



## CABINET REPORT

<b>Report Title</b>	<b>DISPOSAL OF COMMUNITY CENTRE SHOPS</b>
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**AGENDA STATUS: PUBLIC**

<b>Cabinet Meeting Date:</b>	5 <sup>th</sup> March 2020
<b>Key Decision:</b>	Yes
<b>Within Policy:</b>	No
<b>Policy Document:</b>	Yes
<b>Service Area:</b>	Economy, Assets & Culture
<b>Accountable Cabinet Member:</b>	Cllr Tim Hadland, Regeneration & Enterprise
<b>Ward(s)</b>	Billing, Brookside, Rectory Farm, Riverside, Talavera, West Hunsbury

### 1. Purpose

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- 1.1 This report seeks approval for the disposal of fifteen neighbourhood community retail units by way of a freehold sale.
- 1.2 The occupying tenants hold secure leases protected by statute, so a freehold sale will not affect their security of tenure.
- 1.3 The tenants will be given first option to buy them at market value (albeit this may be restricted by the restrictive covenant as described in 1.4 below)
- 1.4 The shops to be sold with a restrictive covenant to ensure they remain as commercial units use Class A1 on the ground floor which supports Planning Policy for the area in which they are located which will ensure they continue to serve the community neighbourhood areas.

## **2. Recommendations**

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- 2.1 That the community centre shops shown on Annex 1 to this report are progressed for sale.
- 2.2 That the process for the sale is as follows:-
  - 2.2.1 That each one has a restrictive covenant placed on the title to remain as commercial use on the ground floor within use Class A1, changes within this use class are regulated by Planning Policy.
  - 2.2.2 That the shops will be sold at market value (to comply with the Council's obligation to obtain best consideration), determined by an independent RICS registered valuer taking into account the restrictive covenant and the costs of sale.
  - 2.2.3 That the tenants are given the opportunity to purchase the shops at the market value as determined by the Council's market valuation.
  - 2.2.4 To allow the tenants a period of six months from the date of the valuation to confirm their offer to purchase the shops and provide evidence of financial ability to complete in a timely manner.
  - 2.2.5 That those shops which are not under offer after six months will be progressed for sale on the open market.
- 2.3 That authority be delegated to the Economic Growth and Regeneration Manager, in consultation with the Borough Secretary, Chief Finance Officer and Cabinet Member for Regeneration and Enterprise to progress this sale on the terms listed in points 2.2.1 – 2.2.5

## **3. Issues and Choices**

### **3.1 Report Background**

- 3.1.1 The Council has substantial property holdings acquired over many years. These neighbourhood shops were developed as part of housing development schemes mostly through Northampton Development Corporation from the late 1960's onwards (now Homes England). The purpose of the shops is to serve the local community so that residents did not have to travel further afield for regular provisions.
- 3.1.2 The leases, constructed at the time of development, were based on retail shop provision primarily to provide a service, but at a reasonable rent. The leases provide for the Landlord to insure the property and to maintain the structure, fabric (including roofs) and in some cases external finishes of the property. Some of the leases provide for limited recharging, others do not. Either way the Council has the task of arranging and supervising the work.
- 3.1.3 Energy Performance Certificates (EPCs) have been completed for the shops. EPCs are a rating scheme to summarise the energy efficiency of buildings, A

is the most energy efficient, G is the least energy efficient. Currently it is unlawful to enter in to a new letting if the EPC is grade F or G and therefore landlords are required to invest in units to ensure they meet grade E and above. From 1<sup>st</sup> April 2023 all lettings will need to meet these statutory limits. Over half of the shops do not meet the minimum levels, and therefore by law the Council will be required to do improvement work to the units.

- 3.1.4 This improvement work is not necessarily to the areas of responsibility retained by the landlord, some of the work would need to be to tenants' fixtures and fittings. This can make it disruptive for the tenant and again requires resourcing, both technical and financial, to resolve the issues. The works cannot be taken into account at rent review, ie they will not add a greater rental return to the landlord.
- 3.1.5 The rent received is therefore gross rent and does not take into account the costs of management and maintenance. This is only likely to increase given the age of the properties and given the EPC ratings referred to in para's 3.1.3.

## **3.2 Issues**

- 3.2.1 Rent received from the letting of shops, as with all commercial lettings, is required as income to be used to support service delivery. Security of income requires the Council to hold a selection of assets. Holding a balanced portfolio reduces the risks of exposure to economic downturns, changes in market demand and the impact on value of increasingly high environmental legislative requirements.
- 3.2.2 The Council has an extensive retail portfolio. Over 50% of the commercial units are retail and this leaves the Council exposed to the well documented issues facing the retail market. Added to this, most of the property holdings were built from the late 1960's onwards with aging structures and low energy performance levels, placing increasing repairing and maintenance costs on the Council.
- 3.2.3 The Council are therefore proposing to realign the commercial portfolio to have a more balanced apportionment of retail, industrial and office units, to have less multiples and to hold assets that meet our energy criteria - ie modern units that provide stable quality net income. The commercial units that will be retained will be required to meet our minimum energy standards of an EPC rating of C.
- 3.2.4 Primary retail units in the town centre are to be retained while further analysis is being undertaken. Tertiary retail units in neighbourhood areas such as these shops have therefore been identified as surplus, not meeting the Council's objectives as outlined in 3.2.3 above. Albeit the rent is reasonable – it is not secure – tertiary retail rents are falling. These shops are considered suitable for owner investors, and some have accommodation over them which makes them ideal for owner occupation.
- 3.2.5 Some, but not all, of the shops form part of the neighbourhood parades, protected through Planning Policy 19, Neighbourhood Centres. Where this is applicable, it is noted that these areas have several local facilities, that

promote social interaction and health and support a healthier lifestyle, where the local community can walk to the facilities. There is recognition in the policy that the facilities form clusters, each one co-dependent on the other, creating synergy.

3.2.6 The saved Planning Policy R9 from the Northampton Local Plan, June 1997 generally restricts changes of use from Class A1 where they would:

- Lead to traffic problems;
- Lead to an adverse effect on amenity
- Be detrimental to the shopping character of a centre or part of a centre by an unacceptable increase in the number of non-shop uses or increasing the length of frontage in non-shop use to an unacceptable proportion of the total frontage.

3.2.7 Emerging Policy 19, Neighbourhood Centres provides clarity on redevelopment stating:-

*“In supporting the retention of neighbourhood centres, any proposals that would result in the loss of a centre will need to demonstrate the following:-*

- *There is an existing neighbourhood centre within an existing 400m radius*
- *A viability assessment, to include robust marketing and evidence of community interest, has been undertaken which provides evidence that it is not viable for the parade to continue operating.”*

3.2.8 To support planning policy and give comfort to the communities that benefit from these shops it is proposed that the sale of the freehold has a restrictive covenant that the area of the shop must retain retail A1 use as the main use. This would allow investment into the shops but ensure that the ground floor at least remains retail.

3.2.9 Placing a restrictive covenant on the shops will reduce the capital value and therefore the capital receipt. All costs associated with the sale will need to be paid for by the buyer, including legal and estates fees, but these will be made clear at the outset and the buyer will take these into account when purchasing the freehold.

3.2.10 In recognition that ownership of the property encourages owners to invest in their assets, the tenants will have first offer to buy the shops as determined by the Councils market valuation. The tenants will be given six months to provide a credible bid to the Council. Any shops that are not under offer following this six month period will be progressed for disposal on the open market.

3.2.11 Valuations noting the restrictive covenant will be procured to obtain market value.

3.2.12 The sale of these shops will affect revenue with the passing rent being circa £200,000 ex VAT. However, this rent is gross rent and does not take into account the repairing and management costs which are under review. The Capital receipts will be dealt with as set out in para 4.8.2.

### **3.3 Choices (Options)**

- 3.3.1 Councillors can choose not to proceed with the recommendations within this report. The Corporate Plan notes that one of the key objectives is to ‘spend your money wisely’. By de-risking the property portfolio and reducing ongoing and future maintenance costs from our assets the recommendations work to achieve this.
- 3.3.2 Councillors can choose to accept the recommendations of this report, without giving the first option to the tenants, para 2.2.3, but these tenants may want the opportunity to take control of the units, to invest capital sums to improve them. It is felt that they should have the opportunity to buy them at market value for these reasons.
- 3.3.2 Councillors can choose to accept the recommendations of this report, with no restrictive covenant placed on the freehold. This would leave the only controls through the Planning Policies. Whilst this may increase the capital receipt it will give less assurance to the communities, of the Council’s commitment to keep neighbourhood facilities for the foreseeable future.
- 3.3.4 Councillors can choose to accept the recommendations of this report for the reasons stated within the report. This is the preferred option.

## **4. Implications (including financial implications)**

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### **4.1 Policy**

### **4.2 Resources and Risk**

- 4.2.1 The Council budget for 2020/21 includes a reduction of income through the sale of shops of £100k. If all of the shops are sold in the financial year this will generate an additional pressure of £100k next year so sales may need to be phased to mitigate budgetary pressures.

### **4.3 Legal**

- 4.3.1 Section 123 of the Local Government Act 1972 (LGA 1972) enables the Council to dispose of land “in any manner they wish” subject to the caveat that such a disposal (s) must be sold for the best price reasonably obtainable. It follows that Section 123 LGA 1972 imposes on the Council a duty to achieve the best price reasonably obtainable.
- 4.3.2 The Council must in order to demonstrate it has complied with its duty to achieve the best price reasonably obtainable, seek to obtain an independent assessment of the open market value of each community centre shop in accordance with the “Red Book” guidance of the Royal Institution of Chartered Surveyors ensuring that the advice sought will cover such matters as value in existing condition, with proposed restrictions and for currently permitted uses.
- 4.3.3 As noted at paragraph 1.4 that the Council intends to impose a restrictive covenant which will restrict the use of each community centre shop by ensuring it remains a retail shop within class A1. Such a restriction may well

reduce the value of the community centre shop, (as noted at paragraph 3.11) potentially leading to a sale at undervalue, which is contrary to the Council's duty under Section 123 LGA 1972.

In relation to A1 Use Classes the use incorporates (a) retail sale of goods other than hot food, (b) Post Office (c) sale of tickets or travel agency (d) sale sandwiches/cold food off premises (e) hairdresser (f) hairdresser (g) funeral director (h) hire shop (i) laundrette/dry cleaners (j) internet café

4.3.4 A disposal at less than best is permitted with the consent of the Secretary of State under Section 123 (2) LGA 1972 or under certain specified circumstances as detailed in the General Disposal (England) 2003. If the valuation advice received by the Council indicates the potential for the sale at an undervalue (as a result of the restriction) the Council will need to satisfy itself and demonstrate (in order to comply with its duty under Section 123 LGA 1972) that the purpose for which the community centre shops are being disposed of is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;-

- (a) the promotion or improvement of economic well-being
- (b) the promotion or improvement of environmental well-being; and
- (c) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed two million pounds

4.3.5 In addition to the above it should be noted that for a restrictive covenant to be enforceable the party seeking to enforce such a covenant must have retained land which is (a) sufficiently definable (b) capable of being benefited by the covenant at the time it was imposed and (c) continue to benefit from the covenant at the time enforcement is sought. It is noted that the community centre shops all form part of larger areas of land which are at present retained by the Council. On that basis the restrictive covenant proposed is both able to bind successive owners or occupiers and is capable at present of being enforced by the Council.

4.3.6 However, a person with an interest in freehold land, subject to a restrictive covenant can apply to the Upper Tribunal (Lands Chamber) (the "UT") for a restrictive covenant to be discharged or modified. There are a number of grounds on which a restrictive covenant can be released or modified and the UT must be satisfied the following conditions have been met;-

- (a) Restriction is obsolete. Due to changes in the character of the property neighbourhood or material circumstances the restriction is obsolete (i.e. the original purpose can no longer be served).
- (b) Impedes a reasonable user
- (c) With the agreement of the beneficiaries of the restrictive covenant.

4.3.7 It is noted pursuant to paragraph 2.2.3 that the Council intends to offer existing tenants of each community centre shop the opportunity (for a limited period) the option to purchase the freehold. This form of disposal is a sale by Private Treaty. In order to satisfy the Council's duty under Section 123 LGA 1972 without marketing aspect of a private treaty disposal must be justified by the Council, where it can demonstrate that for example (a) the Council's corporate

objectives and best consideration duty can best be achieved by sale to a particular purchaser or (b) a purchaser has a particular interest in purchasing the property.

- 4.3.8 The Council must ensure in order to comply with Section 123 LGA 1972 that the disposal of any community centre shop, not sold by way of Private Treaty must be advertised on the open market for an adequate length of time (deemed to be 3 months) in order to capture all potential interest, the Council must ensure that the process is transparent open and communicated appropriately.

#### **4.4 Equality and Health**

- 4.4.1 The Council owns the shops in a landlord capacity, the sale of the freehold does not affect the lease and therefore there will be no changes to the services provided by the shops as a result of the sale.

#### **4.5 Consultees (Internal and External)**

- 4.5.1 Ward Councillors, Legal, Finance, Planning.

#### **4.6 How the Proposals deliver Priority Outcomes**

- 4.6.1 The proposals are aligned to the Corporate Plan Vision and the priority to make best use of our assets and provide value for money.

#### **4.7 Environmental Implications (including climate change issues)**

- 4.7.1 The disposals support the Climate Emergency motions passed at Council in June 2019. The investment portfolio is to meet the minimum energy regulations of EPC C or above.

#### **4.8 Other Implications**

- 4.8.1 The Council has substantial property holdings, asset management involves evaluating the portfolio to ensure we retain only those assets that meet our corporate plan and in the case of the investment portfolio, that we have a balanced commercial portfolio to reduce our risks.
- 4.8.2 The Capital receipts realised from the sale of these shops will be reinvested in the strategic priorities determined through the Capital projects programme process.
- 4.8.3 Note that neighbourhood shops held on the HRA fund are not forming part of this sale as these sites are retained as part of the housing strategy.

### **5. Background Papers**

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Appendix 1 - List of Shops

## **6. Next Steps**

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6.1 Valuations will be procured, and tenants contacted to progress the sales.

**Kevin Langley**  
**Economic, Growth and Regeneration Manager**