

Cheltenham Borough Council

Cabinet – 26 July 2011

Montpellier Lodge, Montpellier Gardens.

Proposed disposal of freehold interest and consideration of formal objections received following public consultation

Accountable member	Cabinet Member Built Environment - Councillor John Rawson
Accountable officer	Head of Property and Asset Management - David Roberts
Accountable scrutiny committee	Environment
Ward(s) affected	Lansdown
Key Decision	Yes
Executive summary	<p>Montpellier Lodge is in the western corner of Montpellier Gardens as shown edged red on the site plan below.</p> <p>The Lodge is surplus to operational requirements and is currently vacant</p> <p>An options appraisal was submitted to the Asset Management Working Group in September 2010 to consider whether the Council should retain the property for leasing out or dispose of the freehold.</p> <p>Discounted cash flows produced in consultation with Financial Services indicated that the best financial option was to dispose of the freehold</p> <p>Following an update to Asset Management Working Group in December 2010, authority was given for the Head of Property and Estate Management to place the premises on the open market and seek bids for the freehold purchase.</p> <p>Four of the resultant ten bids received were above the threshold level of £250,000, resulting in the necessity for the matter is to be considered at Cabinet level as a key decision.</p> <p>Prior to any decision being made on the bids received, consideration must first be given by Cabinet to all written objections to the proposed disposal of the premises, this due to the property being situated on land classed as public open space. These objections must be considered prior to any recommendation to sell the property</p>
Recommendations	<ol style="list-style-type: none">1 That Cabinet consider the relevant objections received and to decide whether or not as a result of those objections to dispose of the freehold of Montpellier Lodge2 If Cabinet decides to dispose of the freehold of Montpellier Lodge, this to be to the preferred purchaser as identified in Appendix 2, (Exempt information not for publication by virtue of paragraph 3,

part (1), schedule (12A) Local Government Act 1972), subject to that purchaser obtaining all necessary planning and licensing consents.

- 3 To delegate authority to the Head of Property and Asset Management in consultation with the Head of Legal Services, to agree the terms of the disposal to the preferred purchaser and conclude the sale.
- 4 In the event of a sale not proceeding to the preferred purchaser to delegate authority to the Head of Property and Asset Management in consultation with the head of Legal Services to negotiate with the under bidders and conclude a sale.
- 5 To repay to the Heritage Lottery Fund the grant funding attributable to monies spent on the subject premises in 2004, if requested to do so by the Trustees of the Fund

Financial implications

The offers were made following an appropriate period of marketing and as such reliance can be placed on the fact that they represent best available consideration.

The preferred option is the highest bid and this is wholly acceptable in financial terms.

Due to the Heritage Lottery Fund involvement in Montpellier Gardens, it is likely that some of the grant funding paid to the Council will have to be repaid. The amount is estimated to be £6 to £10k and the amount not affected by the option selected. This repayment is not significant enough to call into question the proposed sale. although it should be considered when decisions are made as to the use of the capital receipt.

The sale would generate a revenue saving of £141,000 as planned maintenance on the building over the next 20 years would no longer be required.

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<p>Legal implications</p>	<p>Under s123 of the Local Government Act 1972 the Council has a statutory duty upon the disposal of a freehold interest to sell the land for the best price that can reasonably be obtained.</p> <p>If however freehold ownership is retained, then under the Public Health Acts Amendment Act 1907, Section 76(1)(g), use of the building is restricted as it must be used in such a way that benefits the general public and is also ancillary to the park use.</p> <p>If however the freehold is disposed of, then subject to planning, there would be no limit on the use for the purchaser.</p> <p>Under s123 (2A) of the Local Government Act 1972, before taking a decision to dispose of land which forms part of open space land (which is defined as "any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground") the Council must first advertise such intention in a newspaper circulating in the area, and consider any objections.</p> <p>There is no other statutory obligation to consult prior to sale of land of this nature; nor is there a statutory period set out for objections to be received. The Council must therefore allow a "reasonable" period for the receipt of objections. In practice a period of 2-4 weeks (depending on the size and nature of the proposed disposal) is usually allowed for receipt of objections.</p> <p>As the requirement to advertise is limited to open space land, the objections to be considered must reasonably relate to the loss of open space land in order for them to be properly relevant.</p> <p>Contact officer: Rose Gemmell</p> <p>e-mail rose.gemmell@tewkesbury.gov.uk Tel 01684 272014</p>
<p>HR implications (including learning and organisational development)</p>	<p>None</p>
<p>Key risks</p>	<p>The highest bid for a restaurant/café/delicatessen with living accommodation over and with a proposal to erect a conservatory style extension in the rear courtyard is only viable after planning permission and a license to sell alcoholic drinks are first obtained.</p> <p>There is a risk these approvals may not materialise and should a sale be agreed with the second highest bidder (who would also require planning permission for conversion to a cafe) this would generate a significantly lower capital receipt to the Council.</p> <p>There is further risk that if the second highest bidder is unsuccessful with his planning application and that disposal also fails to materialise and approaches made to the third (and fourth) highest bidders, there is a risk the capital receipt would be substantially less than that of the preferred bidder</p>
<p>Corporate and community plan Implications</p>	<p>The capital receipt can be used to fund future capital expenditure, which will help to deliver corporate and community plan objectives.</p>

Environmental and climate change implications	None
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1 Background

- 1.1** The property is a former park-keepers cottage and is located in the western corner of Montpellier Gardens, as shown edged red on the site plan below. The Gardens themselves, as shaded in blue on the plan is established public open space close to the centre of Cheltenham and are an important part of the town's Regency landscape.

The Lodge has been vacant for almost 3 years and is surplus to operational requirements.

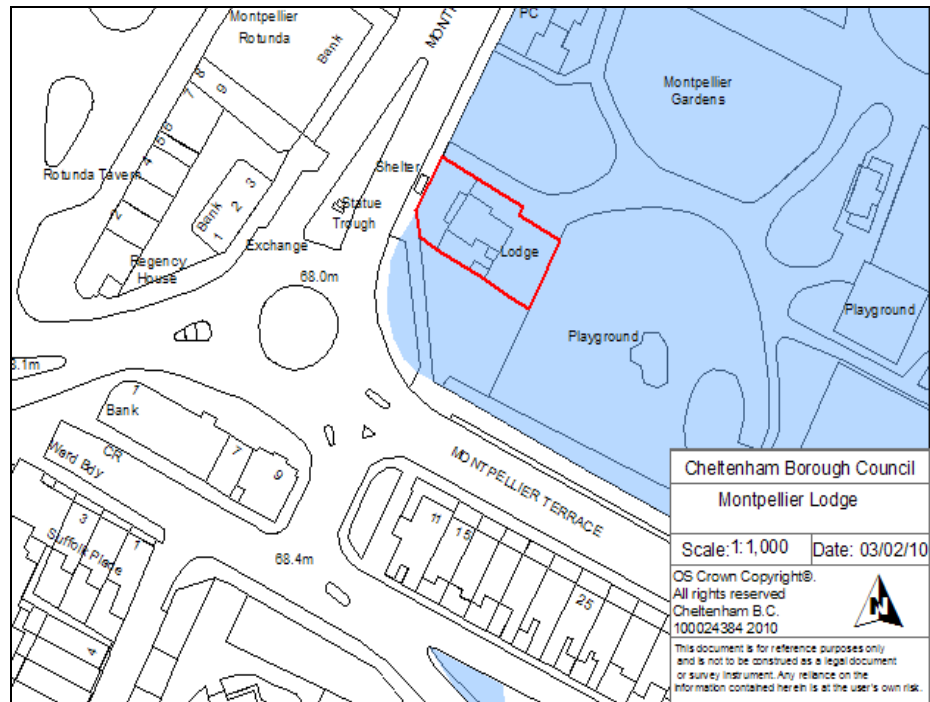
It has also been estimated that to keep the building in sound condition, planned preventative maintenance costs would amount to £141,000 over the next 20 years.

The property is within the Principal Urban Area and, being part of the Montpellier Gardens is identified as Public Open Space within the Local Plan.

The Planning Department has confirmed the planning use is as a dwelling, so no planning approval is required if subject premises sold off as a dwelling house

- 1.2** An options appraisal was placed before the Asset Management Working Group in September 2010 with a further update issued to its December meeting.
- 1.3** At the December meeting it was agreed that the Head of Property and Asset Management take steps to place the premises on the open market and invite bids for the freehold acquisition of the premises and to request of purchasers details of their intended use. On receipt of these bids and after the Head of Property and Asset Management had given due consideration to the viability of each, to then advertise in the local press the Council's intentions to dispose. together with the intended use.
- 1.4** Ten bids were received during marketing period in February (these detailed in Appendix 2)
- 1.5** The highest bid was for a restaurant/café/delicatessen use with living accommodation at first floor level and for the erection of a conservatory style extension in the rear courtyard.
- 1.6** An advert was placed in the local press for two consecutive weeks in late March detailing this proposed use, all in accordance with statutory procedures set out in Section 123 (2A) of the Local Government Act 1972. The deadline for objections was set at 11th April 2011.
- 1.7** Two letters of objection were received during the consultation period, a copy of one of which is contained in Appendix 1 as it contained a number of relevant objections relating to prospective loss of public open space. The other letter contained one objection – which was not relevant as it did not relate to the potential loss of public open space.
- 1.8** Responses to these two letters of objections from both the Head of Property and Asset Management and the Head of Legal Services are also included in Appendix 1.
- 1.9** At the same time as the consultations were being carried out it was established that if a freehold sale was being contemplated by the Council, approval to proceed with this would first be required from the Heritage Lottery Fund from whom a grant was obtained in 2004 to carry out improvements to the Montpellier Gardens.
- 1.10** Approval to this prospective disposal has now been given by the Trustees of the Heritage Lottery Fund and a side letter to that effect duly signed by both parties and attached to the grant contract in June 2011.

Site Plan



2. Reasons for recommendations

2.1 Potential capital receipt from a surplus asset.

3. Alternative options considered

3.1 Leasing out for both commercial and community use has been considered but Members of the Asset Management Working Group agreed at its December 2010 meeting to authorise the Head of Estates and Property Management to place the premises on the market for disposal

3.2 Ward members, Cllrs Seacombe and Driver were consulted prior to the premises being placed on the market.

4. Performance management –monitoring and review

Not applicable

<p>Report author</p>	<p>Norman Ashworth, Senior Estates Surveyor norman.ashworth@cheltenham.gov.uk Tel 01242 264109</p>
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Appendices	<p><u>Appendix 1</u> Letters of objection and responses</p> <p><u>Appendix 2</u> Bid summary - Exempt Information -Not for publication by virtue of paragraph (3) part (1) Schedule 12 (A) Local Government Act 1972.</p>
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