

ASSET DISPOSAL

Executive Summary

This report sets out the proposal for the sale of the freehold interest in the front (north) building of CMS House, 45 Poole Road.

Under Section 123 of the Local Government Act 1972, Woking Borough Council has a duty not to dispose of land for a consideration less than the best that can be reasonably obtained. This would typically (but not necessarily) involve a full marketing process to ensure that the maximum value achievable in the market is secured. However, in cases where there is a “Special Purchaser” which is able to make a more attractive offer than can be secured in the open market, a full marketing process is not required.

In this case, the proposed sale achieves best value/best consideration for the site, and is in line with Market Value estimated by a Red Book valuation.

The Purchaser is a ‘Special Purchaser’, as it is an existing tenant of the Council’s Goldsworth Road Industrial Estate. The proposed disposal will facilitate the relocation of this tenant, which will enable the redevelopment of the Goldsworth Road Industrial Estate. The redevelopment of this Estate will substantially improve the Council’s financial position.

The Purchaser has a relocation clause in its existing lease at Goldsworth Road Industrial Estate, which means that relocating them is necessary in order to get vacant possession of their unit. Relocation to CMS House is the only feasible option. This will fulfil the terms of the relocation clause and enable the Estate to be redeveloped.

The Commercial Protocol has been consulted in respect of the decision making process to apply to this disposal. The Protocol has been created to provide guidance to the Council’s decision making processes. The disposal meets a number of Guiding Principles within the Protocol include No 11, “to maximise receipts from all funding streams including...over the period of the MTFS”.

The benefits of this proposed sale are largely commercial and financial, by generating a capital receipt and improving Goldsworth Road Industrial Estate’s asset value. But there is also the social benefit of relocating a successful small local business and enabling the redevelopment of an industrial estate which will provide much needed space for industrial businesses including small businesses. The main environmental benefit is that the redevelopment of this industrial estate is required due to the poor energy efficiency of the existing estate, therefore this sale will help enable the delivery of more energy efficient, more sustainable industrial space.

Recommendations

The Executive is requested to:

RESOLVE That

the Council dispose of the freehold interest in the front (north) building of CMS House, 45 Poole Road.

Reasons for Decision

Reason: This disposal of the front building of CMS House will generate a capital receipt that is supported by a Red Book valuation and should enable the progression of a redevelopment scheme at Goldsworth Road Industrial Estate by relocating an existing occupier to CMS House.

The Executive has the authority to determine the recommendation(s) set out above.

Background Papers: None.

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1.0 Introduction

- 1.1 This report seeks approval to sell the freehold interest in the front (north) building of CMS House. It is proposed that the rear (south) building be retained by the Council for the time being.
- 1.2 CMS House has a floor area (gross internal area) of 9,148 sq ft, and was recently occupied by CMS Carpets but is now vacant. It is comprised of two buildings which were merged together by CMS Carpets. The rear (south) building is 2,205 sq ft (gross internal area) and is shown in Appendix A as the area south of the pink line; and the front (north) building is 7,015 sq ft (gross internal area) and is to the north of the pink line.
- 1.3 This report sets out the background information on CMS House, and the process undertaken to reach an agreed price to sell part of the building to the Purchaser. It also outlines the other options that have been considered, as alternatives to disposing of part of the property to this specific purchaser.

2.0 Background and Current Position

- 2.1 The Council acquired the freehold of the entire CMS House property on 5th October 2018 for £1.87m.
- 2.2 CMS Carpets vacated the property in 2023, and it is now vacant with substantial empty property rates liabilities of £52,224 per annum. A substantial amount of refurbishment and repairs are required to the whole of CMS House to bring it up to a good condition.

3.0 Proposed Disposal

- 3.1 Under Section 123 of the Local Government Act 1972, the Council has a duty not to dispose of land for a consideration less than the best that can be reasonably obtained ('Best Value/Best Consideration'). In this case, the agreed disposal will be in line with the Market Value of the site as determined by a Red Book valuation.
- 3.2 In accordance with Section 123 of the Local Government Act 1972, Local Authorities are required to secure "Best Consideration" when disposing of property assets. This would typically (but not necessarily) involve a full marketing process to ensure that the maximum value achievable in the market is secured. However, in cases where there is a "Special Purchaser" which is able to make a more attractive offer than can be secured in the open market, a full marketing process is not required.
- 3.3 Case law, e.g. (*R (Midlands Co Operative) v Birmingham CC [2012] EWHC 620*), has established that Councils have a duty to achieve an outcome not conduct a process, thus different processes are acceptable provided the outcome (securing Best Consideration) is achieved based on proper professional advice.
- 3.4 In this case, the Purchaser is a "Special Purchaser" because they have a relocation clause in their lease at Goldsworth Road Industrial Estate, which requires the Council to relocate them to new facilities on "no less favourable terms" than their existing lease. This is a highly onerous clause for the Council as landlord, and will be difficult to fulfil (without CMS House) as property searches of the Council's commercial estate and the wider market have shown that there are no suitable alternatives.
- 3.5 The relatively low rent and favourable lease terms of the Purchaser's existing tenancy, gives them little incentive to vacate, and puts them in a strong negotiating position.
- 3.6 It is essential that the Purchaser is relocated from Goldsworth Road Industrial Estate. A planning application for a light-industrial redevelopment of this Estate was submitted on 12th

May 2023. This redevelopment is urgent, due to the age of the existing buildings and their poor condition. As a result of Minimum Energy Efficiency Standards, by 2026 some of the units will not be legally lettable, due to their poor EPC ratings, and it is not cost effective to refurbish/upgrade the existing buildings – as confirmed by consultancy advice from Vail Williams and BNP Paribas.

- 3.7 Based on discussions with industrial agents, any industrial developers looking to purchase the Goldsworth Road Industrial Estate will require vacant possession of the Estate as a condition of exchange, or at the very least the assurance that vacant possession can easily be achieved. Therefore, it is imperative that the Council relocates the Purchaser (or removes their relocation clause and Security of Tenure), otherwise the Council will not be able to redevelop the Estate and will not realistically be able to sell it at an acceptable price.
- 3.8 The Goldsworth Road Industrial Estate planning application PLAN/2023/0440 was refused by the Planning Committee on 5th September 2023. It proposed demolition of the entire Estate and redevelopment of 12 industrial units to provide light-industrial and storage facilities. The only Reason for Refusal was loss of B2 Use Class units for car repair use. The scheme has now been revised to fully address the Reason for Refusal by providing three B2 units, and has been resubmitted under PLAN/2023/0875 (validated on 2nd November). The Planning Officer is confident that approval will be secured for this revised scheme.
- 3.9 A full marketing exercise has not been undertaken for the sale of CMS House. But another offer has been received, which is at a lower level than has been agreed with the Purchaser. It is not expected that a sale of the entire CMS House site would exceed its Red Book valuation.
- 3.10 The two buildings at CMS House will be split at the Council's cost. The rear building will either be retained by the Council as an investment property and rented, or sold to an investor. Hurst Warne have advised that the rear building is likely to be attractive to the market as a storage or light-industrial unit, and will benefit from its excellent location near the town centre.
- 3.11 The Council could refurbish and upgrade the 2,205 sq ft rear building in order to maximise achievable rents. This will also include removing the boarding from the windows, repairing the windows, and fitting the unit out with toilets and a kitchenette. The Council's building surveyors have established that the rear building has its own electricity supply, but other services, including water and gas, will need to be reinstated.
- 3.12 In conclusion, the Red Book valuation (dated 4th May 2023) by Hurst Warne has demonstrated that the proposed disposal price for the front building of CMS House matches its Market Value. In addition, in view of the "Special Purchaser" status of the Purchaser, and the large financial benefits to the Council of relocating them from Goldsworth Road Industrial Estate, it is clear that this is the "Best Consideration" which maximises overall financial benefits for the Council.

4.0 Alternative Options

4.1 Alternative options for CMS House have been considered, and are summarised below:

- Sell the whole of CMS House - the Purchaser does not require the rear building of CMS House. The front building will provide them with sufficient ancillary storage space to support their retail space, therefore they are unable to make an offer for the whole of CMS House that would be commercially attractive to the Council and meet (or exceed) the Red Book valuation.

It is not expected that a sale of the entire CMS House site in the open market, following a full marketing process, would exceed its Red Book valuation.

- Rent the whole of CMS House – the Market Rent of the property is estimated within Hurst Warne's May 2023 Red Book valuation. This expected level of rent represents an annual return, expressed as a percentage of the agreed purchase price, that is not sufficient to make renting a more attractive option to the Council than a sale. In addition, the added benefits of a sale specifically to the agreed Purchaser, make this a much more attractive option than letting the whole building.

The Purchaser initially considered renting the front building of CMS House rather than renting it, but this is no longer their position, and they have a strong preference for purchasing the freehold.

- Relocate the Purchaser to alternative accommodation - the lack of other suitable, affordable retail warehouse units in the Woking area, makes it very unlikely that alternative accommodation can be found. Therefore, without CMS House, it is unlikely that the Council will be able to relocate the Purchaser, which will prevent Goldsworth Industrial Estate being redeveloped by Council and/or prevent its sale to an industrial developer.

The Purchaser has been offered other vacant units within the Council's portfolio, but none of these are suitable. The Purchaser's highly localised customer base limits how far they can move, and they have specific space and parking requirements which means that the other alternative units are unsuited.

- Sell CMS House in the open market as retail investment – it has been considered whether a sale in the open market, following a full marketing process, would generate more financial benefits to the Council. Given that the Purchaser is paying the full Market Value for the front building, in line with the Red Book valuation, a significantly higher purchase price cannot be expected in the open market, and would also have the downside that it would significantly delay the sale – thus prolonging the high void costs being incurred by the Council for this vacant building. And the failure to relocate the Purchaser from their existing unit at Goldsworth Road Industrial Estate, which is necessary to enable redevelopment of this Estate, will result in a major opportunity cost by limiting the development potential and asset value of the Estate.

Failure to redevelop the Goldsworth Road Industrial Estate, will cost the Council hundreds of thousands of pounds a year in lost net revenues and/or will prevent a sale of the Estate which is expected to generate a substantial capital receipt.

- Negotiate a cash settlement to vacate the purchaser from their existing unit - the alternative to relocating the Purchaser from their existing unit via the CMS House deal, would be a cash settlement to release the Council from the obligations of the relocation clause and statutory Security of Tenure, which would mean that the Purchaser would need to find their own alternative accommodation. Following discussions with the Purchaser, this is an unattractive option for them, due to the limited alternative accommodation locally, thus they were not willing to negotiate a settlement. Even if they were to agree in the future to commence negotiations, any notional cash settlement is likely to be far too high to be a feasible and financially attractive option for the Council.
- Alternative uses – the potential to achieve a higher asset value from an alternative use has been considered. Commercial uses on the site are protected via the Local Plan. It is an Employment Area under Site Allocation UA14 (Butts Rd/Poole Rd), which however does earmark the site for "potentially an element of residential use". A land valuation of a hypothetical residential-led redevelopment of the site has been prepared.

The option of a residential-led redevelopment by the Council (or sale by the Council to a residential developer) of the whole CMS House site has been considered. It has been concluded that this option is very unlikely to generate a significantly higher land value than the Market Value of the CMS House in its existing use. In addition, a redevelopment proposal would take a long time to prepare and design, and it is uncertain what type of scheme would be accepted by planning officers – thus in terms of risk and timescales, redevelopment is less attractive than a sale for continued retail use.

The alternative of a wider residential-led development – including the neighbouring land to the west – has been considered. This would likely deliver a better quality, more valuable residential development, but would be more complex and would require costly land assembly (including the land currently occupied by Kendall Cars), thus does not appear to be a financially attractive option for the Council.

An overage payment has agreed based on the potential uplift in site value as a result of securing a planning consent for a mixed-use, residential-led development. Based on initial valuations, it appears that the uplift in site value over the existing use is likely to be modest, thus a relatively small overage payment has been proposed, in order to not restrict the development potential of the site. In any case, the Purchaser has no intention of redevelopment and intends to trade from the property under its existing retail-warehouse use.

There is considerable uncertainty over development potential, including the number of storeys that would be permitted. Based on nearby planning applications, up to around 6 storeys would likely be able to secure planning consent. Another issue is that the Site Allocation requires that any redevelopment incorporates retail or employment uses, which complicates residential-led development and constrains achievable land values.

5.0 Corporate Strategy

- 5.1 The proposal to sell part of CMS House contributes to a number of Objectives in the Corporate Plan (2021/22), including the following “Place” Objectives: 1) “promoting a strong economy”, by re-accommodating a local business and enabling the redevelopment of an obsolete industrial estate; 2) sustainable development, by enabling the delivery of modern industrial units to replace units that fall below Minimum Energy Efficiency Standards. In addition, it contributes to the “Us” Objective of ensuring an “*Effective Use of Resources*” by maximising the value of the Council’s assets.
- 5.2 The Corporate Plan (2021/22) has been followed by the *Working for all supplementary priorities (2022-2027)* strategy, and the proposed sales meets a number of this strategy’s objectives, including encouraging a “*A high performing council*” by helping to “*Get the Council’s finances under control*” and “*Consider new approaches to increase income*”.

6.0 Implications

Finance and Risk

- 6.1 No major risks identified.

Equalities and Human Resources

- 6.2 None arising from this report.

Legal

- 6.3 There are no legal implications, other than those outlined in this report.

6.4 This disposal is considered to be compliant with the provisions of S123 of the Local Government Act 1972.

7.0 Engagement and Consultation

7.1 None arising from this report.

REPORT ENDS

APPENDIX A – Site plan showing the extent of the CMS House site as per the red line boundary, of which the front building to be sold to the Purchaser is to the north of the pink line.

