved for these disposals.
- 3.9 The target of £30M is proposed on the basis that it could well be exceeded but in order for financial projections and budgeting purposes this figure was set as a prudent estimate figure.
- 3.9 The review has estimated that circa 850 Residential Units could be developed by third parties once the relevant assets are disposed of. This does not include the Operational Estate where further work is required to ascertain the Optimal Estate (see Operational Property Review below).

- 3.10 Assuming all disposals of site designated for Housing Development are Planning compliant at 35% Affordable in line with Planning Policy, a return of circa 178 Socially Rented units will be possible. It should be noted that if sites are transferred to the HRA then a 50% Affordable minimum requirement would apply.
- 3.11 Some of the assets identified could either be disposed of to the market to be developed by the market or alternatively be developed by the Council's for its own HRA stock.
- 3.12 The Council has set itself a considerable challenge by aiming to facilitate the construction of 600 affordable homes and the acquisition of 400 additional affordable homes within the next 4 years. It is also worth noting that the soon to be adopted London Plan requires the Council to increase its general affordable homes targets.
- 3.13 Given the additional financial pressures, the Council is likely to face as a consequence of Covid 19, a careful balance will need to be considered whether the best use of a site is for residential development or capital receipt.
- 3.14 In order to meet this target the Council needs to establish an agreed site programme for HRA Housing Development purposes. However these sites would still generate a Capital Receipt in that they would need to be transferred into to the HRA or to Wholly Owned Company at best consideration. Any consideration of transfer to the HRA will be undertaken on a case by case basis and considered against other alternative business models including the option of a wholly owned company
- 3.15 Section 123(2) of the Local Government Act 1972 provides that (except for a tenancy or leasehold term assignment of less than seven years) a principal local authority 'shall not dispose of land... 'for a consideration less than the best that can reasonably be obtained'.
- 3.16 Therefore any assets transferred to the HRA will require an Asset valuation at the point of transfer. It is recommended that such valuations are made pre Planning Application as a site without Planning Permission will be worth less than one with.
- 3.17 The Assets identified will need to be determined as whether being suitable for HRA Transfer or Market disposal. This determination will be undertaken by the Corporate Landlord Board (see below).

Corporate Landlord Officer Board

- 3.18 The Council has agreed to adopt a Corporate Landlord model in its treatment of assets. This in effect means that the Council's Property Function is the holistic owner of the Council's property assets.
- 3.19 The underlying Core Principles of the Corporate Landlord model are:
- Deliver best consideration for the Council's assets in accordance with s.123 Local Government Act 1972.
 - Reduce expenditure on the Council's property assets
 - Optimise assets to meet the Council's corporate objectives (inc HRA Housing)
 - Consolidation of operational estate into a small number of strategic hubs based on the premise of quality not quantity.

- Release surplus operational estate for long-term revenue income and/or development

3.20 The model anticipates all assets being assessed against these criteria. The Board will determine which assets should be recommended to Members for Disposal, Transfer or other Council use via a Property commentary section in the Executive Report body.

Operational Properties Review

- 3.21 As detailed earlier the initial review has identified a number of Operational Properties which if consolidated could generate further opportunities for disposal receipt generation, the creation of Housing stock (either HRA or private) or improvements to retained stock.
- 3.22 Individual Service Directors will be challenged as to the composition of their Property interests at COE level via a Programme based approach. It is proposed that in order to assist this process a Programme Manager and dedicated Surveyor will be utilised to drive solutions to achieve overlap from other service areas and to provide full costings so that Directors can be confident of solutions to re-shape their service areas.
- 3.33 The CEO has agreed to chair this Programme with a view to reporting to Members the make-up and shape of the Operational Estate proposal by 31 March 2021.

Resource Requirements

- 3.34 To run a disposal programme predicated on the Forecast Properties with some Operational Disposals it is estimated that the following would be required:
- From Core disposals circa 1.5% Agents Fee Total £450K
 - Marketing Costs estimated at £150K pa. Total £300K
 - Qualified Disposals Surveyor – 2 Year fixed term Contract £70K plus on-costs – assume £100K pa. Total £200K. Commencing Nov 2020.
 - Dedicated Legal resource for Programme – 2 Year fixed term Contract £65K plus on costs – assume £95K pa. Total £190K. Commencing Nov 2020.
- 3.35 Against a projected £30M programme these costs of £ amount to circa 4% of the capital which could be generated.
- 3.36 In addition a further Property resource would be required to develop the Optimal Operational Estate with COE which would generate disposals from surplus properties with investment to refurbish retained premises from disposal receipts. Again, some of these sites could be utilised for HRA development following CLOB review.
- 1 Year fixed term Contract £70K plus on-costs – assume £100K pa. Commencing Nov 2020.

Disposal Programme

- 3.37 It is proposed subject to, Executive Agreement, to progress with further work to develop suitability and then take these properties to the Corporate Landlord Officer Board to ascertain their suitability for either disposal or HRA development and then to report back to members

with appropriate recommendations, following Ward Member consultation, as to whether or not to dispose or transfer to the HRA as appropriate as part of a £30M Disposal Programme.

Procurement

- 3.38 It is proposed to utilise the Crown Commercial Services Framework to seek a panel of suitably qualified agents via competitive tendering for a period of 3 years on an individual call off basis. This will ensure that there is an even spread of work and competitive edge to delivery.

RECOMMENDATION

- 3.39 That the Executive note this paper and agree to the recommendations contained at 2 above.

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 will continue to receive services from these recommendations.

5 POLICY IMPLICATIONS

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

6 FININCIAL IMPLICATIONS

- 6.1 The total value of the additional disposals identified in this report is estimated to be in the region of £30m and are targeted to be generated in the period to March 2023. Actual capital receipts will be dependent on many factors including the buoyancy of the property market and demand for development land of the type and location being offered by the Council. The impact of Covid-19 on current and future economic conditions adds further uncertainty.
- 6.2 One off resource requirements of £1.221m to progress the programme are set out in 3.34 and 3.36. Phasing of costs will be determined by the disposal timetable, which will be reported on a quarterly basis.
- 6.3 These costs will be offset against the capital receipts generated which, if £30m is realised, would reduce net usable receipts to c£28.8m. These costs will largely be incurred in advance of securing receipts and therefore are incurred at risk of sufficient receipts not being generated.
- 6.4 The programme of disposals and the Operational Properties Review will lead to consolidation of assets held by the Council and from which it provides services. Reconfiguration of affected services may require initial investment that would need to be met from the capital receipt proceeds; however, therefore decisions will need to be made based on sound business cases which will include taking into account any running cost savings generated.

7. PERSONNEL IMPLICATIONS

N/A

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 This Programme proposes the utilisation of suitable disposal agents to act on behalf of the Council and consequently the risk to the Council would be mitigated in respect of 8.2 above.

8.5 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

8.6 Notwithstanding the above, any disposal must not involve the council giving unlawful State Aid whether by deliberately disposing at less than market value or accepting non-cash consideration that in practice is not equivalent to the market value of the land

8.7 Where the land is open space then notice of the council's intention to dispose must be advertised for two weeks in a local newspaper. Any objections received as a result must be considered by the council before disposing of the open space land

9. PROCUREMENT IMPLICATIONS

9.1 This report seeks to award from competitive tendering through the Crown Commercial Services Framework or another suitable Framework, a small panel of suitably qualified firms of Chartered Surveyors to effectively take to market those assets identified for disposal for a period of two years or to Programme end – i.e. 31 March 2023.

9.2 The Council's requirements for authorising exemptions are covered in CPR 13.

9.3 Further, this report seeks to delegate authority to award the subsequent contracts to the Assistant Director of Strategic Property to be exercised with approval from the Director of Housing, Planning and Regeneration and the Portfolio Holder for Resources. The Council's specific requirements for authorising an award of contract are covered in CPR 16.

9.4 In accordance with CPR 2.1.2, Officers must take all necessary professional advice.

9.5 The actions identified in this report are provided for within the Council's Contract Procedure Rules, and the proposed actions can be completed in compliance with their content.

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

