

**22 October 2014**

**Ordinary Council**

**Warley Training Centre – Acquisition of 5 Residential Units**

*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 Details of the proposed acquisition of the 5 units are set out in Exempt Appendix 1 (Confidential).

**2. Recommendation (s)**

- 2.1 That delegated authority be given to the Acting Chief Executive to approve and enter into the 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.**
- 2.2 Members are asked to approve a virement from the Parking and Improvement Scheme to address the reduction in the original capital receipt anticipated for this sale.**

### **3. Introduction and Background**

- 3.1 In June 2014 the Council's selling agents were instructed to seek bids from the original parties that submitted bids and also any additional active new entrants into the local market. Offers were requested to be submitted on or before the 11<sup>th</sup> July 2014.
- 3.2 The potential bidders were advised to submit two bids on the following basis:-
1. A bid on the previous advised basis including the provision of a small community facility, and
  2. A bid to include the price that the developer would transfer different unit types to the Council
- 3.3 Several offers were received and the bidders that submitted the highest and compliant bids were interviewed and the party that submitted the highest original bid (Bid B) has also offered the most attractive proposal relating to the acquisition of the 5 units.
- 3.4 The Heads of Terms with (Bid B) provides for the sale to be conditional on the purchaser obtaining planning permission for 38 residential units plus a community hall of 60sq m (shell but with wc/kitchen) and also a commitment by the Council to acquire 5 units at a pre agreed discounted price. Exempt Appendix 2 (Confidential) illustrates the proposed layout and specification of the units.
- 3.5 The sale proceeds will be reduced by the aggregate prices of the 5 units and the net proceeds will be paid at the completion date for the sale of the land. The contract will require the purchaser to complete the construction of the development within an agreed period of time.

### **4. Issue, Options and Analysis of Options**

- 4.1 The Asset & Enterprise Committee has resolved to exchange contracts with the highest compliant and deliverable bid that also provides the Council with the opportunity to acquire units at the best price.
- 4.2 Terms have been negotiated and agreed with the party that provides not only the highest bid but also the best overall financial outcome in terms of acquiring the 5 units.
- 4.3 The selling agent has provided a report supporting the acquisition of the five residential units (Exempt Appendix 3 (Confidential)).
- 4.4 Prior to exchange an independent valuation will be sought to reaffirm that the sale and acquisitions offer best value to the Council to comply with s123 of the Local Government Act 1972.
- 4.5 Subject to agreement at a future Council meeting, the management of the residential units will be undertaken through a commercial arm of the

Council (Local Authority Trading Company (LATCO) or similar), the form of which was outlined in a report, Commercialisation of Council Services, to the Asset & Enterprise Committee on the 17 September 2014. It is envisaged that the commercial company will be established prior to the completion of the sale of the land (which is likely to be completed by mid 2015).

- 4.6 In the unlikely event that the commercial company is not established within the required timeframe, the management of the units will be undertaken with the assistance of an independent management company utilising a business lease structure. Local Authorities are unable to utilise Assured Shorthold Tenancy contracts (AST) therefore a third party will be appointed to act as the intermediate landlord between the residential tenant and the Council.
- 4.7 In the absence of a commercial company, the 5 units will be held within the General Fund (pending any future decision on a commercial company) and the net proceeds of the rental income will form a direct revenue source to the General Fund.
- 4.8 The proceeds from the sale will be reduced to reflect the cost of the acquisition of the 5 units. The consideration relinquished will be secured by a requirement on the developer to provide the units by an agreed time frame following completion of the sale and also an equivalent legal charge on the land or an alternative arrangement approved by the s151 Officer and the Monitoring Officer.
- 4.9 The acquisition of the 5 residential units is consistent with the approved Asset Management Strategy key actions, in particular, "The Acquisition of Revenue Generating Opportunities".

## **5 Reasons for Recommendation**

- 5.1 To provide the Council with a future revenue stream and with the opportunity to benefit from any capital appreciation of the assets.

## **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**

**Name & Title:** Jo-Anne Ireland, Acting Chief Executive / Section 151 Officer

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The acquisition of 5 units will reduce the original capital receipt anticipated for this asset sale. In order to mitigate the impact this may have on the Council's ability to fund its Capital Programme, the shortfall will be met by a corresponding reduction to the £1.6m Parking and Improvement Scheme (linked to the Crossrail Project). This will be included in the Half Year Budget Review which will be reported to Finance and Resources on 29 October 2014.

### **8.2 Legal Implications**

**Name & Title:** Christopher Potter, Monitoring Officer & Head of Support Services

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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 Turning now to powers of acquisition, the Council is again not in the same position as a private landowner. This was made clear by the Court of

Appeal case of R v. Somerset County Council, ex parte Fewings [1995] 1 WLR 1037.

- 8.2.6 The Council has statutory power under section 120(1) of the Local Government Act 1972 to acquire land, whether in their area or outside, 'for the purposes of (a) any of their functions under this or any other enactment, or (b) the benefit, improvement or development of their area'.
- 8.2.7 It is clear that there is a timing aspect as regards the disposal and 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 acquisition. It is ultimately for Members to satisfy themselves that there is sufficient information before them.
- 8.2.8 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 **Appendices**

Appendices 1, 2 and 3 to Item 11 – Warley Training Centre – Acquisition of 5 Residential Units are classified as exempt, under Paragraph 4 of Schedule 12A of the Local Government Act 1972 and will not be available for public viewing due to commercial sensitivity.

## 11 **Relevant Past Reports**

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

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