

Cabinet

Date: 6 December 2021

Wards: Borough Wide

Exempt or confidential report

The following paragraph of Part 4b Section 10 of the constitution applies in respect of information given in the appendix of this report and it is therefore exempt from publication. Members and officers are advised not to disclose the contents of this report:

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

Reason for Urgency: The chairman has approved the submission of this report as a matter of urgency as it enables a number of sites to be brought to the market to provide affordable housing. It is important that this is not delayed in order to achieve proposed timescales.

Subject: Disposal of surplus property assets to facilitate the increase in the supply of housing.

Lead officer: Chris Lee, Director of Environment and Regeneration.

Lead member: Councillor Tobin Byers, Cabinet Member for Finance

Recommendations:

- A. That the properties listed in the appendix be declared surplus to council requirements.
- B. That the properties listed in the appendix be marketed for housing as soon as they are ready for sale provided the Director of Environment and Regeneration, in consultation with the Cabinet Member for Finance, considers that the market is favourable.
- C. That authority is delegated to the Director of Environment and Regeneration, in consultation with the Cabinet Member, to determine which of the properties listed in the appendix be sold on one or more of the following terms:
 - Option 1. Disposal to maximise capital receipt; or
 - Option 2. Disposal to provide redevelopment with 50% affordable Housing; or
 - Option 3. Disposal to provide redevelopment with 100% affordable housing.

And on such other terms as he considers are prudent and in the best interests of the Council in concluding a disposal of the properties.

- D. That the Director of Environment and Regeneration, in consultation with the Cabinet Member, be authorised to use delegated powers to make any other decisions that are required to facilitate the conclusion of the disposal of the properties.
 - E. That members note that work is underway on wider housing matters including selective licensing and an Article 4 Direction requiring planning permission for smaller Houses in Multiple Occupation set out in paragraphs 2.16-2.22.
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1. Purpose of report and executive summary

- 1.1 To advise Cabinet of the potential opportunities for facilitating the increase in the supply of residential property within the borough through the disposal of surplus council property and to confirm (i) a programme for disposals and (ii) to seek delegated authority to the Director of Environment and Regeneration in consultation with the Cabinet member for Finance to decide whether the contract for the disposal of the individual sites should include a contractual obligation for the provision of Affordable Housing and (iii) to advise on the procurement implications in pursuing the option of requiring delivery of affordable housing at 50% or 100% as a condition of disposal.
- 1.2 This report presents a schedule of potential sites for disposal for decision by Cabinet.
- 1.3 The report also notes the preliminary work that is underway on wider housing matters including selective licensing and Houses in Multiple Occupation.

2. Details

- 2.1 The council is subject to an increased demand for capital to replenish its reserves, to help fund the capital programme and to increase the supply of new homes. The Council's target for new homes set by the London Plan 2021 has increased with effect from March 2021 from 411 homes to 918 homes per annum.
- 2.2 These demands may potentially be met partially through the disposal of surplus property owned by the council. If the council proceeds with disposals of sites using options 2 or 3 it will be supporting the provision of more new affordable housing by accepting a reduced capital receipt.

- 2.3 Most of the larger sites in Council ownership such as the former Rowan High School and Brenley Playing Field have already been sold and redeveloped for housing. 28 St Georges Road, the P3 Site/Hartfield Road Car Park and P4 Site/Broadway Car Park have been excluded from this report as although their redevelopment could include residential properties they are primarily commercial sites intended to support the regeneration of Wimbledon. West Barnes Library site has also been excluded from this report as the disposal of that site is being considered to include provision of a library facility in addition to housing. The opportunities remaining are limited but attached to this report is a schedule of nine sites that may be sold in the shorter term.
- 2.4 Each of the sites has been brought forward as underutilised and surplus to council requirements and no alternative council use has been identified. To retain the sites will incur holding and security costs. The attached appendix summarises details of the sites. Should all nine sites be sold and redeveloped for housing then it is estimated that this would result in the provision of 362 residential units and an indication of the potential capital receipt for the different options is given in the appendix schedule. It should be noted that this is an estimated delivery of both units and capital receipt, the actual number of units and capital receipt will depend on the market at the time of sale and the outcome of marketing.
- 2.5 There are several other sites that the council owns that could be sold for residential redevelopment but are not included they are mainly small, less than an acre. Several of these require the re-provision of existing facilities/services either on site or elsewhere. The only other large site available is the council owned land at Leatherhead which with a developable area of about 10 acres could provide approximately 150 units however this is currently designated within greenbelt. These sites have therefore not been included and are not within the scope of this report.
- 2.6 The disposal of the nine sites contained within the schedule in the appendix to this report may begin shortly subject to the following:
- (i) The market. Indicators suggest that the market for residential sites is improving. A report by the DVS dated 14th June 2021 providing a review of the market supports the view that subject to no dramatic changes occurring in the market there seems little reason to delay marketing at present although this will of course be kept under review throughout the programme. Delaying marketing and disposal will of course delay the redevelopment of the sites and the supply of housing. Disposal under a rising market increases the opportunity for maximising capital receipt and completion of the redevelopment.

- (ii) De-risking the sites. This is in progress. SLLP are completing title reports that include investigation of potential contamination. If any issues e.g. restrictive covenants are discovered means of reducing the impact will be implemented prior to marketing.
 - (iii) Planning. To enable interested parties to maximise their offer as much certainty regarding potential redevelopment of individual sites is required. Planning permission is the best means of demonstrating this but the cost and delay rules this out. Future Merton are providing guidance on the development likely to achieve planning permission and this should be sufficient to enable potential purchasers to maximise their bid.
 - (iv) Resources. There is insufficient resource at present within the council's property team to progress marketing and so until this is secured a firm of agents will need to be appointed with their costs charged against the capital receipts.
 - (v) Conditions of sale. Overage clauses will be included to collect a share of any enhanced value secured by the purchaser. These clauses are normally included but to maximise the chance of sale, capital receipt and ability of the council to demonstrate it had satisfied its statutory obligation to obtain the best consideration reasonably obtainable no other conditions should be placed upon the terms of the sale contract by the council. There are also subsidy (formerly State Aid) implications to be considered. The concerns regarding unusual conditions of sale are considered in more detail in the paragraphs below.
- 2.7 Planning policy provides that any permission on council owned land will require the provision of 50% affordable housing for any scheme of ten units or more but this is subject to a viability test. If the applicant can prove to the Planning Authority that 50% affordable housing renders the scheme unviable then the Planning Authority is required to accept a lesser provision. Unconditional sale cannot therefore be relied upon to secure the proportion of affordable housing. The best means of so doing is by making it a condition of the contract for the sale of the site.
- 2.8 The concern with making the proportion of affordable housing a condition of the contract is that it is likely to reduce the market for that property and thereby achieve a lower capital receipt which not only makes it more difficult for the council to increase its supply of capital but also conflicts with the council's statutory obligation to obtain the best consideration reasonably obtainable. This means that the council may not be able to rely on its own powers to sell the property but must obtain the permission of the secretary of state and/ or use statutory powers to provide financial

assistance to facilitate the delivery of housing. Should the council decide to impose conditions in the sale contract for all or some of the properties the table in the appendix provides an indication of the potential reduction in capital receipt. An unconditional disposal should still maximise the provision of housing, it is simply that the proportion of affordable housing cannot be relied upon.

- 2.9 Any disposal which achieves affordable housing will also provide the council with nomination rights through the planning permission. These rights do also provide a benefit to the council in enabling it to fulfil its housing needs function. Any contractual obligation on any purchaser to construct affordable housing will need to adhere to the contract procurement rules standing orders and any procurement legislation.
- 2.10 Except with the consent of the Secretary of State, a local authority is required by legislation to not dispose of land for a consideration less than the best that can reasonably be obtained. The Secretary of State has issued the General Consent Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained. This provides that a local authority may dispose of land at an undervalue where the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area; i) the promotion or improvement of economic well-being; ii) the promotion or improvement of social well-being; iii) the promotion or improvement of environmental well-being; and b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds). It is for the council to determine the “well-being” test on a case by case basis taking into account all relevant matters such as policy and fiduciary duty.
- 2.11 Officers note that no disposal will proceed where there is any reduction in the amount of capital receipt arising as a result of the affordable housing conditions without considering and adhering to the state subsidy legislation.

The replenishment of capital reserves can be readily achieved from the sale of land and buildings. The supply of new homes can also be increased through the disposal of land and buildings but the question to be considered is whether the council wishes to maximise capital receipt by relying on the planning process to control the scale of development including the provision of affordable housing or accept a lower receipt, subject to authority and power, by requiring a higher provision of affordable housing than the open market would deliver.

- 2.12 Cabinet is asked to declare all the properties listed in the schedule in the appendix surplus to council requirements and to confirm that the Director of Environmental Services be authorised to market and progress disposal of the sites. The basis of disposal will be considered on a site-by-site basis to either maximise capital receipt, or that some, or all the sites should be disposed of subject to a contractual obligation to obtain a proportion of affordable housing. A project team of officers and members will be brought together to facilitate this process of site disposal. It is likely that this will include officers from the Property Management and Review team, futureMerton team and the Housing Needs team in consultation with the Cabinet Member for Finance and the Cabinet Member for Housing, Regeneration and the Climate Emergency and the Director of Environment and Regeneration.
- 2.13 The council is currently finalising the Housing Delivery Strategy which had considered the option of re-establishing a Housing Revenue Account (HRA). Work was undertaken by external consultants, Campbell Tickell, which considered various criteria including the financial implications, land availability, timescales and technical ability to deliver and operate new affordable housing.
- 2.14 The work undertaken concluded that there would be significant land acquisition costs, there is limited land of scale available to purchase and acquisition could not be guaranteed and the timescales for on site delivery would be medium term. It was therefore concluded that this was not a viable option at the present time to pursue.
- 2.15 Given the pressing need to deliver affordable housing it is considered that the most effective method to deliver new affordable housing within an acceptable timescale is to action the recommendations of this report.
- 2.16 Draft Housing Delivery Strategy
- 2.17 As part of the wider consideration of housing delivery and housing quality standards officers commissioned external consultants, Campbell Tickell, to produce a draft Housing Delivery Strategy which considered the options and actions open to the council and partners to increase the delivery of housing in the borough and to increase the quality of housing provision in the borough.
- 2.18 Consultation recently closed on the draft strategy and a report will be presented to Cabinet in January 2022, seeking approval for the final Housing Delivery Strategy following the consultation.

- 2.19 In advance of finalising the strategy work streams have commenced in a number of areas.
- 2.20 As set out in paragraph 2.1 of this report and in the draft Housing Delivery Strategy there is a considerable need for new homes, including affordable homes. Private sector rented housing makes up about 24% of the 86,000 homes in Merton and is an important part of meeting housing needs. The majority of private sector rented housing in Merton, including Houses in Multiple Occupation (HMOs) is helping to provide affordable decent quality homes for residents who rent. However, there are some landlords who are not maintaining or managing their premises to an acceptable standard and the council has also received complaints about anti-social behaviour , fly tipping and other issues that have been attributed to Homes in Multiple Occupation.
- 2.21 The council already promotes the London Landlord Accreditation Scheme to promote good practice and recognise reputable landlords, and operates a licensing scheme under the Housing Act 2004 for HMOs that meet the mandatory licensing requirements.
- 2.22 Work is underway to explore options for designated areas to be subject to a selective licensing scheme, which would cover all private sector landlords, and an Additional Licensing Scheme, which would cover HMOs not subject to mandatory licensing. Work is also being carried out to assess whether a planning mechanism called an Article 4 Direction could be introduced in Merton to require landlords that wish to convert their property to a small HMO to seek planning permission. Progress on these work streams will be reported to Cabinet by March 2022

3. Alternative options

- 3.1 The options for the purposes of this report are whether the council wishes to seek maximum capital receipt from the disposal of its property or to, subject to authority and power, to accept a lesser sum in exchange for benefits such as a proportion of affordable housing greater than could be secured by relying on its planning powers alone from the sale of all or a portion of any disposals.
- 3.2 Retention of these sites will not secure capital receipts or beneficial development or bring redundant/underutilised sites into use to improve borough amenity.

4. Consultation undertaken or proposed

- 4.1 Through circulation of this report.

5. Timetable

- 5.1 It is proposed that disposals be progressed as soon as market conditions are confirmed as favourable. The method of disposal will be considered on a site-by-site basis taking into account all factors included in this report. Traditionally the winter months are not an ideal time to market therefore it would be intended that preparation work be undertaken over this period with marketing commencing in the spring with a view to new housing provision being completed in 2023.
- 5.2 The first tranche of sites to be disposed is expected to be the sites where planning consent has been obtained by Merantun Developments and the council would endeavour to achieve 100% affordable housing on these sites.
- 5.3 Consideration will be given to the opportunity to add value to any site by seeking planning consent prior to going to the market.
- 5.4 The contract for disposal would seek to set out deadlines for obtaining planning consent and completion of the development.

6. Financial, resource and property implications

- 6.1 Property implications are contained within the body of this report.

Financial Implications:

- 6.2 Capital: The proposed property disposal receipts will be treated as capital receipt which is not currently budgeted for and would be used to fund either further capital investment or be invested in accordance with the Treasury Management Strategy.
- 6.3 Proposed receipts are estimates using difference assumptions such as either 50% affordable housing or 100% affordable housing etc., and prevailing market conditions therefore final outcome will be subject to moving these variables within the report.
- 6.4 The council is under an obligation under s123 of the Local Government Act 1972 when disposing of an interest in land to obtain the best consideration reasonably obtainable. It is for the authority to demonstrate that it has achieved best consideration or Secretary of State approval is required.
- 6.5 It is estimated that capital receipts could be increased if the sites are disposed of with planning permission. Subject to a maximum of four

percentage of the capital receipt, any associated qualifying expenditure for achieving capital receipts can be funded from disposal proceedings.

- 6.6 Revenue: There will be costs associated with relocating services needs for example Gifford house to be met from existing Corporate Services revenue budgets. Also Loss of income from closing existing services, car park and rental income an estimated figure based on the budget for each site is given in the attached appendix. There will also be holding and security costs relating to the sites whilst they are held vacant for disposal.

7. Legal and statutory implications

- 7.1 Meetings with officers of SLLP are ongoing to inform the disposal and means of disposal and assess whether there will be any implications of state subsidy or other risk implications.
- 7.2 To enable any future sale of the properties listed in this report, the Council must first declare these sites surplus.
- 7.3 A local authority has a statutory duty under section 123 of the Local Government Act 1972 when disposing of an interest in land to obtain the best consideration reasonably obtainable. It is for the authority to demonstrate that it has achieved best consideration; if best consideration is not obtained, Secretary of State approval is required.
- 7.4 A local authority may dispose of land at less than best consideration where the Secretary of State has given permission to do so or under the Local Government Act 1972: General Disposal Consent (England) 2003 in circumstances where the local authority considers the disposal is likely to contribute to the social, economic or environment wellbeing in its area.
- 7.5 No disposal terms will be settled without assessing the requirement of procurement legislation and other legislative requirements arising as a result of the manner in which the relevant land is held eg schools, open spaces etc. and concluding any appropriate legal and financial due diligence.

In coming to a decision members will need to take into account all relevant matters and satisfy themselves that the decision is rational in public law terms.

8. Human rights, equalities and community cohesion implications

- 8.1 None for the purposes of this report.

9. Risk management and health and safety implications

9.1 Risk management regarding the revenue and capital budget are contained within the body of the report.

10. Appendices – the following documents are to be published with this report and form part of the report

10.1 Appendix - Schedule of proposed property disposals

11. Background Papers – the following documents have been relied on in drawing up this report but do not form part of the report

11.1 DVS report “Market Review Summary” dated 14th June 2021. DVS valuation reports and Title investigation.

12. Report author

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