

Business Infrastructure & Growth Committee -

5 December 2024

Corporate Policy & Resources Committee -

9 December 2024



Title	<i>Council Land and Property Disposals</i>
Purpose of the report	To seek approval to progress a disposals programme and to recommend to full Council an initial disposal of the Freehold Interest of Ashford Victory Place, Ashford
Report Author	<i>Coralie Holman – Group Head Assets</i>
Ward(s) Affected	All
Exempt	<i>Main Report – No Appendix 1 and 4 - No Appendices 2 and 3 – Yes</i>
Exemption Reason	As to Appendices 2 and 3. The Appendices contains exempt information within the meaning of Part 1 of Schedule 12A to the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985 and by the Local Government (Access to information) (Variation) Order 2006 Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information) and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information because, disclosure to the public would prejudice the financial position of the authority in any contract or other type of negotiation with a prospective purchaser who could then know the position of the Council.
Corporate Priority	Resilience and Addressing Housing Need
Recommendations	Corporate Policy and Resources Committee is asked to: Recommend to Full Council to: 1) Approve progression of an assets' disposals programme of Council owned land and property in order to generate capital receipts Business Infrastructure and Growth Committee is asked to: 1) Recommend to Full Council to: a) Approve the disposal of Ashford Victory place in Ashford to the preferred bidders as set out in more detail in the confidential Appendices attached to this report. b) Delegate authority to the Group Head of Assets in consultation with the Chair and Vice Chair of Business

	<p>Infrastructure and Growth Committee to agree any variations to the terms of the disposals relating to Ashford Victory Place.</p> <p>c) Delegate authority to the Group Head of Corporate Governance to enter into transfers to complete the disposals and any ancillary legal documentation required in relation to Ashford Victory Place.</p> <p>2) Note the current marketing approach and offers received in relation to Thameside House, Staines which will form the basis of a further report to be brought to the Business Infrastructure and Growth Committee in the early part of calendar year 2025.</p>
Reason for Recommendation	<p>The disposals will contribute towards the Financial Resilience of the Council, by generating capital receipts. The disposal of Ashford Victory Place will end on-going borrowing and holding costs in respect of this site, which will relieve pressure on the Council's Revenue Budget and Medium-Term Financial Plan. The Council has a statutory obligation to achieve best consideration from its land and property disposals.</p>

1. Summary of the report

What is the situation	Why we want to do something
<ul style="list-style-type: none"> The Council owns a large portfolio of land and assets, which are held for a variety of purposes and has a statutory responsibility to achieve best value from all its property holdings. A list of proposed sites to be considered for disposal is contained within the appendices of this report together with the anticipated financial receipt a sale may generate. The Council is no longer undertaking direct delivery of regeneration and residential development on its land and property, and this has highlighted 1 development sites which could be sold now and 	<ul style="list-style-type: none"> The Council has statutory obligations to achieve best consideration in relation to its land and property disposals and this directs the Council to focus on financial resilience within its decision making, including disposing of assets, when possible, to relieve pressure on the annual revenue budget resultant from financing and holding costs from vacant sites. A number of the Council's land and property sites are currently not delivering best value in their existing use and are therefore proposed for sale to generate capital receipts that contribute to the financial resilience of the Council. The Council has recently marketed 2 development sites in

<p>generate capital receipts plus bring other benefits.</p> <ul style="list-style-type: none"> • Sites purchased for development using borrowing are now adding pressure to the Council's revenue budgets through ongoing financing and holding costs. • The Council's recently adopted Development Delivery Strategy makes provision for progression of the development on specified sites via partnership working which may take the form of disposal or joint venture style agreements. 	<p>the short-term priority delivery list and have received a number of bids for each site.</p>
<p>This is what we want to do about it</p>	<p>These are the next steps</p>
<ul style="list-style-type: none"> • Form an agreed list of sites following a review of all Council owned land and property assets to commence managed disposals of Council land and property over the coming years, which can be demonstrated as not achieving best value in their current form in order to generate capital receipts. • Progress a disposal of Ashford Victory place to the preferred bidder on a freehold sale basis to allow third party developers to build out /convert the site to provide housing within the Borough. • Note the offers received on Thameside following the marketing that has been undertaken to assist with decision making around disposal options connected with the site and allow further evaluation and due diligence to be undertaken in respect of the disposal interest. 	<ul style="list-style-type: none"> • Working with Councillors, agree a list of sites to be included within a disposals programme as set out/ categorised within Appendix 1 of this report, with disposals commencing in the 2025/26 financial year. • Consider offers received for Ashford Victory Place, assess the benefits and disadvantages of each offer in order to select the preferred bidder for each site to achieve 'best consideration'. • Consider whether to extend the marketing of Thameside House to a full unencumbered marketing exercise. • Take reports to the relevant Council committee making recommendations regarding the sale of each site at the appropriate time. • Take a recommendation to full Council on 12th December 2024 to dispose of the site known as Ashford Victory Place to the preferred bidder on a freehold sale basis to allow the Council to

	<p>address and end all financial costs attached to each site.</p> <ul style="list-style-type: none"> • Instruct solicitors to complete the disposal.
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2. Key issues

- 2.1 The Council owns a large portfolio of land and assets, which are held for a variety of purposes. The Council has a statutory responsibility to achieve best consideration from all its property holdings.
- 2.2 Disposals of sites will enable the Council to obtain capital receipts and where applicable offset purchase and other holding costs and will end the borrowing associated with each site being ended. This will longer term relieve pressure on the Council's revenue budget. In the short-term disposals may result in any costs that exceed the disposal prices being offset against Council reserves, if a) if the Council has financed the purchase of the sites and b) is incurring holding costs (for those sites included within Appendix 1, this predominantly applies to the 3 development sites only).
- 2.3 The overall borrowing costs are accumulating year on year and are currently being funded from the Council's annual revenue budget. Incurring these costs on a long-term basis place greater strain on the Council's financial resources. So, whilst market values are currently low, it is not prudent to retain ownership of the assets longer term and continue to incur annual holding costs.
- 2.4 Should the Council decide not to progress with the recommendations within this report, this may breach the Council's statutory requirements under section 3 of the Local Government Act 1999 to comply with Best Value Duty. Where a local authority is failing to comply with the Best Value Duty, the Secretary of State has wide powers of intervention, including appointment of commissioners to exercise the authority's functions and making a direction to take a specified action. In addition, section 123 of the Local Government Act 1972 obliges the Council to secure best consideration reasonably obtainable on disposal of land; any disposal at undervalue requires prior consent of the Secretary of State.
- 2.5 The Council agreed to end direct delivery of its development sites in the Autumn 2023, due to on-going financial viability challenges resultant from higher borrowing and construction costs. In October 2024, Full Council agreed adoption of a Development Delivery Strategy, which provides for developments on Council owned sites specified in the strategy, to be progressed via disposals or joint venture style partnerships. This aligns with corporate plan objectives in relation to provision of housing, regeneration and financial resilience.
- 2.6 Those sites specified within the Development Delivery Strategy were prioritised over a 10-year period. The initial focus being sites with the highest financial holding costs and are not income generating. Ashford Victory Place, Ashford and Thameside House, Staines are both subject to high financing and holding costs are in the immediate priority classification for disposal.

3. Current position

- 3.1 Following a review of the Council's assets a number of sites have been identified as possible disposal options and may generate financial receipts to contribute towards the Council's longer term financial resilience, which may offer better value than current uses as well as offering revenue savings. A list of sites can be found in Appendix 1 and includes sites that were already being progressed as part of the development delivery strategy. This is an indicative list of possible sites. Many of the proposals included from 2027/28 onwards will need significant due diligence to be undertaken prior to any individual site being confirmed as suitable for disposal. Due diligence will include planning, legal and other considerations to inform recommendations about the suitability of any individual asset.
- 3.2 At the appropriate time as site disposals are progressed, reports will be taken to the relevant Council Committee with specific terms for each sale, seeking approval for the committee to support a recommendation being made to Full Council to agree the disposal. In addition to approval to progress a disposals programme, this report seeks approval to dispose of the 1 specified development sites only.
- 3.3 Both Ashford Victory Place and Thameside House have recently been independently marketed, using a well-known regional commercial surveying practice Vail Williams. Utilising the expertise of Vail Williams has ensured comprehensive marketing and demonstrates best consideration avoiding the need for an independent valuation.
- 3.4 Ashford Victory Place has been marketed on the basis of the current planning permission for the development of 127 residential units on the site. Six offers were received and are set out in more detail in Exempt Appendix 2 of this report. The ranking of bids has been based on professional judgement around conditionality, complexity and price in order to achieve what is evaluated as the order of best consideration.
- 3.5 Marketing for Thameside House has been focussed on conversion of the existing building rather than demolition. A number of late offers have been received for this site, which demonstrates wider consideration should be given to the disposal. If the marketing was extended to a full unrestricted marketing exercise, this may result in higher offers for the site but would potentially focus on demolition of the existing building and a new development. An unencumbered sale is highly likely to yield a higher capital receipt.
- 3.6 The recent marketing was based on a decision approved by the Council's Business Infrastructure and Growth (BIG) Committee in June 2024, which addressed resident concerns about the height, mass and parking provision connected to a new build development and focused on conversion of the existing building. Offers received for the site are detailed in the Exempt Appendix 3 of this report and demonstrate even with the marketing focused on conversion of the existing building, there is strong interest in the site producing a range of financial offers and proposed uses.
- 3.7 The more recent offers for Thameside House focus on a Freehold disposal of Thameside House, rather than the originally proposed grant of a long leasehold interest (c.250 years) to allow the Council to end any asset-based remit.

4. Ashford Victory Place

- 4.1 All offers received for Ashford Victory are for residential development as anticipated. Two offers received (one for affordable housing and the other extra care), require the Council to underwrite between 40% and 100% of the rental costs of the developer. This would create a financial liability of several million pounds each year over a 40+ year period, that would have to be included within the Council's financial statements.
- 4.2 The Council would be obliged to fund any financial shortfall in the developer's income up to the agreed percentage, in the event 'lettings' did not materialise creating an income shortfall. Progressing with an offer on this basis may result in even greater financial pressures for the Council. It is not considered prudent to progress any offers on this basis, instead focusing on bids that allow a freehold disposal that upon completion results in the Council having no further involvement with the site in a property owner capacity.
- 4.3 A thorough review of all offers for both sites has been undertaken and the following conclusions reached, a disposal to a market housing developer seems to be the most straight forward and deliverable offer based on:
- Being immediately proceedable if Council approve the recommendations
 - Minimal or no conditionality connected to the terms of the sale
 - No onerous conditions
 - No on-going financial or other obligations to the Council in respect of the site
 - Produces a market value financial receipt on completion of the sale, which is not based on the Council underwriting future income for the developer/owner
 - Provides much needed affordable housing provision via the planning approval conditions

5. Thameside House

- 5.1 As outlined above, marketing of Thameside House focused on conversion of the existing building not a demolition and new build scheme, to align with the decision taken by BIG committee in June 2024. Interest has been received for the site for a variety of uses, but all are based on conversion of the existing building. Due to the range of offers and prices received, further consideration should now be given to the marketing of the site in order to determine whether the statutory requirement to achieve best value can be demonstrated or whether wider and/or unencumbered marketing is desirable.
- 5.2 A disposal to achieve best value should evaluate the following in respect of determining how straight forward and deliverable the offer is:
- Risk resulting from conditionality and lengthy timescales prior to completion of a sale and receiving the capital receipt i.e. whether the disposal is immediately proceedable
 - Complexity of conditions attached to a disposal offer e.g. planning consent for alternative use, for a new building to be constructed, for a new use to become operational

- Any on-going financial or other obligations to the Council in respect of the site e.g. underwriting future income for the developer/owner
 - Due diligence on the proposed purchaser re funding and track record e.g. do they have funds readily available, are they reliant on partners/ third-party for funding or other agreements to progress to completion.
- 5.3 A disposal of the site with restrictions around use and alterations could be progressed but is unlikely to deliver best consideration. Full marketing of the site on an unencumbered basis, without restriction is likely to generate a higher capital receipt. Therefore a 'restricted' disposal may result in sale at an undervalue and depending on the level of undervalue could need prior approval from the secretary of state as outlined within section 2.4 of this report.
- 5.4 This Committee are asked to consider the current marketing that has been undertaken and whether there would be merit in extending the marketing to attract offers on an unincumbered basis. This would ensure there was full awareness of the highest price that could be achieved for the site and associated conditionality. Following this a detailed evaluation of a full range of offers could be undertaken to rank interest and would highlight a preferred bidder. In turn this would determine whether the Council's preferred disposal option constituted a disposal at an undervalue and the need for Secretary of State approval or whether best value statutory requirements could be demonstrated.

6. Next Steps

- 6.1 Progressing a disposal of surplus Council owned sites addresses Corporate Plan priorities in respect of resilience and for Ashford Victory Place provision of affordable housing (via the provision of 22 affordable units required under the planning approval).
- 6.2 Whilst the original intention for the disposals was to provide a greater provision of affordable housing, economic factors since the sites were acquired have now changed the parameters of the decision making. Best value requirements place the greatest priority for any Council on financial resilience and this is main focus driving the Officer recommendations contained within this report.
- 6.3 If the Council opts not to approve the disposal of Ashford Victory Place, the site will remain in its existing condition and continue to place financial pressure on the Council's revenue budget through on-going financing and holding costs at c. £153,000 pa.
- 6.4 Holding costs for Thameside House would be reduced if demolition of the building is progressed at a capital cost of c. £600,000 as approved by Corporate Policy & Resources Committee in December 2023, however the financing costs from the loan would continue at c. £216,000 pa.
- 6.5 If the recommended disposal option for Ashford Victory Place is progressed the cost of £3.23m will be met from the Council's Capital and Revenue reserves to clear all outstanding financial liabilities in relation to the site. A breakdown of this figure can be found in the financial implications section of this report. It should be noted even if the site is not progressed for disposal the abortive project costs may still have to be written off to reserves.

- 6.6 If committee approves the Officer recommendation to progress the matter to Full Council, final approval to progress the disposals will be sought at the next Full Council meeting on 12th December. If approved solicitors will be instructed and the sales will be progressed as quickly as possible with anticipated completion in early 2025/26.

7. Options

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- 7.1 Option 1 agree to support a disposals programme of surplus Council owned land and property. **This is the recommended option** as it will generate financial receipts and demonstrate the Council is adhering to its Best Value statutory requirements.
- 7.2 Option 2 Do not support a disposals programme of surplus sites and retain all sites within their current configuration/use. **This is not the recommended option** as surplus sites are placing a strain on the Council's revenue budget in terms of vacant holding costs. In addition, some sites are subject to financing costs. This option does not demonstrate 'Best Value'.

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- 7.3 Option 1 agree to progress a disposal of Ashford Victory Place to bidder ranked no.1 as set out in Appendix 2 of this report. **This is the recommended option** as it ensures the Council achieves best consideration from its land and property assets, meeting statutory best value requirements.
- 7.4 Option 2 – do not progress a disposal to the preferred bidder, ranked no. 1 in Appendix 2. Instead, re-market the site to seek a disposal that would deliver 100% affordable housing provision. **This is not the recommended option** as it would require the Council to dispose of its land and property for less than best consideration and is likely to require consent of the Secretary of State. This goes against the requirement to achieve best value and may be construed that the Council does not consider financial resilience as its greatest priority.

8. Financial Implications

- 8.1 At the point of disposal of a site, this will extinguish the Council's previous development proposals, with any losses being met by capital and/or revenue reserves. The Council cannot continue to incur these holding costs and needs to resolve the situation. The Chief Finance Officer strongly advises that the proposed approach is pursued. Capital reserves will address any surplus/deficit from the actual financial receipt of a sale once the cost the council incurred, in respect of the site acquisition has been deducted.
- 8.2 The total current level of costs to offset from capital and revenue reserves equals £3.23m, as shown in the table below:

Property	Purchase Price	Disposal Price	Capital Reserves w/down	Revenue Reserves w/down	Surplus or Deficit (w/down)
Ashford Victory Place	£5.24m	£6m	£0.76m (surplus)	£3.99m (deficit)	£3.23m (deficit)

8.3 The write down of capital costs relating to the disposal of Ashford Victory Place will in part be offset by other potential capital receipts from the disposal of other Assets identified in Appendix 1 during 2025/26. This use of revenue reserves is being addressed in the Council's reserves strategy report for Corporate Policy and Resources Committee on 9th December 2024.

8.4 It should be noted that it is anticipated that the Council will achieve higher capital receipts and reduce capital losses if disposals are made on an unencumbered basis.

9. Risk Management

9.1 Once the Council disposes of its interest in the site it loses control of any future change in proposals by the owner of the building, other than via the Planning Committee and any legal mechanisms (e.g. restrictive covenants or overage) that may be negotiated between the parties. With Thameside House there will be a restriction preventing any external development on site for 10 years, without Council consent.

9.2 All reasonable due diligence will be undertaken on the preferred bidder i.e. to check funding availability as well as other regular financial checks. However, until contracts are exchanged, as with any disposal the legal process proceeds at risk of an abortive completion.

10. Procurement comments

10.1 As this is a disposal, there are no direct procurement implications, which typically relate to purchasing. However, by marketing the sites the Council has ensured they have been exposed to any interested parties to allow bids to be submitted.

11. Legal comments

11.1 Further to sections 120-123 of the Local Government Act 1972, the Council has the powers to acquire and dispose of land for the purpose of any of its functions. Any disposal will need to satisfy the valuation requirements of section 123 of this Act, and disposal for less than best consideration reasonably obtainable will require consent of the Secretary of State.

11.2 Any disposal will be subject to the terms of the contract, transfer and any other necessary legal documentation. The Council's in house Legal Services will support and external legal advice will be obtained if required.

11.3 Any disposal must meet the requirements of Best Duty Value under the provisions of the Local Government Act 1999.

11.4 Failure to obtain best consideration from the proposed disposals may expose the Council to risk of legal challenge by way of a judicial review which will result in substantial legal costs and reputational damage

12. Other considerations

- 12.1 Meeting best value requirements and achieving the best consideration must be a key part of the Council's decision-making process.

13 Equality and Diversity

- 13.1 There are no direct equality issues arising from a property disposal.

14 Sustainability/Climate Change Implications

- 14.1 Requirements relating to the sustainability of any development will be a developer responsibility.

15 Timetable for implementation

- 15.1 Immediately if approved.

16 Contact

- 16.1 Coralie Holman Group Head Assets c.holman@spelthorne.gov.uk

Background papers: Appendix 1: Draft disposals programme
Appendix 2: Schedule of Offers - Ashford Victory Place
Appendix 3: Schedule of Offers Thameside House
Appendix 4: Financial costs of each development site