

Birmingham City Council

Report to Cabinet

11th February 2020



Subject: Land at Montague Street, Bordesley, B9 4BA: Disposal

Report of: Interim Director, Inclusive Growth and Acting Director, Neighbourhoods

Relevant Cabinet Member: Councillor Ian Ward – Leader of the Council
Councillor John O’Shea – Street Scene and Parks

Relevant O &S Chair(s): Councillor Lou Robson, Economy and Skills
Councillor Penny Holbrook Housing and Neighbourhoods O&S Committee

Report author: James Betjemann
Head of Enterprise Zone and Curzon Development
Tel No: 0121 303 4174
Email Address: james.betjemann@birmingham.gov.uk

Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): Bordesley		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 007304/2020		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential: Exempt Appendix 3 - Proposed Sale Terms Exempt information 12A of the Local Government Act 1972 (as amended) 3. Information relating to the financial or business affairs of any particular person (including the Council)		

1 Executive Summary

1.1 This report seeks authority for the freehold sale of the City Council owned site, Montague Street, Bordesley, Birmingham B9 4BA (the Site).

- 1.2 The Site area is 6.02 acres (2.44 ha) approximately and is shown edged black on the attached plan at Appendix 1.
- 1.3 The commercially confidential details relating to the proposed terms of the transaction are set out within Exempt Appendix 3.

2 Recommendations

- 2.1 Approves solus negotiations for the sale of the Site subject to a leaseback of the whole of the Site to the Council and authorises the Assistant Director of Property to negotiate and complete the sale and leaseback, noting that additional commercially sensitive information is detailed in Exempt Appendix 3.
- 2.2 Approves the purchaser paying a 10% deposit on exchange and the balance of the purchase monies on completion.
- 2.3 Authorises the Acting City Solicitor to prepare, negotiate, execute and complete all relevant legal documentation to give effect to the above.
- 2.4 Approves the Acting Director, Neighbourhoods progressing an Outline Business Case for the relocation of the Montague Street Depot, noting that the development, relocation and future service provision is to be delivered within available capital and revenue resources.

3 Background

- 3.1 The Site lies directly to the south of the proposed HS2 line into Birmingham city centre and lies within the Clean Air Zone (CAZ). Currently the Site houses several Waste Management Services including; street cleansing, stores, offices, MOT, servicing, repairs and maintenance for the Council's vehicle fleet ranging from cars, vans, minibuses up to 32 tonnes refuse lorries (the depot). The MOT station is open to both the Council and public.
- 3.2 The Site forms part of a wider 15.8-acre (6.41ha) development opportunity, with the adjacent land at the former SITA recycling plant and Warwick Bar.
- 3.3 The Council has been approached by the adjacent landowner Homes England (HE) to acquire the Site in order to facilitate a nationally significant development that has the potential to deliver a substantial amount of new homes and jobs. It's anticipated that the first phase of development could commence in 2021 on the land already owned. In order to provide the required amount of land needed to support the density of the proposed scheme, acquisition of the Site is required. Planning officers have provided in principle support to the proposed development, and the Site being incorporated in order to deliver the scheme on this important highway corridor into the city centre. The opportunity would deliver multiple benefits, including;
 - Generation of a capital receipt for the Council representing best consideration, as validated by the Assistant Director of Property based on an analysis of the current offer.

- Releasing land for development and facilitate the regeneration of a significant area of Digbeth in line with the vision set out in the Council's 'Curzon Masterplan'.
- Generating an uplift in business rates to support the priorities for the Greater Birmingham and Solihull Local Enterprise Partnership Enterprise Zone (GBSLEP EZ)
- Supporting the Council's targets for 51,100 new dwellings and 100,000 jobs between 2011 to 2031, in line with the priorities for the Birmingham Development Plan.
- Replacing a depot which is near to the end of its operational life and could be considered as no longer fit for purpose for the future running and maintenance of a waste service for the city. This is inline with the priority for upgrading the waste management facilities.
- Savings generated through the improved and modern facilities of a new depot.
- Relocating the depot from a site within the CAZ to a more suitable location. This would avoid unbudgeted costs to the Council from charges incurred by the current fleet of vehicles which utilise the depot.

3.4 The proposed disposal route is via a solus agreement which is considered appropriate as this will enable the adjacent landowner to unlock a wider site that will facilitate a major development opportunity. This represents best value for the Council as the purchase price is above the amount which could be achieved on the open market as a result of the 'marriage value'.

3.5 Disposal of the Site will not compromise the services currently delivered from the depot as the disposal agreement will include an operational leaseback of the Site to the Council for an initial period of two years with an option to extend (terms to be finalised in the contract). The Council will however, be required to use reasonable endeavours to vacate the Site as quickly as practically possible.

3.6 The commercially confidential details relating to the proposed terms of the sale and leaseback and the depot relocation are set out within Exempt Appendix 3.

4 Options Considered and Recommended Proposal

4.1 Option 1: Don't proceed with the sale under the terms detailed - this would result in a lost opportunity to realise the benefits outlined under 3.3 above.

4.2 Option 2: Proceed with the sale under the terms detailed - this would result in the opportunity to realise the benefits outlined under 3.3 above. This is the recommended option.

- 4.3 The recommended sale terms detailed in the Exempt Appendix 3 represent best consideration and have been validated by the Assistant Director of Property based on an analysis of the current offer.

5 Consultation

- 5.1 The trade unions have been made aware of plans to relocate the depot from the Site and recognise the need to move. The site is identified for regeneration within the Curzon Masterplan which was developed based upon extensive public consultation and was approved by Cabinet on 27th July 2015. The Cabinet Member for Finance and Resources has been consulted and supports the recommendations.

6 Risk Management

- 6.1 Unable to relocate the depot: There is a risk that it may not be possible to relocate the depot to another site. This is mitigated by the terms of the sale and leaseback which will require that the depot does not need to relocate for an initial period of two years with an option to extend (terms to be finalised in the contract). Officers have looked at a number of locations and a potential site has been identified and discussions with the landowner have indicated that there is an opportunity to purchase the site.
- 6.2 The proposed development scheme is not delivered: Whilst there is a risk that the scheme is not delivered, the discussions with relevant stakeholders have provided assurance that plans are sufficiently mature to provide confidence in delivery. Without the proposed scheme there is still a strategic case for the sale through solus negotiations with an adjacent landowner to create a comprehensive site that provides enough scale for major new development.
- 6.3 The cost of relocating the depot exceeds the available Council resources: A potential alternative site has been identified and details of this are provided within Exempt Appendix 3. Where possible the Council will consider the opportunity to incorporate existing facilities from other sites within the new depot which would generate savings to the service and potential capital receipts from any land which became surplus. If the cost exceeds the available funding, then there are opportunities to de-scope the new facility or alternative sources of funding will be explored, and discussions have already taken place with external organisations to see if this is feasible.

7 Compliance Issues:

- 7.1 **How are the recommended decisions consistent with the City Council's priorities, plans and strategies?**
- 7.1.1 The Property Strategy is aligned with the strategic outcomes outlined in the Council Plan 2018-2022 (as updated in 2019) – to create a city of inclusive growth where every child, citizen and place matters. The Property Strategy will help make Birmingham: a great city to learn, work and invest in; a great

city to grow up in; a great city to age well in; a great city to live in; and for residents to gain maximum benefit from hosting the Commonwealth Games; is a city that takes a leading role in tackling climate change.

- 7.1.2 As the largest local authority in the country with the biggest property portfolio, the Council can utilise its property and land assets in a strategic way to deliver our priorities.
- 7.1.3 The Property Strategy takes a medium to long term strategic approach to how the Council utilises its unique asset base and will ensure a balanced delivery of maximised commercial and social returns. Re-aligning the Council's property portfolio will provide a catalyst for development and underpin the social fabric of communities across the city.
- 7.1.4 The recommendations support the growth aspirations for the city as set out in the Birmingham Development Plan 2031 by facilitating the development of new homes and jobs, and more specifically the Curzon Masterplan (2015) which identifies this site as an important development opportunity.
- 7.1.5 Relocating the depot supports the Council's Waste Strategy 2017-2040, which was approved by Cabinet in October 2017 and sets out the vision for how the city will manage waste, prioritise and improve recycling with a range of interventions including investment to improve facilities.

7.2 Legal Implications

- 7.2.1 The power to hold, appropriate and dispose of land is contained in Sections 120 - 123 of the Local Government Act 1972.
- 7.2.2 Section 1 of the Localism Act 2011 contains the Council's general power of competence and Section 111 of the Local Government Act 1972 contains the Council's ancillary financial and expenditure powers in relation to the discharge of its functions including the disposal and acquisition of property
- 7.2.3 Exempt information 12A of the Local Government Act 1972 (as amended) 3. Information relating to the financial or business affairs of any particular person (including the Council). Exempt Appendix 3 is considered to be in the public interest as it contains commercially sensitive information of a financial or business nature, which if disclosed to the public could be prejudicial to a named person, individual or company.

7.3 Financial Implications

Summary

- 7.3.1 The opportunity to progress the sale of the depot site quickly has arisen at short notice. It represents a major opportunity for high quality development in the city, and on appropriate financial terms. However, a site and costings for the relocation of the depot has been identified and the sale proceeds may cover all the site and relocation costs, but it is likely that there may be some shortfall. However, relocation is likely to present some significant

efficiencies supporting the Waste Service Strategy and would avoid unbudgeted additional costs due to Clean Air Zone charges at the existing site. The sale therefore presents some significant financial risks which need to be considered alongside the benefits. The sections below provide details in respect of the specific financial implications and are further supported by information contained within Exempt Appendix 3.

Capital

- 7.3.2 The existing depot site is operational land for waste services and will need to be re-provided on another site. The capital receipts from the disposal of the existing depot has not been factored into the Council's existing resources assumptions, so is available to fund the re-provision costs. An element of the capital receipt will be used to fund the cost of internal staff time to progress the site disposal in line with current Council accounting policy.
- 7.3.3 The heads of terms for the site disposal refer to potential for overage payments and set out the methodology for calculating any overage payments. However, it does not currently give any indication of any potential value. The City Council is opting to tax the site and charge VAT on the disposal, any future overage payments will be subject to VAT (see VAT/SDLT section below).
- 7.3.4 Currently the cost of acquiring an alternative site and constructing a new depot including legal and procurement costs has not been fully ascertained. There is a risk that the receipt will not be sufficient to fund all the costs, in which case there would be a need to identify alternative funding sources including external funding or a call on the Council's general resources to address the shortfall. Where possible the Council will also consider the opportunity to incorporate existing waste management facilities from other sites within the new depot which may generate potential capital receipts from any land which became surplus. In order to ensure best value and to mitigate any future financial risk, the cost of acquiring an alternative site and constructing a new depot will need to be contained within a funding envelope equivalent to the value of available capital receipts (net of disposal costs), unless alternative funding sources can be secured. The Council will retain liability for pollution resulting from the usage of the site as a waste facility up to the point it relocates to an alternative site and the funding envelope will therefore need to cover any capital expenditure incurred, if applicable, in relation to site clearance/remediation. Full details of any proposed relocation, including costs and funding, will be set out in the Outline and Full Business Cases in line with the Council's Gateway and related Financial Approval Framework, anticipated Quarter 3 of 2020.

Revenue

- 7.3.5 The sale of this asset will remove liabilities arising from the Clean Air Zone charges that will be applicable to the vehicles located at the Site. There will also be a cost to staff based at the site who use a non-compliant vehicle which will be avoided.
- 7.3.6 The terms of the sale are that the site is leased back to the Council at nil rent for an initial period of 2 years with an option to extend (terms to be finalised in the contract). The Council must use reasonable endeavours to relocate the site as quickly as possible.
- 7.3.7 The revenue costs and potential savings from relocating the depot cannot be quantified with any accuracy at this early stage and full details will be developed and presented to Cabinet through OBC and FBC documents in line with the Council's Gateway and related Financial Approvals Framework. Subject to approval to progress with the disposal an OBC for the depot relocation is anticipated for the third quarter of 2020.
- 7.3.8 Redevelopment of the site will generate additional business rates that will support the priorities for the Greater Birmingham and Solihull Local Enterprise Partnership's Enterprise Zone, as set out in Enterprise Zone Investment Plan (2019) approved by the Council in July 2019. New homes delivered as part of the new development will generate council tax income.

VAT/Stamp Duty Land Tax

- 7.3.9 The Council will need to opt to tax and charge VAT on the disposal of the Montague Street site. Opting to tax will secure VAT recovery for the Council on any disposal costs, e.g. legal/professional and site clearance costs etc., whilst protecting the Council's partial exemption position. The Council should opt to tax before incurring any expenditure in relation to the disposal. The leaseback to the Council will be further consideration for the disposal of the site that needs to be valued to ensure that VAT is correctly charged on the disposal. Any overage received by the Council at a future date would also be liable to VAT.
- 7.3.10 No Stamp Duty Land Tax (SDLT) should arise for the Council in relation to the arrangements with the acquirer as it is expected that SDLT relief for sale and leaseback arrangements will apply to relieve the Council of any SDLT liability. The Council will be required to submit a SDLT return in order to claim any available SDLT relief. The conditions for relief will need to be considered carefully in the legal documentation for the disposal to ensure that it is clear that relief is available.
- 7.3.11 A SDLT liability is likely to arise for the Council on the acquisition of the site for the replacement depot. Further detail on this is provided in the Exempt report.

Other

7.3.12 An initial assessment of the current terms of the proposed sale and leaseback transaction has taken place. Based on this assessment and subject to the finalisation of the terms including the option to extend, the risks and rewards of ownership are deemed to pass to the acquirer on transfer of title and there is therefore no indication that the transaction would negatively impact on either the value or timing of the capital receipt recognition. However, this would need to be subject to the final agreed terms and confirmation from a suitably qualified valuer.

7.2.13 Accounting for the lease under IFRS16 will not result in any cash payments by the Council however the benefit of the lease, whilst not deemed to be material, will need to be valued and recognised as an asset on the Council's balance sheet (subject to depreciation) with a corresponding liability.

7.4 Procurement Implications (if required)

7.4.1 Any procurement implications for the new depot will be set out in the future Outline and Full Business Cases in line with the Council's Gateway and related Financial Approval Framework..

7.5 Human Resources Implications (if required)

7.5.1 Internal professional property, legal and planning resources will be utilised to deliver this sale.

7.6 Public Sector Equality Duty

7.6.1 The sale will be undertaken in accordance with the Property Strategy. The Property Strategy is a policy document setting out the strategy principles associated with property assets and at this stage there are no specific implications. An initial Equality Impact Assessment has been undertaken for this report Ref No: EQUA450 attached at Appendix 2 which discloses that the recommendations are unlikely to have an adverse impact on the characteristics and groups protected under the Equality Act 2010 and a full Equality Assessment is not required for the purpose of this report.

8 Appendices

8.1 Appendix 1 – Site Plan

8.2 Appendix 2 – Equality Assessment EQUA450

8.3 Exempt Appendix 3 – Proposed Sale Terms

8.4 Exempt Appendix 3 Annex 1 – Potential Relocation Site Plan

8.5 Exempt Appendix 3 Annex 2 – Montague Street – Wider Adjacent Land Ownership

9 Background Documents

9.1 Property Strategy 2018/19-2023/24

9.2 Curzon Masterplan (2015)

9.3 Waste Strategy 2017-2040