

# Cheltenham Borough Council

## Cabinet – 19<sup>th</sup> September 2023

### Freehold/Head Leasehold Investment Disposal

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**Accountable member:**

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

**Accountable officer:**

Paul Jones, Executive Director for Finance, Assets & Regeneration

**Ward(s) affected:**

n/a

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**Key Decision:** Yes

**Executive summary:**

The council own both freehold and long leasehold (c.163 years unexpired) interests in Regent Arcade Shopping Centre and shown edged red on the Plan (“the Centre”), which in turn are let to Canada Life under a long lease at a ground rent equal to 15.24% of net rental income, subject to a minimum base rent of £575k per annum.

Aside, the council have a lease back of the 523 space car park at a peppercorn rent for a remaining term of c.87 years.

*This report and the recommendations refer only to the council’s principal interests and not the car park.*

In accordance with the council’s adopted Asset Management Strategy, a review of the council’s interests was undertaken at 2022/23; see attached Briefing Note and the Addendum to this report (Exempt Information: Local Government Act 1972, Schedule 12A, Part 1, Paragraph 3).

For the period 06/21 to 06/22, the Centre delivered a net income to the council equivalent to the base rent of £575k. This performance has been consistent over the last 10 years+.

With changes in retailing and High Streets, it is considered that the time is now right for the council to sell its principal interests in the Centre and allow the market to invest in its future, allowing the council to reinvest the funds generated into new projects that will deliver both

financial returns and secure economic, environmental and social outcomes.

**Recommendations: That Cabinet:**

- i. **delegates to the Executive Director for Finance, Assets & Regeneration, in consultation with the Deputy Leader and Cabinet Member for Finance & Assets, authority to dispose of the freehold and head leasehold interests in Regent Arcade Shopping Centre for best consideration and upon such other terms as are deemed appropriate; and**
  - ii. **authorises the Executive Director for Finance, Assets & Regeneration, in consultation with Deputy Leader and Cabinet Member for Finance & Assets and the Director of One Legal, to prepare and conclude the necessary legal documentation to reflect the terms negotiated.**
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## **1. Implications**

### **1.1 Financial, Property and Asset implications**

The property and asset implications are addressed within the body of this report. In line with the principles of the Council's asset management strategy, the disposal of our interest in Regent Arcade will provide both capital and revenue resources to re-allocate to the key priorities outlined in the Corporate Plan. The disposal will provide a capital receipt which can be used for investment in any of the key projects outlined or to reduce the Council's borrowing at a time when interest rates are the highest in 15 years. Likewise, although the asset provides a positive net contribution to the general fund at present, there are options for re-investment which will increase the revenue benefit for the Council where a higher return could be generated.

**Signed off by:** Gemma Bell, Director for Finance & Assets, [gemma.bell@cheltenham.gov.uk](mailto:gemma.bell@cheltenham.gov.uk)

### **1.2 Legal implications**

Pursuant to section 123 of the Local Government Act 1972 ("Section 123 LGA 1972"), the Council has the power to dispose of land in any manner it wishes, subject to certain provisions. The Council has a statutory duty to obtain the best price reasonably obtainable, subject to certain exemptions. Section 123(2) permits a disposal at less than the best price reasonably obtainable with the consent of the Secretary of State. When considering the duty under section 123 LGA 1972, what is reasonable in any particular case depends entirely on the facts of the transaction

In the event that a sale does not proceed the land remains in the Council's legal occupation and the Council will retain responsibility including upkeep and, for example, for occupiers' liability.

The Car Park Underlease for a term of 99 years from 4.6.82 has absolute restriction against CBC's assigning, underletting or parting with possession of the demised premises (although CBC can grant an operating licence with landlord's consent, not to be unreasonably withheld or

delayed)

The proposed transaction is complex given that the Council owns part of the freehold and a long leasehold (c.163 years unexpired) interest in the Centre. There are various limitations on disposal of the Centre with regard to the Freehold, Leasehold and Underlease interests and care must be taken to ensure that no obligations or restrictions are breached to ensure that the structure of the transaction, and its related documents, do not transgress against the Council's statutory obligations.

**Signed off by:** Andrew Perry, Senior Lawyer, [andrew.perry@onelegal.org.uk](mailto:andrew.perry@onelegal.org.uk)

### **1.3 Environmental and climate change implications**

No Comments Received – A sale will deliver a capital receipt for reinvestment in the council's corporate plan, which takes into account environmental and climate change implications.

### **1.4 Corporate Plan Priorities**

This report contributes to the following Corporate Plan Priorities:

- Being a more modern, efficient and financially sustainable council

### **1.5 Equality, Diversity and Inclusion Implications**

The capital receipt will be used to deliver on the council's corporate priorities, which include the promotion of equality, diversity and inclusion.

### **Performance management – monitoring and review**

The disposal will be managed by Peter Woodley, MRICS, Principal Surveyor – Asset Management, Projects and Development, in consultation with the Cabinet Member for Finance & Assets and the Executive Director for Finance, Assets and Regeneration.

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## **2 Background**

### Introduction

2.1 Local Government own a wide range of land and property, which serve a multitude of purposes and functions, including:

- Service delivery (leisure centres, car parks, community centres, crematorium, etc)
- Operational (depots, storage, vehicle maintenance, etc)
- Administrative (offices)
- Cultural, Heritage & Recreation (galleries, museums, theatres, etc)
- Economic Development (workspace, land for development, training facilities, etc)
- Strategic Planning/Place-Making (land, ransom strips, etc)

- Infrastructure (roads, bridges, flood defences, etc)
- Environmental promotion and well-being (parks, gardens, streetscape, etc)
- Social value (promoting employment, health and training opportunities)
- Investment & Financial Returns (ground leases, shops, offices, industrial units, etc)

2.2 More than often, an individual property or landholding will serve more than one purpose or function; for instance, the authority may hold land for development to deliver planning and place-making outcomes, promote economic development and social value, secure environmental improvements and generate capital/revenue receipts.

2.3 As part of the council's adopted Strategic Asset Management Strategy<sup>1</sup>, it consistently reviews the performance of individual properties to establish whether the outputs being delivered meet expectations or align with the wider corporate objectives of the authority. This will include a review of the historic, current and projected future performance, taking into account numerous factors, including:

- Utilisation and capacity
- Environmental performance (especially with increasing minimum energy efficiencies standards "MEES") and energy costs
- Running (revenue) costs, projected capital expenditure and whole life costing
- Financial returns, including growth expectations against inflationary measures
- Planning considerations, including population growth, changes in lifestyle trends, etc
- Technology and changes in demand, including working styles, customer need, service transformation and organisational collaboration
- Opportunity cost of capital against alternative investment vehicles

2.4 The rationale behind monitoring the continuous performance of the portfolio is to ensure that the council secures the best financial and strategic returns from its portfolio and to deliver the greatest value for money for its residents.

### Regent Arcade

2.5 In respect of Regent Arcade Shopping Centre ("the Centre"), the council has held its various interests in the shopping centre since it was first developed, around 1983. During this time the headlease to Canada Life has been previously varied to adjust the length and rent, the last time being around 2011, to the current terms.

2.6 Whilst part of the original intention to maintain an underlying interest in the Centre was undoubtedly to exercise some control as landowner of an important town centre site, the other principal reason would have been to deliver an income linked to the financial performance of the centre. With changes in the market and town centres across the UK,

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<sup>1</sup> 2022 to 2027, adopted January 2022 (note – this does not include the council's housing stock, which is subject to a separate and distinct asset management regime)

and limited short term potential for rental growth, the council has a substantial capital value tied up in the Centre, which could be deployed in new investment opportunities that have the potential to deliver both increased revenue and capital returns.



### **3 Reasons for recommendations**

- 3.1 To make best use of capital resources to deliver financial returns and with the potential to secure additional economic, environmental and/or social returns for residents

### **4 Alternative options considered**

- 4.1 Do Nothing: Hold the investment - Discounted due to opportunity cost of having the capital value tied up in the existing asset

### **5 Consultation and feedback**

- 5.1 Internal only

### **6 Key risks**

- 6.1 Council fails to secure a purchaser at an acceptable level: It is proposed that a suitably qualified and experienced commercial investment property agent be engaged to help develop and deliver the disposal strategy.

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#### **Report author:**

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## **Appendices:**

- i. Risk Assessment

## **Background information:**

Addendum: Private & Confidential – Exempt Information

Briefing Report: Private & Confidential – Exempt Information

## Appendix 1: Risk Assessment

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