

Cabinet

7th January 2014

Report of the Cabinet Member for Finance, Performance and Customer Services

Disposal of and Investment in Council Assets

Summary

1. This report sets out details of progress made on a number of asset management projects involving the disposal of surplus assets and investing in other assets to assist in the delivery of key Council projects priorities. In particular decisions are sought concerning
 - the disposal of the buildings at Lower Darnborough Street, 17/21 Piccadilly, land at the former Manor School and land adjacent to the A59 roundabout
 - acquisition of the remaining freehold part of Stonebow House

Background

2. One of the key principles for the asset review of all council property and land agreed by Cabinet in November 2012 was to identify opportunities to generate capital receipts by rationalising and sharing the occupation of properties so reducing the number of properties the Council owns and occupies. In addition opportunities are always looked at where the Council can significantly increase the value of its properties by acquiring interests in existing property assets and also land around Council assets where this will assist in delivering Council projects and priorities
3. The Council's Asset and Property Management Team have been working on a number of projects as part of this asset review. This has included working closely with other Council services, public sector and community organisations and also private commercial landowners and developers.

- 4 It is the responsibility of the Council to ensure it receives best value from the disposal of all its land and buildings using the principles for disposal detailed above. Obtaining this best value can be dealt with in a number of ways
 - Open market sale – the asset is placed on the market and offers are received with the highest one being accepted. These offers are made unconditionally and ensure a sale goes through quickly. Examples of these which have recently taken place are the sale of Hollycroft
 - Open market sale with conditions – the asset is placed on the market with a planning brief and offers are invited setting out the conditions (ie. obtaining planning permission) which the offer is subject to. These offers are then considered both on price and the risk of the conditions not being fulfilled. Examples of this type of approach recently done are the Yearsley Bridge site and the Edmund Wilson Pool site
 - Direct negotiations with one party – this method is not often followed but is used when the other party has an interest in the property – ie. a current tenant – or there is a very good economic and financial reason for dealing directly with them such as the creation of new jobs or the assembly of a larger site for residential development. These other parties are known as ‘special purchasers’ or ‘particular buyer.’ Disposal by this method is permitted as long as an independent valuation is carried out by a firm of chartered surveyors not connected to the case showing that market value has been obtained. An example of this would be the agreement to sell the Hungate site to Hiscox and Kent St Coach park for the new fire station
5. It is the responsibility of the Assistant Director for Finance, Asset Management and Procurement to ensure the right approach to the method of disposal is followed on a case-by-case basis using these principles. Proposed disposals of Council property assets are reported to the Capital and Asset Board and, where the capital receipt is above £100,000 are then reported to Cabinet for approval.
6. Detailed below are 4 proposed disposals which have followed the process outlined in paragraph 4 for the reasons stated below which member approval is now sought and a proposed acquisition for which member approval is also sought

Clementhorpe Maltings, Lower Darnborough Street - sale

- 7 Clementhorpe Maltings is a Grade 2 listed two-storey former malting which has been vacant for several years (its last use was for storage for the Castle Museum). Because of its current space layout, limited headroom and its structural condition substantial capital investment is needed to stabilise the building and then convert it into a beneficial use. The plan at Annex 1 shows it's location in the centre of York.
- 8 The method of disposal chosen was to invite bidders to present their proposals for the re-use of the building to an officer panel appointed by the Capital and Asset Board which included a representative from English Heritage. Agreed criteria were used to assess the bids and the preferred buyer, Northminster Properties, was agreed by the panel and approved by the Capital and Asset Board. Their proposed scheme is to develop the property as 6 town houses, the existing machinery and fittings remaining in situ in the communal area and the creation of a renewable energy heating centre using the existing kiln and flue to heat the townhouses which will be let on long leases.
- 9 The costs of this conversion are only estimates at this time and so it is agreed that whilst no capital receipt is guaranteed the project will be run on an 'open book basis' and the Council will receive any surplus receipt after the developer has taken the normal level of profit.
- 10 Summary details of the analysis of the bids are contained in Confidential Annex 2 and **Cabinet is recommended** to approve the sale to Northminster with the approval of any capital receipt to be received to be delegated to the Director of Customer and Business Support Services in consultation with the Cabinet Member for Finance Performance and Customer Services.

Former Manor School Site - sale

- 11 This site (location plan at Annex 1) has been held following the relocation of the school to a new site in 2008 due to its immediate proximity to the British Sugar Site – one of the key housing and employment sites in the Council's draft Local Plan. The Manor site will provide a main access route to the British Sugar site as well as an area for residential and potential other development. Therefore there has been close liaison between the Council and Associated

British Foods plc (ABF), the freeholders of the British Sugar site, on joint masterplanning for both sites.

- 12 ABF has now made an offer for the freehold of the Manor site which is currently being assessed and further negotiated. The capital payments offered are staged over a period of time and dependent on planning approval being obtained for phases of the development. There is a substantial initial deposit proposed and the total potential receipt represents a full market value for the site.
- 13 Negotiations are ongoing and **Cabinet is recommended** to approve the sale to ABF with delegation given to the Director of Customer and Business Support Services to agree the details and phasing of payments. Approval now will enable the masterplanning of the combined site to proceed with the prospect of a planning application being made in the first half of 2014.

17/21 Piccadilly - sale

- 14 This vacant site (location plan at Annex 1) has been marketed by the Council as it is no longer required as part of any redevelopment plans for the Coppergate Centre. A number of bids were received for the site for a range of uses and with vastly varying capital values. These bids were assessed against agreed criteria, the level of capital receipt, economic impact of the development, community benefit and the deliverability of the scheme.
- 15 A shortlist of the 4 bids which scored the highest against the criteria has been drawn up. All the shortlisted bids propose a hotel with other facilities. They are all subject to planning approval and so further evaluation is needed to refine the initial evaluation. Further information is being sought from shortlisted bidders and this will be evaluated in January before a preferred bidder can be identified.
- 16 All the shortlisted bids have offered a substantial capital receipt as part of their bids. A recommendation is expected in mid January and therefore **Cabinet is recommended** to delegate the approval of the preferred offer to the Director of Customer and Business Support Services in consultation with the Cabinet Member for Finance Performance and Customer Services, subject to the preferred offer having the highest evaluation score.

Land adjacent to A59/A1237 Roundabout - sale

- 17 As part of the Access York Park and Ride project highway improvements are being carried out to the roundabout of the A59/A1237 junction. An area of land (see location plan Annex 1) is not required for these improvements and therefore is surplus to requirements. An offer has been received for this land from the owners of the adjacent garage and petrol filling station site so that the combined site can be developed for retail/restaurant use.
- 18 The capital receipt offered is substantially in excess of the current use value of this site which is currently a landscaped area and so a decision was made not to market this surplus site as it is not large enough to be developed for any commercial use on its own and instead conclude negotiations with this special purchaser.
- 19 The details of the purchaser and the offer made are contained in Confidential Annex 2 and are supported by the independent valuation report which is summarised in Annex 2. **Cabinet are recommended** to accept this offer which represents best value for this site.

Stonebow House, Piccadilly – acquisition

- 20 The land on which Stonebow House is built is jointly owned by City of York Council and North Yorkshire County Council (NYCC) – see site plan at Annex 1 for details - and is let on a long lease to a property holding company that are currently in receivership. The ownership of this site was considered as part of the Asset Management Review and it was agreed that ownership of the freehold of the whole site should be pursued to enable City of York Council to enter negotiations with the long leaseholder on options for the building and sites future.
- 21 Agreement has been reached with NYCC to purchase their interest for £62,250. Cabinet is recommended to approve this purchase as it reflects 50% of the commercial valuation of the freehold. It will mean CYC have full freehold ownership of this site which is in a strategic location for the future expansion of the city centre. CYC will pay 50% of any increase above £124,500 if the whole site is sold for more than this figure within 10 years.

Consultation

22. All properties which are suitable for sale are first checked to see if there are any service requirements or any potential community use for the buildings as part of the disposal policy. Then a report is taken to the Capital and Asset Board on offers which have been received and any other interest in the property. All the above sales and acquisition have been approved by the Capital and Asset Board.

Analysis/Options

23. The only 2 alternative options are to proceed or not with any of the above disposals and acquisitions.

24 Clementhorpe Maltings

- Proceed – bring vacant listed building, potentially at risk into use providing 6 housing units
- Not proceed – building further deteriorates and will require maintenance and management to prevent possible structural failure

Former Manor School site

- Proceed – enable the British Sugar site master planning and development to proceed as a key access route is obtained and also provide a substantial capital receipt for the Council
- Not proceed – this site could be disposed of separately for housing development on part of the site which although would raise a capital receipt it would be unlikely to be at the same level as the figure offered. In addition the benefits of masterplanning of both sites would be lost as well as the control of seeing both sites developed together.

17/21 Piccadilly

- Proceed – development and re-use of this vacant and derelict site which is in a prominent area of the city centre so will help with the re-generation of this part of the City
- Not proceed – building remains derelict and further work will need to be done to reduce the risk of a structural failure.

Land adjacent to A59/A1237 Roundabout

- Proceed – significant capital receipt received for this area of land and also an improvement in the area and environment around the new roundabout
- Not proceed – area of land is not large enough to sustain a development in isolation so would remain as landscaped area with future maintenance liability for the Council

Stonebow House, Piccadilly

- Proceed – City of York Council will control the freehold of the whole site and so can have meaningful discussions with the long leaseholder about future options for the site with the objective of improving the appearance and development of this area on the edge of the City Centre
- Not proceed – no detrimental effect but any future discussions with the long leaseholder will need to include NYCC as the owner of part of the site which could cause delay and possible conflicting ideas for the site

Council Plan

- 25 The proposed sales would meet the Council priorities for **Creating Jobs and Growing the Economy** by supporting the development of key sites within the City such as the British Sugar site and also **Building Strong Communities** by providing residential accommodation in a number of areas throughout the city. In addition the substantial capital receipts raised from these sales will provide funding to also help meet the Council's priorities through its capital programme.

Implications

- 26 **Financial** – The £62,250 capital cost of the purchase of the remaining freehold for Stonebow House will come from capital contingency where there is a remaining balance of £421k.

All capital receipts are managed as part of the capital programme and the Director of CBSS reports regularly on over and under achievement against this programme

- 27 **Property** – all the implications are contained in this report

28 **Legal** - Under section 123 of the Local Government Act 1972 the Council may not generally dispose of land for less than the best consideration reasonably obtainable. Best consideration includes price and may include other matters which have a direct financial value to the Council. It does not include more general benefits to the area such as social or other economic benefits.

Best consideration is normally evidenced through marketing and a sale to the highest bidder. Where a bid is conditional the Council is entitled to take a reasonable view on the likelihood of a condition, such as the achievement of planning permission, being met.

Best consideration may alternatively be evidenced through independent valuation. The valuation must be of the unrestricted value of the land – ignoring restrictions which the Council is placing on future use in its capacity as vendor. Planning restrictions can be considered but, in general terms, unrestricted value is intended to be the amount which would be received for the disposal of the property where the principal aim was to maximise the value of the receipt.

The Council is under no duty to dispose of land through particular means such as through open marketing. A failure to market does though increase the risk of a sale being challenged. However, the Courts though have said that a breach of section 123 is only likely to be found if:

“the council has (a) failed to take proper advice or (b) failed to follow proper advice for reasons which cannot be justified or (c) although following proper advice, followed advice which was so plainly erroneous that in accepting it the council must have known, or at least ought to have known, that it was acting unreasonably.”

Where the Council uses criteria for assessing bids other than those in relation to capital value there is self evidently a risk that the Council will receive less than best consideration. This therefore presents a risk in respect of the Clementhorpe Maltings and 17/21 Piccadilly sales. Under section 123 the Secretary of State may consent to disposals at less than best consideration and a general consent has been given to disposals at an undervalue of up to £2m where the Council considers the sale will promote the economic, social or environmental well being of the area.

European state aid rules must also be complied with. State aid is a complex and developing area of law. The starting point is that the resources of the state should not be used to benefit a particular entity in a way which has the potential to impact on trade between member states.

It is clear that a sale at less than market value can constitute state aid. The achievement of market value may be demonstrated by a full marketing exercise. Alternatively, the advice of an independent valuer may be relied upon. In assessing market value it is permissible to have regard to special conditions imposed by the seller affecting the land and buildings provided that any purchaser could, in principle, be capable of complying with those conditions.

29 **Equalities and Human Resources** – no implications

Risk Management

30. There are no major risks associated with the sale of the properties detailed above.

31. Property disposals generally do carry risks such as the

- Legal title which the Council has for the property – this is being mitigated by the Council registering it's title with the Land Registry to all its property assets
- Uses to which vacant sites and buildings can be put to – this requires close liaison with Planning and also the Local Plan development to bring more certainty when any disposal takes place
- The state of the market – for buying the type of properties which come forward. This is more difficult to control but, as has been done in the past the sale of vacant properties can be delayed until market conditions are suitable with temporary occupation in the meantime to reduce the cost of retaining vacant properties.

Recommendations

32. That the Cabinet

- Approves the sale of Clementhorpe Maltings and land adjoining the A59/A1237 roundabout for the capital receipts detailed in confidential Annex 2.
- Approves the acquisition of the remainder of the freehold for Stonebow House for £62,250
- Approve the sale of the Former Manor School off market to ABF Ltd with delegation of the conclusion of negotiations to the Director of Customer and Business Support Services in consultation with the Cabinet Member for Finance Performance and Customer Services subject to the provision of adequate supporting valuations
- Delegate the final evaluation and selection of a purchaser for 17-21 Piccadilly to the Director of Customer and Business Support Services in consultation with the Cabinet Member for Finance Performance and Customer Services subject to the provision of adequate supporting valuations. .

Reason: To support the economic development of the city and create jobs and provide capital receipts to fund the Council's capital programme.

Contact Details

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	Report Approved	√	Date	23/12/2013
Specialist Implications Officer(s) Ross Brown – Technical Finance Manager Brian Gray – Senior Legal Assistant				
Wards Affected: All				√
<i>For further information please contact the authors of the report</i>				

Background Papers: None

Annexes:

1 – Site Plans 1-5

2 – Confidential – Details of sale and acquisition terms and summary of independent valuers report