West Suffolk Council

Investing in our Commercial Asset Portfolio: Option to Purchase Property at Elsey's Yard, Bury St Edmunds

Report No:	**EXEMPTION REMOVED: CAB/WS/19/009** **(The removal of the exemption also relates to the Appendices A and B attached to this report)**	
Report to and dates:	**Cabinet**	25 June 2019
	Council	16 July 2019
Cabinet Member:	Cllr Susan Glossop Portfolio Holder for Growth **Tel:** 01284 728377 **Email**: susan.glossop@westsuffolk.gov.uk	
Lead officer:	Julie Baird Assistant Director - Growth **Tel:** 01284 757613 **Email:** julie.baird@westsuffolk.gov.uk	

Decisions Plan: **The decision made as a result of this report will usually be published within 48 hours. This decision is not subject to call-in, as the decision is being recommended onto Council. This item is not included on the Decisions Plan, but has been published by way of a General Exception Notice on 14 June 2019.**

Wards impacted: **Abbeygate, Bury St Edmunds**

Recommendation: **It is recommended that, subject to approval of Council:**

(1) Subject to satisfactory negotiation, due diligence, contract and surveys, delegated authority be given to the Assistant Director for Growth, in consultation with the Portfolio Holders for Growth and Resources & Performance, to exercise the purchase of the freehold interest of land and property at Flats 1-5 and 8 Elsey's Yard, Bury St Edmunds for a maximum sum of £319,000 (three hundred and nineteen thousand pounds), allowing for the £656,000 discount due, excluding VAT, fees and Stamp Duty Land Tax, to be funded from the Investing in the Growth Agenda fund; and;

(2) The establishment of a capital budget of £379,400 to be made available to facilitate the purchase, including fees and Stamp Duty Land Tax, to be funded from the Investing in our Growth Agenda Fund; in additional a one-off revenue budget of £64,311 as set out in the 2.2.7 of the Financial case, to be funded from the Strategic Priority and MTFS reserve; and:

(3) That should the purchase be made, the Council's Section 151 Officer will make the necessary changes to the Council's prudential indicators as a result of Recommendation (1) above.

1. Background / Context

1.1 The Council has the opportunity to acquire land and property at Elsey's Yard in Bury St Edmunds via an option with the current owner of the property – Notting Hill Genesis Housing Association. The property comprises five occupied social housing flats and a separate office and café, both of which are currently vacant. A location plan showing land ownership is attached as Appendix A.

1.2 The option arises from a contribution made by the former St Edmundsbury Borough Council in 2006 towards the development/refurbishment of the scheme (then owned by St Matthews Housing) and allows for the Council to purchase the property with a discount of £656,000. <u>If the option is not taken up, the Council will not be able to recoup that sum by any other means.</u>

1.3 The option has been triggered by Notting Hill Genesis deciding to dispose of its portfolio of properties in Norfolk, Suffolk and most of Essex. This option allows for a three month period for the Council to submit a purchase notice – a commitment that the Council will purchase the property, so effectively an exchange of contracts. After this period and if we do not submit a notice, the property will go onto the open market and, whilst the Council could still bid for the property, it would be without the £656,000 discount. As it stands this purchase notice is required to be served by 22 July, however Legal Officers have requested an extension of the option period on the basis that the vendor and its agents have not provided all the required information to date.

1.4 In addition to a purchase allowing us to claw back the previous investment by St Edmundsbury, ownership of the property also provides the following opportunities:

- The five flats, including two specially adapted, provide important social housing accommodation close to the facilities in the town centre.
- The office and commercial space previously used as a café would be treated as part of our commercial portfolio, helping to support local businesses as well as generating an income to help support the delivery of services.
- In the longer term, ownership of this land offers the potential to improve links between the Arc shopping centre and St Andrews Street car park and support any potential redevelopment of the latter in the future.

1.5 Negotiations are ongoing with the vendor as to an agreed sale price and due diligence is being undertaken. Therefore we are seeking Member approval to proceed with issuing the purchase notice, subject to the appropriate due diligence as deemed by the Section 151 and Monitoring officers. As part of this we will be seeking a delegation for the Assistant Director for Growth in consultation with the Growth and Resources and Performance Portfolio Holders to approve the final purchase price, up to a maximum of £319,000 (with the £656,000 discount applied). The breakdown of this is set out in the Financial Case **(2.2).**

1.7 This report sets out the position at the time of writing, but as negotiations and due diligence are still ongoing, an update will be provided by the

Portfolio Holder for Growth in the Council meeting and/or in any addendum as necessary.

2. Proposals

2.1 Strategic Case

2.1.1 The property is located between Risbygate Street and the Council-owned St Andrews Street car park. As can be seen on the plan in Appendix A, it is immediately adjacent to land already in Council ownership and therefore would complement any future re-development in the area.

2.1.2 Ownership of the site could, in future, also contribute to improving links between St Andrews Street Car Park and the Arc shopping centre, helping to support the Bury Masterplan aspiration of improving the character and appearance of the St Andrews Quarter.

2.1.3 The commercial element of the property would complement the Council's existing commercial property portfolio, providing good quality accommodation with parking in a location which local agents confirm is in demand. The investment overall would be in line with three of the four principles of our Investing in Growth Strategy: (i) investing in our place and people; (ii) behaving more commercially for a blended return; and (iii) making our process and policies work for our communities.

2.2 Financial Case

2.2.1 As set out above, the option allows the Council to purchase with a £656,000 discount. The option agreement states that the price is to be agreed between the two parties – the Council and Notting Hill Genesis.

2.2.2 The Council has obtained an RICS "Red Book" valuation report of the property. The opinion of Market Value in this report is £812,000. With the deduction of £656,000, this would equate to an actual purchase price of £156,000. We are in the process of negotiating a price with the vendor so the purchase price has yet to be fixed. The agreement allows that in the event that agreement of price cannot be reached between the Council and the vendor, the matter will be referred to a third party expert valuer for determination. Whilst Strategic Property Officers are working to ensure that the third party route will not be required, we have reflected the risk that the final price may be higher than our valuation in **Recommendation (1).**

2.2.3 In assessing the income potential of the property, we have worked on the basis that the social housing would be managed by a social housing provider and therefore there would be no direct income to the Council (see **2.3 Housing Case**).

2.2.4 Although the offices and café are currently vacant, we have reviewed current market demand and spoken with local commercial agents who confirm that there is demand for good quality office accommodation with car parking in central Bury. Strategic Property Officers are of the view that a rent of £39,600 per annum could be achieved from letting out the commercial accommodation, including the seven car parking spaces which form part of the asset.

2.2.5 The table below shows the financial implications of purchasing the site based on the maximum budget requested. These figures reflect an increase of 20% on our Red Book valuation, which Officers consider should provide adequate tolerance in the event that the value is determined by a third party expert valuer (£819,000 multiplied by 20% equates to £974,400, which has been rounded up)

Capital Implications of Elseys Yard, Bury St Edmunds	**Based on maximum budget**
Purchase Cost of building	975,000
Stamp Duty (SDLT)	50,650
Purchaser's costs - 1% of purchase price	9,750
Sub Total	1,035,400
Discount amount	(656,000)
Total Capital Cost	**379,400**
Revenue Implications of Elseys, Bury St Edmunds	
Rental Income from development	(39,600.00)
Building maintenance (1.1%)	10,725.00
Net income per annum	**(28,875.00)**
Overall (surplus)/deficit per annum before borrowing	**(28,875.00)**
Borrowing - Interest	11,382.00
Borrowing - MRP	5,032.00
Overall (surplus)/deficit per annum after borrowing	**(12,461.00)**
Return on total investment (before borrowing)	7.61%
Return on total investment (after borrowing)	3.28%

2.2.6 The figures in the table above include the full cost of prudential borrowing, however, actual borrowing would only take place when the Council's treasury management activities identify such a need. For example, this could be when the Council's cash flow management activities anticipate that an external cash injection is required to maintain the appropriate level of cash balances for the council to operate and fulfil its budget and service delivery requirements.

2.2.7 In addition to the total capital required, there is also a one off revenue ask comprising the following, representing the first year holding costs:

Revenue ask for Elsey's Yard	
Building maintenance (1.1%)	10,725.00
Borrowing - Interest	11,382.00
Borrowing - MRP	5,032.00
Businss rates for commercial space (1 year)	17,172.00
Commercial space potential improvements/rent free	20,000.00
Total	**64,311.00**

Given the commercial space is currently vacant we have factored in potential holding costs for the first year, including the building maintenance provision, costs of borrowing and empty property rates. However this is likely to be mitigated well within the first year when analysing current market demand, including seeking the views of local commercial property agents.

Whilst the property is lettable in its current condition, there is scope for improvements which might benefit marketability and/or incentivise a tenant seeking to take on a longer lease term. The advice we have received from agents is that no works should be carried out unless requested specifically by a prospective tenant as part of their negotiations. This could also be reflected in the form a rent free offer to the tenant.

Future revenue costs are proposed to be funded by the income anticipated as set out in 2.2.5.

2.2.8 This report set out a robust strategic case to acquire the property. If members were minded not to support the strategic case then, from a purely financial perspective, it is recommended that the purchase of the property still takes place in order to secure the return of the original 2006 investment of £656,000 in the site. The Council can then, if considered appropriate, subsequently sell the property to realise the £656,000 (full value achieved will be subject to any onward sale value and costs).

2.3 Housing Case

2.3.1 We would look to retain the tenants in occupation and work with a registered provider to ensure that the properties are managed and stay within the social housing stock.

Should the Council opt not to purchase the property, some of the current tenants could be served a notice to end the tenancy and referred to the Council as homeless. This would place additional burdens on the Council.

By purchasing the property we would benefit from having access to these units and would ensure that future allocations are for the benefit of applicants on the housing register. The ground floor units are particularly attractive given that they are wheelchair accessible and these types of properties are identified as an area of short supply particularly in the town centre.

2.3.2 Three of the existing dwellings are assured tenancies and the Council should therefore be mindful that there is a risk, albeit low, that the existing tenants could apply for the right to buy.

2.4 Legal issues

2.4.1 Given the deadline of submitting the Purchase Notice by 22 July, we have been undertaking the necessary legal due diligence, including searches, to support a potential acquisition - should this be approved by Members. Legal Officers have also undertaken a full review of the Option agreement so we are clear on what actions the Council is required to undertake in order to benefit from the agreement.

2.4.2 There are difficulties arising for the Council in meeting the deadline imposed within the Option Agreement as the Agreement specifies submission of the purchase notice on 22 July. Such submission is effectively exchange of contracts and the Council is then committed to purchase the property. Further, the Option Agreement has made no provision for repayment of the £656,000 if it declines to take up the option by that date. The solicitors for the seller have disclosed very limited information thus far. The Council's Legal Team is pressing for the disclosure of all relevant information and we are also carrying out research to ensure that on acquisition the Council is not in breach of any of the provisions of the Housing Acts by taking on the tenancies. The results of our searches so far have revealed a chancel liability for which we will need to obtain indemnity insurance and a foul sewer running underneath the property that could potential hinder re-development in the future.

2.4.3 As set out in 1.4, we are seeking an extension of the option in reflection of the time it is taking for the vendor to provide the Council with the necessary information. If an extension is not agreed then officers will take a view (in discussions with S151 officer and Monitoring Officer) on issuing the purchase notice in order to secure the return of the £656,000, subject to the progress of due diligence by 22 July.

3. Alternative Options

3.1 The option to purchase this property with the associated discount is specific to this property and agreement with the vendor. The alternative is not to purchase the property, however this would lose the Council the opportunity to recoup the £656,000 discount from the purchase price. It would lose the Council opportunity to secure the social housing units and add a source of revenue from the commercial space to help support the delivery of services and meeting the MTFS targets.

4. Consultation and engagement

4.1 This is set out within the report as above.

5. Risks

5.1

Risk	Mitigation
Losing the £656,000 investment should we fail to or be unable to submit the Purchase Notice within the option period.	We will seek to submit the notice by the deadline date (see 2.4.3). We are also obtaining Counsel opinion to ensure that we have options

	covered in the event that either we need to withdraw from the Purchase Notice or are unable to submit it due to the lack of performance on the part of the vendor.
The tenants could exercise their right to buy, and a relative may be able to exercise such right on their death.	Minimal risk if they are in receipt of Housing Benefit. This can be mitigated against if the houses are let through a registered provider – which is the working assumption and currently subject to discussion with potential providers.
Because of any possible restrictions imposed by the Housing Acts we would not be able to take on the tenancies directly and would have to appoint another registered provider or indeed because of the protracted due diligence required could mean we would not be able to meet serving the purchase notice effectively exchanging contracts, before 22 July.	Discussions with Housing Providers ongoing. All options being considered. Counsel advice being sought in respect of whether the housing units can be held by the Council for a short while.
Structure and building condition requires significant investment post acquisition.	The Council's Building Surveyors have inspected the property and are content as to its condition given the relatively recent re-development. Some further due diligence on drainage is currently being undertaken.
We are unable to secure a tenant for the commercial space	We have sought the views of local commercial property agents. Their advice is that the property should command a good level of demand in the property. If we are unable to secure a tenant, the potential business rates liability has been included in the revenue ask.

6. Implications arising from the proposal (delete where either they are not relevant to the report or are already covered in the main report)

6.1 **Financial**

Covered in the main report.

6.2 **HR / Staffing**

The Seller's Solicitors have argued that TUPE applies with regard to an employee on the basis that they provide a Facilities Management role for the site. The Council has challenged this position and our present understanding is the employment would not meet TUPE requirements.

7. Appendices

7.1 **Appendix A** – Site and Location Plan
Appendix B – Photographs

8. Background documents

8.1 No background documents.