

Report Title:	Sale of Land at Stafferton Way
Contains Confidential or Exempt Information	Report and Appendices A&B Part I Appendices C, D and E Part II Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.
Cabinet Member:	Councillor Andrew Johnson - Cabinet Member for Business, Economic Development & Property
Meeting and Date:	Cabinet – 16 th December 2021
Responsible Officer(s):	Duncan Sharkey – Chief Executive
Wards affected:	Oldfield

REPORT SUMMARY

Absolutely Leisure holds a long leasehold over The Arena, Unit 4 Howarth Road. The property is split in two sections following the construction of the Stafferton Way Link Road with a small plot of land south of the link road being used for car parking.

Terms have been agreed to sell this area of land to Absolute Leisure to enable its development for residential units. The sale is conditional on obtaining planning permission.

This report recommends the transaction which will be by way of an option to purchase, followed by a purchase if planning consent is granted for redevelopment and a deed of variation to the existing lease.

The option price to be paid on exchange is £5,000. On completion a minimum sum of £95,000 is to be paid plus 33% of the value uplift from the receipt of planning consent, capped at £450,000.

The purchaser will be responsible for the Council's reasonable legal fees in the transaction.

The transaction enables the Council to receive a capital receipt whilst maintaining the income from the remaining property.

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That Cabinet notes the report and:

- i) Approves the Council entering into an option agreement with Absolute Leisure for the sale the freehold interest of land south of the Stafferton Link Road for £5,000 and the subsequent sale of the freehold on receipt of planning consent under the terms of the option agreement.
- ii) Delegates authority to the Chief Executive in consultation with the Cabinet Member for Business, Economic Development & Property to negotiate the legal contracts required to complete the transactions.

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

Options

Table 1: Options arising from this report

Option	Comments
Enter into an option agreement to sell the freehold to the tenant in the event the planning application is successful. This is the recommended option	If planning consent is obtained the sale of the land will provide the Council with a capital receipt and additional dwellings will be provided. If planning consent is not obtained the leasehold arrangements remain as existing.
Do not enter into the option agreement to sell the land	No capital receipt and no additional dwellings will be provided.

- 2.1 The Arena, 4 Howarth Road, is a commercial unit totalling 27,600 sq ft of warehouse and office accommodation currently utilised as an indoor go kart track along with external loading and parking areas. The property is located on Howarth Road, adjacent to the Stafferton Way Link Road.
- 2.2 When Stafferton Way was extended in 2016 the new road split the site of 4 Howarth Road into two areas leaving the majority of the site on the corner of Howarth Road and Stafferton Way but a smaller parcel of land remained on the south side of Stafferton Way which is used as a car park and is sublet by the tenant to the Volkswagen Garage in Howarth Road and comprises 0.24 acres with approx. 50 car parking spaces. The plan at Appendix A shows the two areas of land included in the lease. The area shaded pink is the part under discussion in this report.
- 2.3 The property is leased to Absolutely Leisure under a lease for 125 years from 10 January 1990. The annual rent payable to the Council is £70,000 pa and is subject to upwards only rent reviews every 5 years to 30% of market value.
- 2.4 Absolutely Leisure is a charitable organisation which provides access to leisure facilities to children and young people with additional needs as well as to the general public. The tenant has been particularly hard hit by the Covid pandemic having been unable to open for many months. In addition, they were not eligible for the government grants which were based on rateable value, because the rateable value of the unit exceeded the rateable value level for the grants. Consequently, the tenant has been seeking to raise funds.
- 2.5 Absolutely Leisure have approached the Council to purchase the freehold of the detached car park in order to sell it on for residential development.

- 2.6 The lease still has over 90 years to run before it would return to RBWM. The tenant cannot change the use without the consent of the Council as the landlord. The Council does not have to give landlord's consent to the proposal.
- 2.7 By selling the land to the tenant value is released and the Council shares in the increase.
- 2.8 The money raised by the sale will assist the Charity with its current cash flow problems, including the repayment to RBWM of considerable rent arrears.
- 2.9 Heads of Terms (contained in Appendix B) have been provisionally agreed with Absolutely Leisure as follows:
- The transaction to be by way of an option to purchase the freehold, the option to run for 5 years and the option payment is £5,000. This will be deducted from the purchase price should the option be enacted.
 - When the option is enacted the purchase price is to be £100,000 plus one third of the sale price of the land after it has obtained planning consent, but subject to a total cap of £450,000.
 - The purchaser is to obtain planning consent at its own cost.
 - Each party will be responsible for its legal costs

3. KEY IMPLICATIONS

- 3.1 The option period is for a term of 5 years.
- 3.2 The option will not restrict the Council to undertake its statutory obligations and activities.

Table 2: Key Implications

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
Option exchanges, planning permission achieved and land sold	Option not exchanged	Sale price of £250,000 secured	Total sale proceeds of £350,000	Total sale proceeds of £450,000	31 st March 2022 to exchange option

4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 The Council will receive a non-refundable payment of £5,000 for entering into the option agreement

- 4.2 In the event that a planning application for residential development is successful and the land is sold the Council will receive a minimum of £100,000
- 4.3 In addition to the minimum sale price of £100,000 the Council will receive 33% of the sale price for the land with the total received by the Council capped at £450,000. As such the additional sum could total £350,000.
- 4.4 The annual rent received from the remaining asset will remain unchanged at £70,000 pa which is subject to upwards only review every 5 years.
- 4.5 An external valuation has been undertaken by Kempton Carr Croft acting as an independent valuer. The valuation report confirms the agreed price offers fair value to the Council. A copy of the valuation report is contained in Appendix D which is Part II and not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.
- 4.6 A more detailed commentary on the valuation and division of value is contained in Appendix C. A copy of the valuation report is contained in Appendix D which is Part II and not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.
- 4.7 All planning costs and fees are the responsibility of the tenant.
- 4.8 The table below summarised the financial implications of the transaction.

Table 3: Financial impact of report's recommendations

REVENUE COSTS	2021/22	2022/23	2023/24
Additional total	£0	£0	£0
Reduction	£0	£0	£0
Net Impact	£0	£0	£0

CAPITAL COSTS	2021/22	2022/23	2023/24
Additional total	£0	£0	£0
Reduction	£5,000	£0	£0
Net Impact	£5,000	£0	£0

5. LEGAL IMPLICATIONS

- 5.1 RBWM has the power to dispose of land in its ownership under section 123 of the Local Government Act 1972 provided the land is sold at a consideration not less than the best that could reasonably be obtained.
- 5.2 A sale to anyone other than the tenant would produce a lower price, due to the restrictions on the lease, and so the agreed terms offer the best consideration reasonably obtainable for the Council under the terms of section 123 of the Local Government Act 1972.

6. RISK MANAGEMENT

6.1 There is little or no risk to the Council in completing this transaction.

Table 4: Impact of risk and mitigation

Risk	Level of uncontrolled risk	Controls	Level of controlled risk
Transaction does not proceed	Low	Tenant benefits by completing.	Low
Planning Permission not granted	Medium	The site is not allocated for residential use in the new BLP but is in a central location on brownfield land	Medium

7. POTENTIAL IMPACTS

7.1 Equalities. An Equality Impact Assessments screening form has been completed and is available on the [council's website](#)

7.2 Climate change/sustainability. N/A

7.3 Data Protection/GDPR. No personal information has been used or stored.

8. CONSULTATION

8.1 Internal consultation with CLT and Cabinet Member. Report also taken and discussed with Capital Review Board and approved.

9. TIMETABLE FOR IMPLEMENTATION

9.1 Implementation date if not called in: Immediate. The full implementation stages are set out in table 5.

Table 5: Implementation timetable

Date	Details
4 th January 2022	Instruct solicitors to prepare land option agreement
31 st March 2022	Conclude legal process and exchange option agreement

10. APPENDICES

10.1 This report is supported by 4 appendices:

- Appendix A – Location Plan and Photographs
- Appendix B – Title Plan

- Appendix C – Valuation Commentary – Part II Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.
- Appendix D – Kempton Carr Croft Valuation Report – Part II Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.
- Appendix E – Development Appraisal prepared by KCC - Part II Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

11. BACKGROUND DOCUMENTS

There are no background documents

12. CONSULTATION

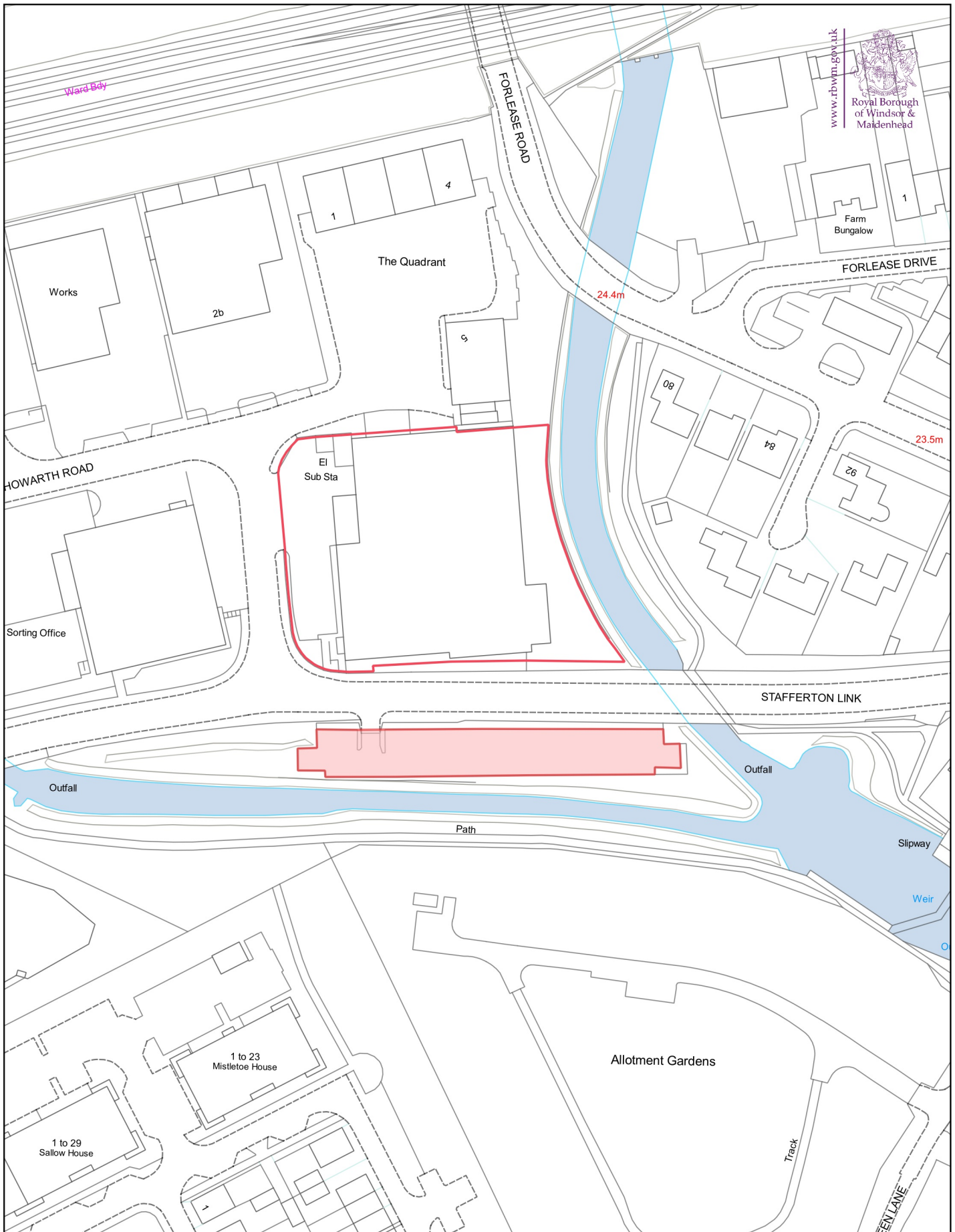
Name of consultee	Post held	Date sent	Date returned
<i>Mandatory: Statutory Officers (or deputy)</i>			
Adele Taylor	Executive Director of Resources/S151 Officer	30/11/21	07/11/2021
Emma Duncan	Deputy Director of Law and Strategy / Monitoring Officer	30/11/21	
<i>Deputies:</i>			
Andrew Vallance	Head of Finance (Deputy S151 Officer)	30/11/21	
Elaine Browne	Head of Law (Deputy Monitoring Officer)	30/11/21	08/11/2021
Karen Shepherd	Head of Governance (Deputy Monitoring Officer)	30/11/21	
<i>Other consultees:</i>			
<i>Directors (where relevant)</i>			
Duncan Sharkey	Chief Executive	30/11/21	
Andrew Durrant	Executive Director of Place	30/11/21	
Kevin McDaniel	Executive Director of Children's Services	30/11/21	
Hilary Hall	Executive Director of Adults, Health and Housing	30/11/21	30/11/2021
<i>Heads of Service (where relevant)</i>			
N/A			
<i>External (where relevant)</i>			
N/A			

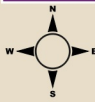
Confirmation relevant Cabinet Member(s) consulted	Cabinet Member for Business, Economic Development & Property	Yes
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REPORT HISTORY

Decision type:	Urgency item?	To follow item?
First entered the Cabinet Forward Plan: 15 th September 2021	No	No

Report Author: Amanda Dennis, Commercial Estates Surveyor, Property Services Tel 07787 912750 / Chris Pearce, Head of Capital Projects and Asset Management, RBWM Property Company Ltd Tel 07825 430969



<p>Description:</p> <p>Site 4 Howarth Road Maidenhead SL6 1AY</p>	<p>Drawing No:</p> <p>EO2752 F</p> <p>Date:</p> <p>05/08/2021</p>	<p>OS Ref:</p> <p>SU8980 nw</p> <p>Scale at A4 Port:</p> <p>1:1250</p>	<p>Royal Borough Of Windsor and Maidenhead</p> <p>© Crown copyright and database right 2021. Ordnance Survey 100018817</p> 
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Heads of Terms – Detached Car Park, The Arena, Stafferton Way, Maidenhead.

SUBJECT TO CONTRACT

Site Address	Detached car park, Stafferton Road, Maidenhead
Seller	The Royal Borough of Windsor & Maidenhead of Town Hall, St Ives Road, Maidenhead, Berkshire. SL61RF
Purchaser	Absolutely Leisure, The Arena, Stafferton Way, Maidenhead, SL7 3HN
Vendor's Solicitors	Shared Legal Solutions, Wokingham Borough Council, Shute End, Wokingham, RG40 1WH
Purchaser's Solicitors	Winkworth Sherwood
Transaction	An option to purchase the freehold title of the property
Option period	The option to run for a period of 5 years from completion.
Option price	The price for the option is £5,000. This will be deducted from the purchase price should the option be enacted. If it is not exercised the Council will retain it.
Purchase Price	<p>Upon exercise of the option, the purchase price is to be £100,000 plus an overage of one third of the sale price of the land after it has obtained planning consent but subject to a total cap of £450,000.</p> <p>The cap would be indexed in line with UK House Price Index compiled by the Land Registry between now and when the sale takes place.</p> <p>The overage is to be calculated as 33.33% of the difference between Base Value of £100,000 and the Enhanced Value (with the benefit of Planning Permission.)</p>
Planning	<p>The purchaser is to obtain, at its own cost, planning consent for the proposed use.</p> <p>The Council's consent, as vendor, will be required to the proposed planning application prior to submission, not to be unreasonably withheld or delayed and will be assumed to be acceptable if no response is received within 10 working days</p>
Use:	The site to be redeveloped for residential purposes.

Timings	<p>The option to be exchanged within 3 months of receipt of draft Option issued by the purchaser's solicitors.</p> <p>AL & RBWM Option Agreement to be exchanged simultaneously with AL and Developer Option Agreement.</p> <p>Option Agreement between AL and RBWM to be conditional upon Option between AL and Developer being exercised</p> <p>Following AL receiving notice to complete from Developer, AL to serve Notice on RBWM confirming the Purchase Price and exercising the option to complete the Freehold purchase.</p> <p>Completion to be 6 months (or earlier by agreement between the parties) from notice to exercise, and to be simultaneous with AL and Developer Option completion.</p>
Lease	<p>Upon completion of the purchase, the land will be surrendered from the lease between RBWM and A Harvey Ltd dated 10 January 1990 (as amended). The retained land will continue to be subject to the lease.</p>
Legal Costs	<p>-Purchaser to pay the Council's reasonable legal costs and surveyors costs.</p>
Compliance with Legislation	<p>Purchaser to be responsible for ensuring compliance with all necessary legislation relating to all activities carried out under the right granted. In particular to ensure the land has the relevant planning consent.</p>
Council's Approval	<p>The sale is subject to approval by the relevant Council Officer, Member or Committee.</p>
Other terms	<p>Such other terms as are considered necessary by the Council's Solicitor for a transaction of this nature.</p>