



CABINET

Subject Heading:

Cabinet Member:

SLT Lead:

Report Author and contact details:

Policy context:

Financial summary:

Is this a Key Decision?

When should this matter be reviewed?

Reviewing OSC:

PROPERTY DISPOSALS

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The Council's Asset Management Plan

The disposal of the properties identified in this report if approved will generate capital receipts which will be utilised to fund Council priorities approved as part of the Capital Strategy. Disposal will also deliver minor reduction in ongoing revenue costs

Yes

Expenditure or saving (including anticipated income) of £500,000 or more

Not Applicable

Overview & Scrutiny Board

The subject matter of this report deals with the following Council Objectives

Places making Havering
Opportunities making Havering

[X]
[X]

SUMMARY

On various occasions, Cabinet has approved the disposal of a number of Council owned sites either identified as surplus because of specific projects or following property reviews carried out by Property Services.

As the Council has pursued a policy of selling surplus sites for many years it becomes more difficult to identify new sites for disposal that do not pose challenges, either technically or in terms of planning, and especially in respect of objections to disposal that arise in many cases. Nonetheless, constant and on-going appraisal of property assets to identify disposal opportunities is a best practice tenet on all local authorities and at Havering is essential in providing capital receipts to fund and secure improvements and enhancements in delivery of Council services.

Nationally, councils are shifting their approach and considering sites for self-development in line with corporate need. Through capital spend; they are able to generate savings and new forms of revenue income.

This report identifies two sites that do not appear to meet the Council's approved criteria for property ownership and therefore need to be considered for disposal or self-development to meet corporate need, through the General Fund, HRA or Council-owned Company.

RECOMMENDATIONS

That Cabinet:

- (a) **Agree**, in principle, that the land referred to below is no longer required to be held for the purposes for which the Council presently holds it and that it should be appropriated to planning purposes with a view to its subsequent disposal in due course:
 - Land at Gooshays Drive, Harold Hill
 - Hall Lane Pitch & Putt Course, Upminster
- (b) **Authorise**, for the purposes of (a) above and in accordance with section 122(2A) Local Government Act 1972 and section 233(4) Town and Country Planning Act 1990 that notices are placed in a local newspaper circulating in the area for two consecutive weeks expressing
 - (i) an intention to appropriate the land to planning purposes; and
 - (ii) an intention to dispose of the land following its appropriation.
- (c) **Consider** any objections to the intended appropriation and/or disposal before a decision to appropriate or dispose is made.
- (d) **Agree**, in principle, following its appropriation for planning purposes, to the disposal of the land referred to above subject to (b) and (c) above.

REPORT DETAIL

- 1 Over the last few years Cabinet has considered several reports that dealt with the results of a number of systematic property reviews and service-led projects that identified surplus property assets. Following this consideration, approval has been given to a number of property disposals.
- 2 The Council's Asset Management Plan states that land and property assets should only remain in Council ownership if they:
 - need to be retained in Council control for the provision of services
 - are of great value to the Council, community and other stakeholders and are in need of the degree of protection from development or other uses afforded only by ownership
 - are investment properties providing a financial return that can fully satisfy relevant investment criteria
- 3 As well as ensuring that the portfolio of retained property is suitable for the operational needs of the Council, there is a continuing need to generate capital receipts from the disposal of assets in order to pursue capital projects. The review and identification of new disposal and capital receipt opportunities makes an essential contribution to funding the Council's capital programme.
- 4 The combination of these factors has highlighted the need for a continuing systematic review of the Council's assets to ensure that those that continue to be retained match one of the definitions referred to above and those that do not are considered for disposal or re-use.
- 5 The required outcome of any asset disposal is to ensure that the Council's assets are managed efficiently and that their value makes a positive contribution to service delivery. However, where the site is to be redeveloped in accordance with the Council's planning policies the disposal may also assist in the pursuit of certain planning objectives, such as housing provision.
- 6 The sites identified for disposal within this report are:

Appendix 1	Land at Gooshays Drive, Harold Hill
Appendix 2	Land at Hall Lane Pitch & Putt Course, Upminster

Each Appendix sets out the strategic context in identifying the land for disposal along with any associated projects. Further data on the asset and a site plan are also provided. The Council owns the freehold interest in both sites.

7. As a matter of law, councils hold or own land for a particular statutory purpose. If they want to hold the land for a different purpose, they must formally appropriate the land to that purpose. Appropriation is a statutory process that allows the Council, following consultation, to change the purpose for which it holds property in its ownership from one purpose to another.
8. Councils are authorised to appropriate land for planning purposes. By formally appropriating the land for planning purposes subject to section 241 Town and Country Planning Act 1990, the Council (or any other person) may develop the land in accordance with a planning permission.
9. The Council should only propose to appropriate land for planning purposes if it has an intention to see the land used for development that promotes or improves the economic, social or environmental wellbeing of its area and believes that the appropriation is needed in order to facilitate or achieve any of these aims.
10. In each case, the Council intends to see the land used for development, subject to securing planning and any other relevant authorisations. The reason behind the intended future disposal of the land is also supported by the Council's Asset Management Plan which only seeks to retain the ownership of land where that land: meets a service need, is of high value to the Council and/or local stakeholders and the community, or needs to be protected from development. Further, the subsequent disposal of the land will generate capital receipts that will allow the Council to pursue other priority capital projects.
11. A Council is authorised to appropriate land that it owns. However, if the land is used as public open space, which is legally defined as "*any land laid out as a public garden or used for the purposes of public recreation*" the Council must advertise its intention to appropriate the land for two successive weeks in a newspaper circulating in the area. It must then consider any objections made to the intended appropriation.
12. Outline planning applications have been submitted for both sites, which should provide more details on the proposals to residents and other interested parties. This will ensure that any objections are made from a more informed stand-point.
13. Councils are authorised to dispose of land held for planning purposes in accordance with section 233 Town and Country Planning Act 1990 subject to the requirement that the land is disposed of for the best consideration that can reasonably be obtained. Further, where land is used as public open space (as defined above) the Council must advertise its intention to dispose of the land for two successive weeks in a newspaper circulating in the area. It must then consider any objections made to the intended disposal.
14. It is proposed that both the intention to appropriate, and dispose of the land for planning purposes, will be advertised in one notice published for two successive weeks in a newspaper circulating in the area. The Council will consider all of the objections made, both to the appropriation and the disposal before making a decision as to whether to proceed.

REASONS AND OPTIONS

Reasons for the decision:

15. The Council should regularly review assets to ensure that they meet the requirements of the Asset Management Plan and make the best possible contribution to the aims of the Council.
16. As a preliminary step it is necessary to obtain Cabinet's in principle decision to both appropriate and thereafter dispose of the land for planning purposes. A final decision on whether to appropriate for planning purposes and dispose of the land will be made following the consideration of any objections received.

Other options considered:

17. The only other option immediately available would be to not sell these sites. They are considered to be surplus to the Council's requirements and retaining them may not maximise their contribution to the Council's aims.

IMPLICATIONS AND RISKS

Financial implications and risks:

Capital Implications

18. Capital presale expenses up to the allowable maximum of 4% of sale proceeds will be offset against the capital receipts. Any costs over and above this, or of a revenue nature will be met through the prioritisation of existing resources. Should the sale not proceed then the presale expenses will need to be reclassified as revenue in nature and alternative funding sources identified.
19. Costs will be incurred in connection with the processes required under section 122 Local Government Act 1972 in connection with the appropriation of the land for planning purposes. This will involve publishing notices for two consecutive weeks in a local newspaper circulating in the area. The cost of the notices will be met from the pre-sale expense budgets referred to above.
20. There is a risk that the disposal proceeds may be less than anticipated or that additional pre-sale expenses may be identified in which case the Director of Asset Management Services would reconsider the position in consultation with the appropriate Lead Member and Finance Officers. The economic case for each disposal will be kept under consideration throughout the sale process.

21. The net capital receipts will then be utilised to fund Council priorities approved as part of the Medium Term Financial Strategy and Capital Strategy. This may involve the flexible use of receipts to fund transformation costs of a revenue nature.

Revenue Implications

22. Hall Lane mini golf course – the disposal of this site will have a minimal impact on revenue. There are currently no revenue budgets for this site. Costs are dependant on the opening hours of the course but for 2017/18 net costs were £2k (approximately £12k costs with income of £10k generated). Net costs to date in 2018/19 are £4k (costs of £12k and income of £7k).
23. Gooshays Drive – the disposal of this site will deliver a minor reduction in grounds maintenance costs.

Legal implications and risks:

Appropriation

24. The Council is seeking to appropriate land for planning purposes under section 122 Local Government Act 1972 (“LGA 1972”) and then dispose of the land pursuant to section 233 Town and Country Planning Act 1990.
25. Section 122 LGA 1972 enables the Council to appropriate (transfer) land it owns from one use to another, as long as (1) the new use is for a purpose it could have purchased the land and (2) the land is no longer required to be held for the purpose for which it is held immediately before the appropriation. The Council must therefore, consider whether the land is no longer needed for the purpose for which it is currently held if it is to be appropriated for planning purposes.
26. The meaning of the words “*no longer required for the purpose for which it was held immediately before the appropriation*” in law means “not required” or “not needed in the public interest of the locality”.
27. The appropriation for planning purposes, in this instance, must follow the process set out in section 122(2A) LGA 1972. This involves placing a notice in two consecutive editions of a local weekly newspaper and the formal consideration of any representations made in response to the notice. There is a legal duty to consider such representations fully and properly.
28. Appropriation of the land for “planning purposes” (in order to engage the provisions of section 203 Planning and Housing Act 2016 (“PHA 2016”)) requires the Council to consider the following factors, that is, whether:
 - 28.1 the appropriation will facilitate the carrying out of development, re-development or improvement on or in relation to the land or is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated;

- 28.2 the proposed development, re-development or improvement will contribute to the promotion or improvement of the economic, social and/or environmental well-being of the area;
 - 28.3 it is in the public interest that the proposed development should be carried out, having regard to the provisions of the development plan, whether planning permission is in force and any other considerations that would be material to the determination of a planning application for development of the land; and
 - 28.4 as noted above, whether the land is no longer required for the original purpose for which it was acquired
- 29 “Planning purposes” is defined in section 246(1) Town and Country Planning Act 1990 (“TCPA 1990”) and acquisition for such purposes includes acquisition under section 226 or section 227 TCPA 1990.
- 30 Where land is appropriated for planning purposes, it is then held by the Council under the statutory provisions of Part 9 of the TCPA 1990. The consequence is that the erection, construction or carrying out of any maintenance or any building or work on the land and subsequent use of the land is authorised under those planning powers, if the works are done in accordance with planning permission, even if they interfere with third party rights.
- 31 The purpose of section 203 PHA 2016 is to ensure that where land has been appropriated for planning purposes, and provided that work is done in accordance with planning permission, then existing rights, which could prevent the development of that land from proceeding, can be overridden. The rights are overridden whether the Council or another person carries out the development. Persons who would otherwise benefit from those rights are entitled to claim compensation for the interference from the person carrying out the development.
- 32 Section 122(2A) LGA 1972 requires that before appropriating any land consisting or forming part of open space the Council must advertise the proposed appropriation in two consecutive editions of a local newspaper and consider any objections received in response.

Disposal

33. Section 233 TCPA 1990 authorises a local authority to dispose of land held for planning purposes subject to securing the best consideration for the land that can be reasonably obtained.
- 34 Section 233(4) TCPA 1990 requires that before disposing of any land consisting of or forming part of open space the Council must advertise the intended disposal in two consecutive editions of a local newspaper and consider any objections received in response.

- 35 In this instance, the intention is to combine the notice of intention to appropriate under section 122(2A) LGA 1972 and the notice of intention to dispose under section 233(4) TCPA 1990 in one notice. There is no precedent for doing this and therefore there remains a possibility that the process may be the subject of a legal challenge. If this were to happen, it is unlikely to frustrate the process but it could cause a considerable delay, as the advertising process would have to be carried out again, but as two separate processes, first dealing with the intention to appropriate and the second the intention to dispose of the land held for planning purposes.

Human Resources implications and risks:

36. There are no Human Resources implications or risks in identifying these areas of land for disposal.

Equalities implications and risks:

- 37 The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

- 38 The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.
- 39 An Equality and Health Impact Assessment will be carried out for both sites in due course.

BACKGROUND PAPERS

None