

Report to:	EXECUTIVE CABINET
Date:	24 March 2021
Executive Member:	Councillor Oliver Ryan, Executive Member (Finance and Economic Growth).
Reporting Officer:	Paul Smith, Assistant Director — Strategic Property.
Subject:	DISPOSAL OF COUNCIL OWNED LAND AND PROPERTY
Report Summary:	Following Executive Cabinet approval of the revised policy for the 'Disposal of Council Owned Land' on 30 September 2020, the report seeks permission to declare the former Cotton Tree Public House, Droylsden surplus to the requirements of the Council.
Recommendations:	That Executive Cabinet be recommended to agree that the premise, known as the former Cotton Tree Public House, together with an area of parking land to the rear be declared surplus to the requirements of the Council. Any disposal of the former Cotton Tree Public House is to include An absolute restriction/covenant restriction to stop becoming a public house in the future.
Corporate Plan:	The proposed measures shall facilitate the onward sale of a vacant and under-utilised Council property which, eventually is likely to contribute to delivering corporate priorities – housing, economic growth and employment opportunities.
Policy Implications:	The Authority are seeking to comply with its policy on the disposal of Council owned land which was approved by Executive Cabinet on 30 September 2020.
Financial Implications: (Authorised by the statutory Section 151 Officer & Chief Finance Officer)	<p>The report provides supporting details for the proposal to declare the former Cotton Tree Public House, Droylsden surplus to requirements of the Council and marketed as such for disposal.</p> <p>Any subsequent receipt generated via this disposal will be an additional sum to the estimated £ 15.3m that will be realised via the schedule of asset disposals approved by the Executive Cabinet on 30 September 2020. These estimated receipts will support the financing of the Council's capital programme. Members should note that the broader capital ambition of the Council is currently unaffordable until further capital receipts are generated.</p> <p>Ideally the minimum disposal value realised via the sale of this Council asset should equate to the initial purchase sum (£ 0.150m) together with the outstanding arrears for rent and business rates (£0.052m) as referenced in section 1.2 of the report i.e. a minimum value of £ 0.202m.</p> <p>It should be noted that the value of the receipt received by the Council will be reduced by the related external property agent fees incurred that will facilitate the property sale. All Council officer fees associated with this transaction will be recovered from the purchaser of the property.</p>
Legal Implications:	Members should consider given the history of the premise and the reason why the Council purchased the site whether there should be a restriction on the use of the premise being a licensed premise.

(Authorised by the Borough Solicitor)

Under section 123 of the Local Government Act 1972, a local authority has the power to dispose of land. The main caveat to this power is that the council must not do so for “ a consideration less than the best that can be reasonably obtained ”

Section 123 of the Local Government Act 1972 has caused much debate over the years for councils considering land disposals. Legally, councils have the power to dispose of land ‘in any manner they see fit’ for the ‘best price reasonably obtainable’, however in practice this has proved to be more complicated. Over the last decade there have been several judicial reviews challenging council decisions, particularly in regard to the price that has been accepted for land that is for sale. A council can be found in breach of section 123 if it has “(i) failed to take proper advice; (ii) failed to follow proper advice for reasons that cannot be justified; or (iii) has followed advice that was so plainly erroneous that in accepting it the local authority must have known, or at least ought to have known, that it was acting unreasonably.” A useful case that explores what ‘any manner’ of disposal actually means is a dispute between Salford Estates and Salford City Council/Tesco Stores Limited. Salford Estates sought a judicial review of the council’s decision to sell land to Tesco on the basis of an independent valuation, rather than go out to the open market. Tesco owned land in the middle of a larger site owned by the council, and by purchasing the additional land Tesco would be able to build a large superstore. In this case the court ruled that the method of achieving the ‘best price’ did not matter, the council was under no obligation to follow a set process, and it had complied with its section 123 duty. To quote: “there was no particular prescribed route to achieving the best price reasonably obtainable: it was not a duty to conduct a particular process, for example to have regard to particular factors.” On a separate point, a council is able to sell a site for less than its market value, but it must seek statutory consent to do so. Specific consent is not needed where a council can demonstrate the land sale will help to secure the improvement of the economic, social or environmental wellbeing of the local area, and the undervalue is only up to £2m less than market value. These are the circumstances where socio and economic benefits can be relevant. The undervalue itself still needs to comply with “normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer”.

In conclusion, through case law a couple of key points become clear regarding a council’s obligation to section 123 compliance. Firstly, the most important thing is the outcome, rather than the process. Secondly, monetary value is the best consideration in whatever the form, whether overage, upfront or deferred. However, social and economic benefits can justify a disposal at an undervalue, but only in certain circumstances.

Risk Management:

The subject property has been vacant for a number of years, with a previous tenant ‘abandoning’ the property and whose current whereabouts is presently unknown. The Council are taking steps to formally return the property to the possession of the Authority. The condition of the property is poor and is subject to ongoing complaints from neighbouring property owners.

Background Information:

The background papers relating to this report can be inspected by contacting the report author, Paul Smith.



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1. INTRODUCTION

- 1.1 Due to issues around anti-social behaviour, on 15 August 2013, the Council acquired the subject property at 106 Market Street for £150,000. Following on from acquisition, the Council marketed the vacant property for alternative use and on 7 January 2016 entered into an agreement with a tenant who was looking to operate the former Public House as a restaurant.
- 1.2 The lease was for a term of 10 years from the date of the agreement (i.e. expiring 6 January 2026) and under the provisions of this lease, the Council were due to receive an initial rental of £5,750 per annum increasing to £11,500 per annum on 7 January 2021. Unfortunately, the tenant made minimal lease payments since completing the lease initially and has not made any payments since 25 March 2017. Rent arrears now total £29,982.15 and there are also Business Rates arrears of £21,777.42.
- 1.3 The property has not been occupied by the lessee or his trading business, Indian Mint, for a number of years, leaving the property vacant and in a derelict state. The Council have sought to trace the lessee in order to recover the arrears but, attempts have thus far proved futile. In the meantime, the condition of the property continues to deteriorate and is drawing complaints from neighbouring property owners who are suffering from issues of damp, flytipping and antisocial behaviour. As such, in recent weeks, as this would not prejudice the ability to recover any arrears, the Council have agreed to take steps to formally terminate the lease (via forfeiture) and return possession of the building to the Authority.
- 1.4 During the period of void, the Council have received unsolicited interest from developers who are keen to acquire the property from the Authority and both convert and refurbish the building to provide a combination of uses, primarily involving retail uses to the ground floor and residential uses to the upper floors. It is therefore proposed that the Council formally seek to declare the property surplus to its requirements so that, the Authority can explore disposal options that would seek to see the building brought back into a meaningful use. This proposal would include the vacant land to the rear of the Cotton Tree (as shown edged blue in Appendix Two) which, serves to provide access to both the former Public House and the adjoining, privately owned shops. Given the rights across the land, the Council derive very little benefit from this area which has been a constant source of flytipping and a management intensive area of land.
- 1.5 At the meeting held on 30 September 2020, Executive Cabinet agreed a revised policy that would allow the Council to sell its surplus assets. The policy made provision for greater consultation and requests that all decisions to declare an asset surplus – and therefore available for sale – to be made by Executive Cabinet. It is understood that the Executive Member (Finance and Economic Growth) has already consulted with Ward Councillors who are keen for the property to be brought forward for sale, given its deteriorating condition and prominent location at the junction of Market Street and Manchester Road.
- 1.6 In selling the opportunity, the Council would look to include a restriction whereby, it would not be possible to reuse the property as a Public House. This would help avoid the anti-social behaviour issues which prompted the initial property purchase in 2013.

2. NEXT STEPS

- 2.1 Given the consultation carried out by the Executive Member (Finance and Economic Growth), it is hoped that the decision to declare the subject asset surplus, can be taken by Executive Cabinet. Once declared surplus, the Director of Growth would then be able to select and implement the preferred disposal process which, at this stage, is likely to be an open market sale, by way of an initial building agreement that would ensure that the building is refurbished

by the intending purchaser, prior to the Council transferring a formal legal interest in the property.

- 2.2 Once any period of marketing has been completed, the Head of Estates would need to confirm that best value has been achieved – and therefore that the Council have satisfied its obligations under s.123 of the Local Government Act 1972 – prior to the Director of Growth agreeing the terms of any disposal in consultation with the Executive Member (Finance and Economic Growth).

3. CONCLUSION

- 3.1 Subject to the Council formally terminating the lease previously granted to the absent tenant, the Authority would like to seek to declare the subject asset surplus to requirements. This would allow officers to dispose of the subject asset which, would not only generate a capital receipt but, most importantly, bring an increasingly long-term vacant property back into a meaningful use.
- 3.2 The building is situated at a prominent junction and adjacent to both a tram station and tramline in the district centre. It is therefore important that, as part of any future sale, the Council can ensure that the building is refurbished initially (i.e. that a developer does not simply acquire the asset and landbank) and that the uses which take place in the renovated building are sympathetic to the wider area and support the objectives of the Authority.

4. RECOMMENDATIONS

- 4.1 As set out at the front of the report.