

Cheltenham Borough Council

Cabinet – 19th September 2023

Disposal of Land at Idsall Drive, Prestbury

Accountable member:

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

Accountable officer:

Gemma Bell, Director for Finance & Assets

Ward(s) affected:

Prestbury

Key Decision: No

Executive summary:

The council own the freehold of land at Idsall Drive, Prestbury (shown edged red on the plan below) which extends to c.650m² (0.16 acre) and is currently set out as a 10 space short stay car park, signposted as short stay with a maximum stay of two hours.

The land is located within a largely residential location, close to Prestbury High Street, which has around 23 on-street car parking spaces located within a similar distance to that of Idsall Drive, along with additional privately owned customer car parking. Allowing for business rates, repairs, maintenance and asset management, it currently costs the council around £4k per annum in revenue, along with future potential capital liabilities.

There are historic financial claw-back arrangements relating to the original funding of the car park in 1986 in favour of Prestbury Parish Council, for which advice has been received to the effect that these provisions remain in force and will require to be paid by the council.

A review of the use of the car park was undertaken in 2022, copy attached, which covered both the traditional summer holiday period and typical school term time. The results of this exercise showed that 3 vehicles accounted for 33% of total usage, 2 of which were commercial vehicles and 1 of which regularly exceeded the two hour stay, along with a general surplus of available on-street car parking.

Taking into account ongoing revenue liabilities and the potential for future capital expenditure

requirements, it is therefore recommended that Cabinet declare the site surplus to requirements and authorise a disposal of the site on terms that represent best consideration with the requirements of s.123 Local Government Act 1972.

Recommendations: That Cabinet:

- i. declares the site surplus to requirements;**
 - ii. delegates to the Director for Finance & Assets, in consultation with the Deputy Leader and Cabinet Member for Finance & Assets, authority to dispose of the site on terms that represent best consideration and upon such other terms as are deemed appropriate; and**
 - iii. authorises the Director for Finance & Assets, 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

Disposal of the site will deliver both immediate ongoing revenue savings and long term capital expenditure, whilst delivering a receipt to support the council's medium term financial plan and corporate plan.

Signed off by: Gemma Bell, Director for Finance & Assets, gemma.bell@cheltenham.gov.uk

1.2 Legal implications

Section 123 of the Local Government Act 1972 gives a local authority the power to dispose of land held by it in any manner it wishes provided that the local authority achieves the best consideration that can reasonably be obtained. Steps should therefore be taken when disposing of the land to ensure that the Council obtains the best consideration that it can, and the land should not be disposed of for less than market value. Disposal for less than market value may be possible but will require Secretary of State consent.

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

Cabinet Member's authority to approve disposals is capped at £250,000. Disposals above this sum have to be referred to Cabinet for approval.

Signed off by: Andrew Perry, Senior Lawyer, 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

N/A – A sale of the car park will release capital funding into the council's corporate plan, which promotes 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 Director for Finance & Assets.

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 etc)
- 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 etc)
- 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 Strategy¹, 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

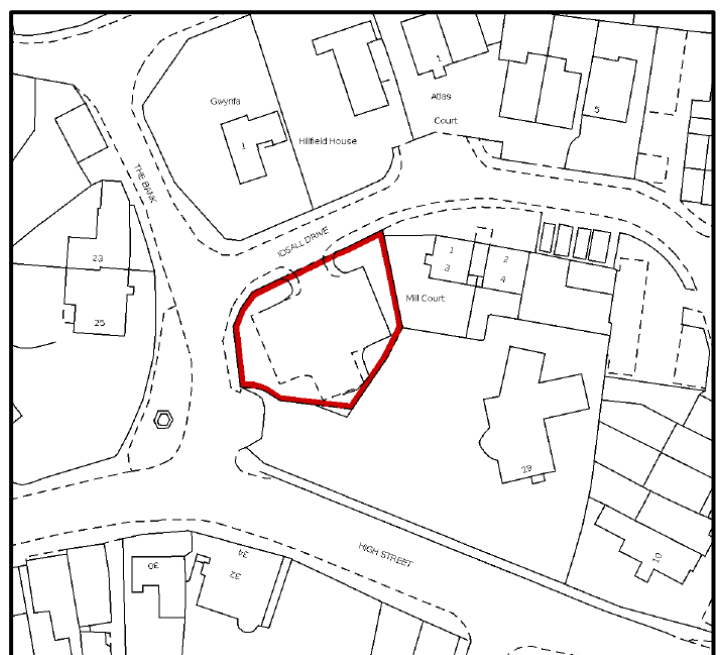
2.4 The rationale behind monitoring the continuous performance of the portfolio is to ensure that the council secures the best financial and strategic returns from its portfolio and to deliver the greatest value for money for its residents.

Idsall Drive Car Park – Ownership & Title Matters

2.5 Idsall Drive car park extends to c.650m² (0.16 acre) and is currently set out as a 10 space short stay car park, signposted as short stay with a maximum stay of two hours.

2.6 Allowing for business rates, repairs, maintenance (including landscaping and fencing) and asset management, the car park currently costs the council around £4k per annum in revenue. With the need for future resurfacing and boundary treatment, the car park will also require future capital expenditure over and above the annual revenue cost.

2.7 The car park is located within a largely residential location, approximately 175m from the middle of Prestbury High Street. There are around 23 on-street car parking



¹ 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)

spaces located within a similar distance to that of Idsall Drive, along with additional privately owned car parking available for customer use.

- 2.8 The council “acquired” the freehold of the site from Tewkesbury Borough Council (“TBC”) as a result of boundary changes in 1991. TBC had previously entered into a funding agreement with Prestbury Parish Council (1986) to contribute to the running of it as a short stay car park. Under this agreement, the Parish Council contributed the sum of £10k over a 5 year period, subject to claw back provisions in the event that “the car park shall be sold or otherwise pass from the ownership of the [Tewkesbury] Borough Council or be leased...for a term of 10 years or more...”. One Legal have previously advised that this claw back provision would have transferred to CBC as a result of the statutory provisions of the boundary changes.
- 2.9 In terms of legal restrictions on the title, there appears to be a covenant attached to the land from a previous transaction which restricts any future development to no more than a “*single private dwelling house and garage*”. However, whether this covenant is capable of being enforced is questionable on two grounds:
- i) The beneficiary, Morland Development Company Limited, no longer appears to exist and it is unclear whether another party has acquired the benefit of this restricted covenant;
 - ii) Regardless of i) above, whether any beneficiary that may exist owns land which benefits from the covenant and could, therefore, enforce it.
- 2.10 Further legal investigation will be required, along with the potential to either apply to have the covenant lifted through the Lands Tribunal or insure against any claim that could come forward in the event it was breached.
- 2.11 Regardless, the council could potentially appropriate the site for planning purposes and use its planning powers to override such covenant, which whilst would give rise to potential compensation to the beneficiary, would be based solely on the diminution of the benefiting property. Again, further legal advice will be required but in the opinion of the author, and assuming there is a benefiting property (which is questionable), any such diminution will be nil.

Usage

- 2.12 A review of the use of the car park was undertaken in 2022 (copy attached), which covered both the traditional summer holiday period and a typical school term time. This involved surveying the usage every 2 hours over 14 random days, including a Saturday and Sunday, from 8.30am to 6.00pm. On each visit, vehicle registration numbers were noted in order to assess both the number of vehicles parked within the car park and the typical duration of stay.
- 2.13 In addition to surveying the usage of the car park, during the hours of 10.30am to 4.30pm a note of available spaces within the 23 on-street spaces identified was also undertaken to allow overall capacity to be assessed. The overall results are set out in the attached

“car parking survey” background paper.

- 2.14 In summary, the results showed that 3 vehicles accounted for 33% of total usage, 2 of which were commercial vehicles and 1 of which regularly exceeded the two hour stay (being parked on site most of the time on most of the visits). Overall, there was a substantial number of vehicles which exceeded the two hour stay, a large number of which by a substantial period of time, i.e. not for short stay parking for trips to the High Street.
- 2.15 Throughout the course of the survey, there was generally a surplus of available car parking within easy access of the High Street, i.e. within the same distance as the car park.

Impact on Prestbury High Street

- 2.16 It has previously been stated that closure of the car park will result in adverse impact on Prestbury High Street. However, the High Street is largely residential in character, with only 3 shops, 2 hairdressers, a café/delicatessen and a pub/restaurant with its own 32 space car park.
- 2.17 Notwithstanding abuse of the car park (i.e. long stay and commercial), the surveys show that there is generally more than sufficient on-street parking available within a comparable distance to suit the functioning of those remaining shops and services within the High Street.

EV Charging

- 2.18 As part of the council’s strategy to support the roll out of EV charging points across the Borough, a wide range of operators were provided a list of some 40+ sites in the ownership of the council and to confirm whether or not they would be of interest to them. This list included Idsall Drive.
- 2.19 In terms of interest, the response rate for Idsall was relatively low, with only two considered positive responses and was certainly not as popular as more central or prominent locations. It is, therefore, anticipated that interest for this use will be limited and any value nominal.
- 2.20 However, the site will be openly marketed and details forwarded to those operators who did express an interest, considered or otherwise, and they will be able to bid for it alongside all other interested parties.

Prestbury Parish Council

- 2.21 As referenced above at 2.8, a sale of the site will trigger a financial payment to Prestbury Parish Council as a consequence of the original funding agreement between them and TBC. The basis of this payment is set out on one of three options, for the Parish Council to determine as they see fit. These options comprise:

- i) The value of the original funding provided, i.e. £10,000;
- ii) The value of the original funding provided, indexed linked to RPI (calculated to be £37,784 as at June 2023); or
- iii) The value of the original funding provided plus a profit share of any uplift in the market value of the site over and above £53,500 (calculated to be £15,350 as at June 2023, using a hypothetical market value of £100,000).

2.22 The council held discussions with the Parish Council regarding a disposal of the car park in 2021 and an offer was made by the Parish to purchase it at a stated value of £40k, net of repayment of the funding originally provided by it to TBC. However, after further consideration, the Parish decided not to proceed with the purchase and withdrew their proposal.

Summary

2.23 Taking into account ongoing revenue liabilities and the potential for future capital expenditure requirements, it is therefore recommended that Cabinet declare the site surplus to requirements and authorise a disposal of the site on terms that represent best consideration within the meaning of s.123 Local Government Act 1972.

3 Reasons for recommendations

- 3.1 To secure revenue savings and avoid future capital expenditure and deliver a capital receipt; and
- 3.2 To make best use of public owned assets for the delivery of services and projects for the residents of Cheltenham Borough, in accordance with the council's adopted asset management strategy.

4 Alternative options considered

4.1 Do nothing

Council continue to incur revenue costs and face future capital expenditure with no discernible benefits – Option discounted

4.2 Formalise Car Park

Would require inclusion within the council's car parking order, which may not be confirmed, along with regular enforcement regime. Option discounted as: 1) overall usage is limited; 2) costs of car parking management would increase overall revenue deficit; 3) charges would decant genuine short stay parking to on-street.

5 Consultation and feedback

5.1 Internal only

6 Key risks

- 6.1 Council fails to secure an offer that is acceptable – mitigated through use of local commercial agents to maximise market coverage
 - 6.2 The site is subsequently sold by a third party purchaser for a higher value use – mitigated through inclusion of relevant covenants and overage clauses, allowing the council to claw back any such enhanced value
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Report author:

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Appendices:

- i. Risk Assessment

Background information:

Car Parking Survey Briefing Note (including Appendices 1-4)

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	Council fails to secure a purchaser at an acceptable level of value	Gemma Bell, Director for Finance & Assets	5	2	10	Accept	Appoint experienced agents to support the marketing and subsequent negotiations and provide s.123 certification	Peter Woodley MRICS, Principal Surveyor	Ongoing
2	Purchaser obtains subsequent change of use to higher value use	Gemma Bell, Director for Finance & Assets	3	2	6	Accept	Mitigation reference 1 will largely mitigate risk but inclusion of restrictive covenant and/or overage clauses will allow council to benefit in any such future uplift in value	Peter Woodley MRICS, Principal Surveyor	Ongoing