

Cheltenham Borough Council

Cabinet – 7th March 2023

Land Adjacent to 68 Windsor Street - Disposal

Accountable member:

Deputy Leader, Cabinet Member Assets & Finance, Councillor Peter Jeffries

Accountable officer:

Director of Finance & Assets (Deputy Section 151 Officer), Gemma Bell

Ward(s) affected:

Pittville

Key Decision: No

Executive summary:

The owner of 68 Windsor Street has approached the Council with a request to purchase a small area of land adjacent to their property. Following consultation with various managing departments within the Council and negotiations with the purchaser, a sale price has been agreed. This is not the first example of a home owner purchasing land owned by the Council to enhance their own property.

The land is designated as Public Open Space and therefore any disposal would be subject to advertising pursuant to s123(2)(A) of the Local Government Act 1972 which requires approval by Cabinet.

Recommendations:

- 1. To grant permission for the placing of notices pursuant to s.123(2)(A) of the Local Government Act 1972 in the local newspaper advertising the disposal of the land;**
 - 2. Subject to the outcome of the notices, to dispose of the land subject to the conditions of sale and heads of terms agreed;**
 - 3. To authorise the Director of Finance and Assets to instruct the Director of One Legal to prepare and conclude the necessary legal documentation to reflect the terms negotiated by the council and authority to execute such documents.**
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1. Implications

1.1 Financial, Property and Asset implications

Although the land is designated as Public Open Space, it has been concluded by both the Council and Cheltenham Borough Homes that it is not suitable for development. The property owner has approached the Council to purchase the land which will provide a capital receipt to the Housing Revenue Account which can be re-invested into the capital programme to provide more affordable homes in Cheltenham. There will be covenants placed on the purchase to allow the land to only be used as a garden space and will prohibit development of the land, minimising the impact on the local community. The proposal has been presented to the Asset Management Working Group who were supportive of the recommendation to dispose of the land.

Signed off by: Gemma Bell, Director of Finance & Assets (Deputy s151 Officer),
gemma.bell@cheltenham.gov.uk, 01242 264124

1.2 Legal implications

As the land was originally acquired as part of the housing land for the respective estates, the disposal is under the provisions of section 32 of the Housing Act 1985 and the General Housing Consents 2013. The Council can dispose of vacant land at any price determined by the Council (consent A3.2).

Where a disposal of open space is under consideration, Section 123 (2A) of the Local Government Act 1972 provides that the proposed disposal should be advertised for two consecutive weeks in a local paper, and the Council should consider any objections received.

Signed off by: One Legal, legalservices@onelegal.org.uk

1.3 Environmental and climate change implications

The restrictive covenants proposed to be enacted as part of this transaction will ensure that although the land will no longer be owned by the Council, that development will be prohibited and it will be used only as a garden for the property. This supports the building of maintenance of green space and biodiversity in the town and is not expected to have a negative impact on the Council's priority to be carbon net zero by 2030.

Signed off by: Laura Tapping, Climate Emergency Programme Officer,
laura.tapping@cheltenham.gov.uk

1.4 Corporate Plan Priorities

This report contributes to the following Corporate Plan Priorities:

- Being a more modern, efficient and financially sustainable council

Signed off by: Ann Wolstencroft, Head of Performance, Projects and Risk

2 Background

2.1 The land adjacent to 68 Windsor Street is a parcel measuring 4m x 31m, on the entrance to Little Cleevemount. Wyman's Brook runs beneath the land and surfaces to ground level along the western boundary and the area is an open area of grass, housing a mature Ash tree. The land is in the HRA fund and is managed by Cheltenham Borough Homes. The freehold title is currently unregistered.



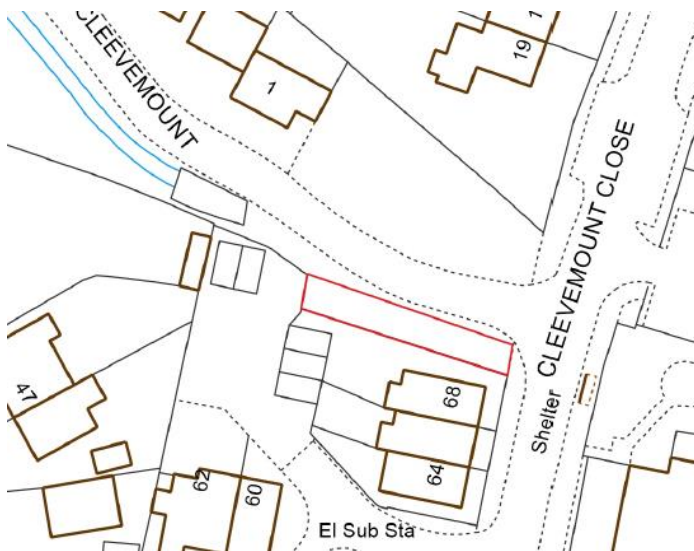
Image 1: Land adj 68 Windsor Street as seen from Cleevemount Close.



Image 2: Land adj 68 Windsor Street as seen from Little Cleevemount



Image 3: Land adj 68 Windsor Street looking towards Little Cleevemount



Plan 1: Proposed area for disposal, edged in red.



Plan 2: CBC ownership indicated by blue rendering. (NB, Areas rendered in yellow were previously owned by the Council but now in private ownership. Highways are indicated by the brown rendering. Public Rights of Way are indicated by the black lines).

2.2. A sale of the parcel has been agreed subject to the following conditions:

- An absolute prohibition on development, retaining the use of the land to garden use only;
- An undertaking that should the existing tree be felled, it is replaced with at least one tree of the same or similar species, in the same or similar location;

- That a natural border is placed on all sides - this would ideally be a native hedge or similar and would be the ongoing responsibility of the owner; and
- The land would be sold reserving any rights of access or otherwise relating to the culverted brook which runs beneath it to the Council or third party.

3. Reasons for recommendations

3.1. After consultation with various departments, it has been determined the parcel represents no development opportunity for Cheltenham Borough Homes or Cheltenham Borough Council.

3.2. The disposal will generate a capital receipt for the HRA fund which can be re-invested to fund their acquisitions programme. A small HRA revenue cost saving will also be generated as the cost of maintenance will be transferred to the new owner.

3.3. As this is designated as Public Open Space, advertising pursuant to s.123 (2)(A) is a legal obligation and approval from the Cabinet is required to undertake this.

4. Alternative options considered

4.1. The Council could decide to retain the land however by doing so we would continue to be responsible for the ongoing maintenance of the land and the tree. It has been advised that the Ash does not have a long future and will likely require significant works to either radically prune back or remove entirely.

5. Consultation and feedback

5.1. The following parties have been consulted regarding the disposal:

- Cheltenham Borough Homes – Development Manager
- Cheltenham Borough Council – Trees Officer
- Cheltenham Borough Council – Green Space Manager
- Asset Management Working Group (Meeting, 30th January 2023).

5.2. Cheltenham Borough Homes have provided a letter which confirms that the land does not represent any development opportunity and giving their support to disposal.

5.3. CBC Trees Officer confirmed that the mature Ash on the land was under their management however it is not considered to be a good specimen and would not be a candidate for a Tree Preservation Order.

5.4. They further requested that the land be sold subject to a restrictive covenant which provided for a natural border such as a native hedge and, if the tree is to be removed, for it to be replaced with at least one other of an appropriate species.

5.5. CBC Green Space advised that due to the route of Wymans Brook, development of the land would not be viable and, if sold, it should retain use as garden land only.

5.6. Asset Management Working Group received a full briefing note for consideration. The Group was supportive of the recommendation to dispose of the land as public open space and for the item to progress to Cabinet for decision.

6. Key risks

5.1. The key risks associated with this decision are set out in Appendix 1.

Report author:

Claire Pockett, Estates Surveyor, claire.pockett@cheltenham.gov.uk

Appendices:

- i. Risk Assessment

Background information:

N/A

Appendix 1: Risk Assessment

Risk ref	Risk description	Risk owner	Impact score (1-5)	Likelihood score (1-5)	Initial raw risk score (1 - 25)	Risk response	Controls / Mitigating actions	Control / Action owner	Deadline for controls/ actions
1	There is a risk that the new owner does not comply with the conditions of sale resulting in the Council taking legal action against them.	Claire Pockett, Estates Surveyor	3	1	3	Accept & Monitor	<p>To mitigate this, the conditions will form restrictive covenants within the conveyance.</p> <p>A breach of those covenants will result in the usual remedies in law; either a permanent injunction or the seeking of damages.</p>	Claire Pockett, Estates Surveyor	Date of the completion of the sale.