

Finance Sub-Committee

Date of Meeting:	01 June 2022
Report Title:	Acquisition and Disposal of Assets
Report of:	Peter Skates - Director of Growth & Enterprise, Alex Thompson - Director of Finance & Customer Services
Report Reference No:	FSC/26/21-22
Ward(s) Affected:	All Wards

1. Purpose of Report

- 1.1.** The Purpose of this report is to report land and property acquisition and disposals to the Finance Sub Committee. This allows the Committee to have oversight, scrutiny and budgetary review of the Council's Land and Property function. This report allows transparency in terms of the Council's land and property activity responding to the Corporate aim of Open and the Council's priorities of being an Open and enabling organisation and Plan Priority of Open and making Cheshire East a thriving and Sustainable Place.

2. Executive Summary

- 2.1.** This report provides context and activities linked to the Council's assets acquisitions and disposals of land and property.
- 2.2.** Chapter 2 part 4 in the Constitution (December 2021), identifies the functions of the Sub-Committee and includes responsibilities under point 2.5;

'property transactions including the buying selling and appropriation of land and property (including compulsory purchase where required)'

The Finance Sub-Committee has responsibility for approving property transactions over £2m. This report provides information that will increase understanding of the process and potential approvals that may be required.

- 2.3.** There are no transactions requiring approval at this point, but this report also assists the committee in understanding the relationship between property

transactions and the Medium-term finances of the Council. The importance of these transactions was highlighted to the Committee as part of the feedback on the assumptions behind the current Medium Term Financial Strategy (MTFS) at their meeting of 1st September 2021.

- 2.4. The report provides information on the property acquisitions and disposals undertaken by the Council in the period 1st April 2020 to 31st March 2022. It also provides information on pending transactions and a potential pipeline of further activity.
- 2.5. The Council is an open and enabling organisation. The Corporate Plan states a priority to 'ensure that there is transparency in all aspects of council decision making'.
- 2.6. Provision of this report seeks to ensure that there is transparency in this aspect of the Council's decision making. The work covered in this report supports a sustainable financial future for the Council. In addition to this the work described in this report also supports a thriving and sustainable place, releasing assets so they can be brought back into economic use and enabling services to deliver their projects, supporting a transport network, help urban and rural economies to thrive and deliver safe and clean neighbourhoods.

3. Recommendations

- 3.1. Notes the acquisition and disposal activity of the Council for the period 1st April 2020 to 31st March 2022, and identified within the Appendices;
 - Appendix A - Summary of Acquisitions
 - Appendix B - Disposals completed in 2020 to 2021 Financial Year.
 - Appendix C - Disposals completed in 2021 to 2022 Financial Year.
- 3.2. Notes the pipeline of property transaction activity and the potential impact of these on the MTFS. [**Note : Subject to Part 2 - Commercial considerations**]

4. Reasons for Recommendations

- 4.1. Chapter 2 part 4 in the Constitution (June 2021), identifies the functions of the Sub-Committee and includes responsibilities under point 2.5;

'property transactions including the buying selling and appropriation of land and property (including compulsory purchase where required)'
- 4.2. The Finance Sub-Committee has responsibility for approving property transactions over £2m.

5. Other Options Considered

- 5.1. The aim of the report is to provide information to the Sub Committee and to improve their understanding of the issues and no approval is required. As a result, the only alternative would be not to provide a report, however this would not be aligned to the Council's corporate plan priority of being an open and enabling organisation. Not bringing a report would hinder the Finance Sub Committee in the discharge of its duties and would not be aligned to the Council's Constitution.
- 5.2. The Committee could choose not to note the report.

Option	Impact	Risk
Do nothing	The report asks the Committee to note the content of the report. It could choose not to do this.	This could hinder the committee in the discharge of its duties.

6. Background

- 6.1. The Council in delivering its aims and priorities, set out in the Council's Corporate plan will undertake property transactions as part of its routine business. These transactions include instances where property is either bought or sold.
- 6.2. In general, Councils principally acquire land and property assets to deliver physical projects in their Boroughs. Cheshire East Council has an extensive Capital programme where acquisition of property plays a central role in the successful delivery of these projects. A good example of these types of acquisition would be the Council's Highway schemes, where land is required to construct a road. A summary of acquisitions is set out in Appendix A. Acquisition of property will continue as these projects mature in line with their respective designs, as previously agreed by the relevant decision taking body within the Council.
- 6.3. The Council disposes of assets on the open market, generating a capital receipt that supports the Council's MTFS. As part of the Council's current MTFS a sum of £1m per annum has been identified as a target for property disposals through this process for the year 2021/2 and each subsequent year of the MTFS. Based on the forecasting work that has been undertaken the Council is confident in achieving this in the current market.
- 6.4. This report follows a report in November to the Committee that reported the position as of September 2021.
- 6.5. A schedule of the assets that has been disposed of in the financial year 2021 to 2022 is set out in Appendix B, with an out turn (as at 31st March 2022) of

£1,300,000. Additional capital transactions, described in Appendix C brings the total Capital receipts out turn to £2,836,287 for the Council. Both numbers represent a good in year performance.

- 6.6.** A schedule showing active disposals for the balance of the current year and for future years is set out in Appendix C. This section also reports on a property transaction that is still ongoing where an urgent decision needed to be taken. This is a part 2 element of this paper as the content is commercially sensitive.
- 6.7.** The delivery of Capital Receipts through the disposal of assets is an important element of the Capital Programme and also supports the Revenue Budget through, where applicable the generation of revenue savings.
- 6.8.** The Councils acquisition programme draws down Capital monies from the Capital Budget but generates potential income and expenditure through the holding of these assets.
- 6.9.** The Sub Committee is also responsible for the oversight of the Council's investment strategy and an element of this strategy could be the acquisition or disposal of land and property.
- 6.10.** The Sub Committee also has a function to provide oversight, scrutiny and budgetary review of the Land and Property Function and its responsibilities also include property transactions including the buying selling and appropriation of land and property. The Finance Sub-Committee has responsibility for approving property transactions over £2m.
- 6.11.** Although there are no specific property transactions to consider, it will aid members in understanding the relationship between these activities and the MTFS.
- 6.12.** As part of the Council's Capital Programme there are a number of physical works that require the acquisition of land. The largest number of acquisitions for this purpose has been the Council's Highway Schemes, where 5 major projects are currently being progressed by the Council's Highway Service. These projects, by their nature will require the acquisition of third-party land. The Council will endeavour to acquire land for these purposes by agreement but may also have to resort to compulsory acquisition of land, seeking powers from the relevant body within the Council to progress this. In these instances, the compensation is dealt with on a statutory basis, using established surveying approaches.
- 6.13.** During the period HM Treasury guidance on accessing Public Works Loan Board (PWLB) has changed. Councils are required to submit a high-level description of their capital spending and financing plans for the following three years, including their expected use of the PWLB. As part of this the PWLB will ask Councils to confirm that there is no intention to buy investment assets primarily for yield at any point in the next three years. Should Councils

wish to buy investment assets primarily for yield during this time they will not be able to access this form of funding.

- 6.14.** During 2020/2021 and the current financial year the Council has prudently tracked the Government's emerging position on PWLB borrowing. The Council has not as a result acquired any assets primarily for investment over these years.
- 6.15.** The Council has a process to transfer assets onto its disposal schedule. All vacant assets that are not used by the Council for operational purposes are on the schedule. Where an Operational Asset is no longer required, the asset is declared surplus to requirements. As part of this process other Council services, other than current user are consulted as to the potential use of the assets for their operational needs. Should an asset not be required for these purposes it is then placed on the Disposal Programme. If there are competing uses these are considered at the Asset Board to aid the development of the Officer Recommendation for the future use of the asset.
- 6.16.** Assets are also disposed of by other methods than a disposal on the open market. The Economy and Growth Committee has recently approved the Council's Community Asset Transfer Framework with consultation. This would allow assets to be transferred to community organisations or the next tier of Local Government, at no cost to the Council, aiding the Council in rationalising its estate and importantly offering the community opportunities to own and control services that are offered in their own communities.
- 6.17.** The Council's Housing Delivery Framework, which was agreed by the Economy and Growth Committee in July 2021, is expected to generate opportunities to mixed tenure housing schemes using a number of the Council's assets.
- 6.18.** The Council is also able to transact with other Government Bodies on a 'One Public Estate' Basis, where the Council can transact with other government bodies on a market value basis. The Council does not have any disposals of this nature over the reporting period.
- 6.19.** The Council is preparing an update of the Corporate Asset Management Plan. The last plan was created in the year 2015/16 and although there is no statutory requirement to develop an asset management plan, it is good practice to develop and then manage and track performance against that plan as part of the Councils budget strategy in supporting capital investments decisions to deliver the MTFs priorities and is a requirement of the Council's Constitution. The asset management plan will set out principles for the corporate approach to managing property assets and the protocols, management, and governance, under which property decisions will be taken.
- 6.20.** A report about the principles behind the Asset Management Planning has been presented to the Economy and Growth Committee and a report presenting the Asset Management Plan is planned to be taken to Economy & Growth Committee in the spring of 2022 under its responsibility for the

development and delivery of the Council' estates, land and property assets policies.

6.21. Disposals are subject to Section 123 of the Local Government Act 1972.

7. Implications

7.1. Legal

7.1.1. The Council has a number of powers to acquire land for various statutory functions and also to dispose of land including those general powers under the Local Government Act 1972 and the Localism Act 2011.

7.1.2. Holding property assets creates a variety of liabilities, some of which are irrespective of active use. Liabilities include legislative ones – for example, the liability to pay rates on a variety of properties, both domestic or non-domestic. There are also actions that are those of a prudent property owner such as keeping the property in reasonable repair to prevent legislative liability arising – such as under the Occupiers' Liability Act 1984 and making sure that the property does not become the source of a private or public nuisance; There are contractual ones that may arise through the use of the property such as landlord's obligations when a property is let.

7.1.3. All actions involving the disposal or acquisition of property assets must be taken in accordance with the Council's Constitution current at the time of taking the decision. The Council's Constitution (December 2021) Chapter 2, Part 5, Paragraph 53 currently delegates to the Executive Director of Place authority to acquire and dispose of assets and requires that:

6.1.3.1 Under Chapter 3, Part 4, Section 4 Paragraph 42 The Chief Finance Officer and the Executive Director Place must be consulted on all proposed acquisitions and disposals of land and property.

6.1.3.2 Under Chapter 3, Part 4, Section 4 in the Budget and Policy Framework Procedure Rules Acquisition and disposal of land and property over £2 million is the responsibility of the Finance Sub-Committee; and below £2m is a member of the Corporate Leadership Team in consultation with the Chief Finance Officer and the Executive Director Place.

7.1.4. The Council operates a "Cascade" principle of delegation under Chapter 2 of the Constitution to ensure that decisions are taken at an appropriate level.

7.1.5. It is recognised good practice for local authorities to produce and implement an Asset Management Plan to enable the Council to manage, develop and rationalise their built and land assets.

7.1.6. The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is

not prohibited by other legislation. These powers have replaced the previous wellbeing powers; however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles.

7.1.7. The Council has a fiduciary duty to the taxpayers and must fulfil this duty in a way which is accountable to local people and when land is being disposed of it should be ensured that the land is disposed of for best consideration. In instances where land is disposed of at less than best consideration the Council is providing a subsidy to the occupier of the land. In such cases the Council must ensure that the nature and amount of the subsidy complies with Subsidy Control rules.

7.1.8.

7.2. Finance

7.2.1. The 2022-26 Medium Term Financial Strategy includes an ambitious capital programme, totalling £633.7m. 62% of the programme is externally funded from grants and developer contributions; 32% is funded through prudential borrowing, with only 6% funded from capital receipts and direct revenue contributions.

7.2.2. Capital receipts from asset disposal represent a finite funding source and it is important that a planned and structured manner of disposals is created to support the priorities of the Council. Cash receipts from the disposal of surplus assets are used to fund new capital investment or offset future debt or transitional costs.

7.2.3. The Council maintains a policy of not ring-fencing the use of capital receipts to fund new investment in specific schemes or service areas unless a suitable business case is made available, but instead subject to any claw back provisions, to allocate resources in accordance with key aims and priorities. Capital receipts can arise from certain developments and in those cases will be included as direct funding to a particular scheme.

7.2.4. Capital receipts have been an important source of finance in previous financial years. A more prudent approach has been taken in recent years and there has been no assumption of any significant additional capital receipts. A minimum amount of £1m additional capital receipts has been anticipated in 2022/23. The Council's current strategy is to realise net receipts of £4m for the period 2022/23 to 2025/26.

7.2.5. In March 2016 the government published statutory guidance on the flexible use of capital receipts which allows Local Authorities to use capital receipts to offset the revenue cost of transformational projects which are expected to deliver future ongoing revenue savings for either the Council or other public sector delivery partners.

7.2.6. Since 2018 up to £7m of capital receipts have been used to fund transformational projects under these guidelines. There are no plans to use capital receipts in the future for this purpose.

7.3. Policy

7.3.1. This paper provides the Finance Sub Committee information directly relating to the role of the Sub Committee, enabling it to undertake its functions as set out in the constitution.

7.4. Equality

7.4.1. This is an information report that describes the Council's acquisition and disposal of property activity identifying the linkages between these activities and the MTFs. It does not consider any individual property transactions. Equality implications are considered at the point of creation of the MTFs and at the point that a decision is made about the individual property transactions and therefore a Equality Impact Assessment is not required to support this report.

7.5. Human Resources

7.5.1. None.

7.6. Risk Management

7.6.1. The risks associated with management of risk for property transactions are dealt with on a case by case, at a project and programme level. There is a risk that the Council is not able to achieve the target that it has set out for Capital Receipts. This is managed at these levels and risks are escalated where appropriate.

7.7. Rural Communities

7.7.1. None directly. The programme of acquisitions directly supports programmes of activity that the Council undertakes to achieve its aims and priorities. Achievement of Capital Receipts supports the Council's Capital Programme.

7.8. Children and Young People/Cared for Children

7.8.1. None directly. The programme of acquisitions directly supports programmes of activity that the Council undertakes to achieve its aims and priorities. Achievement of Capital Receipts supports the Council's Capital Programme.

7.9. Public Health

7.9.1. None directly. The programme of acquisitions directly supports programmes of activity that the Council undertakes to achieve its aims and priorities. Achievement of Capital Receipts supports the Council's Capital Programme.

7.10. Climate Change

7.10.1. None directly. Climate change implications are considered on a case by case basis for each project requiring acquisition or each disposal activity. However, by undertaking a programme of disposals will have a wide range of implications for the Council. This will allow the Council to have a smaller leaner estate, which in turn will generate opportunities for efficiencies and minimising the amount of carbon generated by the Council in its day to day activities. Releasing unwanted assets for future economic use will also have benefits potentially reducing the generation of carbon in future construction projects by third parties.

Access to Information	
Contact Officer:	Andy Kehoe, Head of Estates Andy.kehoe@cheshireeast.gov.uk
Appendices:	A - Summary of Acquisitions B - Disposals completed in the current Financial Year, 2021 to 2022 C – Disposals Programme (as at Sept 2021) Appendix Exempt by virtue of paragraph 3
Background Papers:	None