

27 March 2015

Asset & Enterprise 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 A (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. As a consequence the under bidders and the original bidder were asked to resubmit. The details of the original bids, the compliant bidders reduced bid and the results from the most recent re bid exercise are set out in Appendix A.

2. Recommendation (s)

- 2.1 **That delegated authority be given to the Chief Executive/Interim Chief Executive to approve and enter into conditional contracts with the party that has submitted the highest compliant and deliverable bid.**
- 2.2 **That delegated authority is given to the Chief Executive/Interim Chief Executive to enter into an option agreement to acquire up to 5 residential apartments subject any exercise of the option being agreed by Council.**

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 11th 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) also offered the most attractive proposal relating to the acquisition of the 5 units.
- 3.4 The Heads of Terms with (Bid B) provided 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.

- 3.5 The sale proceeds were to be reduced by the aggregate prices of the 5 units and the net proceeds be paid at the completion date for the sale of the land.
- 3.6 The current highest bidder proposes to submit a planning application in accordance with the expectations of Planning including a community hall of 60 sq m (shell). The bidder has also agreed that the Council can option to acquire up to 5 apartments on the basis that the option is required 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.

4. Issue, Options and Analysis of Options

- 4.1 Prior to exchange an independent valuation will be sought to reaffirm that the sale offers best value to the Council to comply with s123 of the Local Government Act 1972.
- 4.2 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).
- 4.3 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.
- 4.4 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.

5 Reasons for Recommendation

- 5.1 To provide the Council with a capital receipt and potential 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: Christopher Leslie/ Finance Officer (S151 Officer)
Tel & Email: 01277 312542 / christopher.leslie@brentwood.gov.uk

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

Purchase of up to 5 residential apartments will generate a capital receipt that will be used to fund the Council's capital programme.

8.2 Legal Implications

Name & Title: Philip Cunliffe-Jones, Solicitor
Tel & Email: 01277 312703/ phillip.cunliffe-jones@brentwood.gov.uk

- 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 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.
- 8.2.6 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

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 Appendices to this report

Appendix A – Bids Received (*Exempt*)

Report Author Contact Details:

Name: John R Parling, Strategic Asset Manager

Telephone: 01277 312690

E-mail: john.parling@brentwood.gov.uk