

30 June 2015

Policy, Finance & Resource Committee

Warley Training Centre – Sale & Acquisition

Report of: *John R Parling, Strategic Asset Manager*

Wards Affected: *Warley*

This report is: *Public*

1. Executive Summary

- 1.1 The Asset & Enterprise Committee on 15 July 2014 resolved “That conditional contracts for the sale of the property are exchanged with the highest and most compliant bidder (Bid B), with the Council then negotiating to retain 5 units for revenue purposes.”
- 1.2 A further report was presented to the Asset & Enterprise Committee on 17 September 2014 confirming that the Council’s solicitors have been instructed regarding the sale and negotiations have been undertaken to retain 5 units at a discount to current values.
- 1.3 A report was presented to Ordinary Council on 22 October 2014 relating to the acquisition of the 5 units. Council resolved “1. That delegated authority be given to the Acting Chief Executive to approve and enter into conditional contract on behalf of the Council relating to the acquisition of the 5 x 2 bedroom apartment units as set out in exempt Appendix 1 (Confidential) but such delegated authority shall be conditional upon best consideration relating to such acquisition and the connected disposal being reaffirmed to the satisfaction of the Section 151 Officer at the date of exchange of contracts by an independent RICS) Royal Institution of Chartered Surveyors) qualified surveyor. 2. Members approve a virement from the Parking and Improvement Scheme to address the reduction in the original capital receipt anticipated for this sale”
- 1.4 Following agreement of terms and approval of the Asset & Enterprise Committee and Ordinary Council to the proposed transactions the original compliant bidder has sought to reduce their offer for the site. The Asset & Enterprise Committee of the 27 March 2015 resolved to give delegated authority to the Chief Executive to approve and enter into conditional contracts with the party that submitted the highest compliant and deliverable bid and to enter into an option agreement to acquire up to 5 residential apartments.
- 1.5 Heads of terms have been agreed with the party indicated in Appendix A (Exempt). This party has undertaken discussions with the Local Planning

Authority and the provision of the small community hall (60 sq m) has met with some resistance and developer has put forward an alternative proposal that is a capital payment is provided in lieu of the facility, Appendix A (Exempt) to be expended to support existing sport/community/leisure facilities within Warley.

- 1.6 The proposal to acquire up to 5 residential apartments has been reviewed and as it would be necessary for the Council to borrow money to fund the proposal and therefore, increase its debt liability, it is considered that the option arrangement should not be pursued. The capital requirement could be better utilised to reduce the Councils debt or fund other capital schemes to avoid the necessity to borrow.

2. Recommendation (s)

- 2.1 That delegated authority be given to the Head of Paid Service to approve and enter into conditional contracts with the party that submitted the highest compliant bid as set out in Appendix A (Exempt)**
- 2.2 That the requirement for the developer to provide a community facility of 60 sq m is omitted and that the Head of Paid Service be given delegated authority to negotiate and agree, after consultation with the Chair of the Committee, a capital sum in lieu.**
- 2.3 That the requirement that the Council will enter into an option agreement to purchase up to 5 residential units be withdrawn.**

3. Introduction and Background

- 3.1 This property has been vacant except for a short period since 2010.
- 3.2 Terms have been agreed with a developer to exchange conditional contracts on the basis that they submit a planning application in accordance with the expectations of Planning including a community hall of 60 sq m (shell). The developer has also agreed that the Council will be able to option to acquire up to 5 apartments on the basis that the option is to be operated prior to the completion of the sale of the land i.e. after planning permission has been granted or earlier if the purchaser elects to complete earlier, the monies to acquire the units to be paid on the completion of those units.
- 3.3 Following discussions between the developer and Planning a proposal has been put forward that a capital payment could be provided rather than the provision of a small community hall which could be used to support the development of existing sports, community and leisure facilities within Warley.

- 3.4 Following a review of the capital requirements of the Council it is considered that the capital to purchase up to 5 residential apartments could be better used to reduce the debt of the Council or support other projects and avoid or reduce the requirement to borrow further. Furthermore, no consideration has been given as to how the Council would run the management of the units. As such, there are practical unanswered questions that would have implications to the scheme itself, Council finances and which need to be resolved ahead of taking such a strategic decision.

Issue, Options and Analysis of Options

- 4.1 The site has been openly marketed and the sale offers best value to the Council to comply with s123 of the Local Government Act 1972.

5 Reasons for Recommendation

- 5.1 To provide the Council with a capital receipt.

6 Consultation

- 6.1 None at this stage

7 References to Corporate Plan

- 7.1 The key criteria for the disposal of the freehold of the freehold interest in this site are linked directly to the Corporate Plan 2013 –16, specifically:

- a) A Prosperous Borough
- b) Set planning policy that supports discerning economic growth and sustainable development
- c) Promote a mixed economic base across the Borough, maximising opportunities in the town centres for retail and balanced night time economy

8 Implications

8.1 Financial Implications

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The sale of the Warley Training Centre will generate a capital receipt that will be used to fund the Council's capital programme.

8.2 Legal Implications

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- 8.2.1 The Council's disposal powers are contained in section 123 of the Local Government Act 1972. Under section 123(1) of the Local Government Act 1972 the Council has the power to dispose of land in any manner that they wish.
- 8.2.2 The Council, however, does not have the same complete freedom of action that a private landowner would have as regards disposal and that section 123(1) of the Local Government Act 1972 might at first suggest.
- 8.2.3 The Council is a public authority and is subject to public law restraints. When the Council is entrusted with apparent complete discretion, it must exercise its powers reasonably and in accordance with the relevant statutory purpose.
- 8.2.4 In addition, section 123(2) of the Local Government Act 1972 requires any disposal to be for the best consideration that can reasonably be obtained (unless the disposal is for the granting of or assignment of a lease of seven years or less – which is not the case here). If the consideration is for less than the best consideration that can reasonably be obtained, prior ministerial consent is required.
- 8.2.5 It is clear that there is a timing aspect as regards the disposal and any acquisition and the administration arrangements regarding the management of the intended residential units. Any lack of detailed information relates to a future decision on such arrangements rather than the narrow decision itself on whether to give delegated authority (and if so upon what basis) to proceed with the disposal and any acquisition. It is ultimately for Members to satisfy themselves that there is sufficient information before them.
- 8.2.6 The law clearly provides for land to be acquired in scenarios before everything is ready. Section 120(2) of the Local Government Act 1972 specifically states: 'A principal council may acquire by agreement any land for any purpose for which they are authorised by this or any other enactment to acquire land, notwithstanding that the land is not immediately required for that purpose; and, until it is required for the purpose for which it was acquired, any land acquired under this subsection may be used for the purpose of any of the council's functions'
- 8.3 **Other Implications**) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

None

9 Background Papers

None

10 Relevant Past Reports

27 March 2015 – Asset & Enterprise Committee

22 October 2014 – Ordinary Council

17 September 2014 – Asset & Enterprise Committee

15 July 2014 – Asset & Enterprise Committee

4 July 2012 - Asset, Infrastructure & Localism Panel

28 February 2012 - Asset, Infrastructure & Localism Panel

11 Appendix

Appendix A - Exempt

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