



Cabinet Report

Date:	22nd February 2024
Title:	Sale of Land in High Wycombe (“the Site”) to the existing Leaseholder (“the leaseholder”)
Cabinet Member:	Cllr John Chilver; Cabinet Member for Accessible Housing and Resources
Contact officers:	John Reed / Paul Redstone john.reed@buckinghamshire.gov.uk ; paul.redstone@buckinghamshire.gov.uk
Ward affected:	Chiltern Villages
Local Councillors:	Councillor Dominic Barnes, Councillor Zahir Mohammed and Councillor Mark Turner
Recommendations:	That Cabinet approve: <ol style="list-style-type: none">1) Buckinghamshire Council (“BC”) selling a long leasehold interest in the Site at Wycombe Air Park (“WAP”) to the leaseholder (“the principal transaction”). This will generate a capital receipt which is budgeted for in the MTFP.2) BC simultaneously completing on all associated legal agreements including Deeds of Variation to existing legal agreements between the parties (“related transactions”).3) Granting delegated authority to the Director of Property Assets, in consultation with the Cabinet Member for Accessible Housing and Resources, Head of Legal and the S151 Officer to progress legal due diligence, obtaining all necessary sign off reports and the carrying out of all necessary due diligence prior

to exchange/completion on both the principal and related transactions (“the overall transaction”) on the terms set out in the Heads of Terms (Appendix 1 in the Confidential Appendix).

- 4) Approving a budget spend on legal and professional fees to progress the transaction, noting that this is to be funded from the Capital Receipt and does not require a budget amendment.**

Reasons for recommendations: The overall transaction will

- 1) deliver a significant net capital receipt which will contribute to BC’s capital receipt target to fund its existing priority capital projects. The consideration agreed is more than the current projected figure in BC’s Medium Term Financial Plan (“MTFP”).
- 2) maintain most of the revenue currently emanating from the land at WAP. This will continue to contribute to BC’s revenue target as set out in the MTFP.
- 3) create an opportunity for a significant additional revenue receipt to BC if planning can be secured on other land within WAP that exists beyond the Site. This is not yet budgeted for in the MTFP.
- 4) enhance the prospects for an upgrade of WAP as an operational airfield.

BC and the existing Leaseholder (“the Leaseholder”) both acknowledge that a key driving factor for the overall transaction is to improve the long-term viability and sustainability of WAP.

The Leaseholder has stated that it, along with it wishes to invest in WAP to make it more economically viable in the long term. The Leaseholder’s ambition is to provide a more user friendly, modern, and attractive airfield for the aviation community for decades to come. The Leaseholder’s verbal commitment is to create new facilities and buildings to maintain the current audience and to attract new people to aviation as well as new aircraft operators.

1. Executive summary

- 1.1 In September 2022, the Leaseholder signed a Collaboration Agreement (“CA”) with BC to investigate the potential to sell surplus land at WAP (plan showing the Site - see Appendix 1).
- 1.2 In May 2023, the Leaseholder, with financial backing from an investor, approached BC to acquire a 150-year leasehold interest in the Site. Linked to this were other terms to vary their existing leasehold interest on WAP.
- 1.3 In October 2023, the Leaseholder put forward a “best and final unconditional cash offer” to BC.
- 1.4 BC’s Property team is now seeking Cabinet approval to accept this offer.

2. Content of report

2.1 Background to the transaction:

- 2.2 In July 2022, BC’s Cabinet delegated authority on all matters relating to the sale of the Site to the Director of Property and Assets in consultation with the Cabinet Member for Finance, Resources, Property and Assets (now titled Cabinet Member for Accessible Housing and Resources), Head of Legal and S.151 Officer.
- 2.3 This delegated authority was subject to the terms being in accordance with those approved by Cabinet on the same date.
- 2.4 In September 2022, the parties signed a CA to investigate the potential to sell the Site which is identified as an employment regeneration site in the Wycombe District Local Plan 2019.
- 2.5 Minimum pricing figures were incorporated in the CA.
- 2.6 In May 2023, the Leaseholder, with financial backing from an investor, approached BC to acquire a 150-year leasehold interest in the site.
- 2.7 In October 2023, it put forward a “best and final cash offer” to BC.
- 2.8 The Leaseholder is now seeking a decision from BC as to whether it agrees to the terms so that the transaction can be legally documented.
- 2.9 **The Site:**
- 2.10 The Site is a 13-acre net (18-acre gross) site within WAP.

- 2.11 It, along with other buildings on WAP, currently provides hangar space and other employment buildings necessary for the airfield to operate.
- 2.12 Feedback from the Leaseholder is that WAP is in a state of gradual decline. This trend is set to continue without a material cash injection.
- 2.13 The Site is identified as a strategic employment site (HW15) within the adopted Wycombe District Local Plan (2019); in addition, there is potentially a further 6-12 acres of land within WAP that is also available for development, it too falling within HW15 – see Appendix 2. Proposals for B1, B2 and B8 uses and sui generis employment generating uses will all be permitted within this designated zone.
- 2.14 The Leaseholder has secured financial backing from an investor (“the funder”) to upgrade WAP. A pre-condition of the funder is that the Leaseholder acquires the Site on a long leasehold basis on a peppercorn rent (150-year term minimum).
- 2.15 **Legal interests within WAP:**
- 2.16 *BC’s freehold interest within WAP.*
- 2.17 All of WAP; including the Bateman Chapman building currently occupied by Airways Aero Associations Ltd (“AAA”); Plot 3, an office building with car parking; 3 units leased to Booker Gliding Club (“BGC”); a hangar/office occupied by ATS Group (“ATS”) and a shed/small plot of land until recently occupied by Barry Parkhouse (now vacant).
- 2.18 *AAA’s legal interest within WAP.*
- 2.19 All of the Site other than the land owned by BC leased to ATS and BGC; the Bateman Chapman building and the Bellman hangar.
- 2.20 AAA also lease Plot 3 on a peppercorn rent but do not occupy it. It is sublet to a car dealership company.
- 2.21 *Other legal interests within WAP.*
- 2.22 BGC occupy their three units on long term leases from BC albeit a nominal rent is only being paid.
- 2.23 ATS occupy their building on a leasehold basis.
- 2.24 *The Site.*
- 2.25 The Site comprises part of AAA’s leasehold interest along with the Bateman Chapman building and units owned by BC that are directly let to ATS and BGC.
- 2.26 All land ownerships are shown on the plan in Appendix 2. Full details of the various legal agreements are set out in the Confidential Appendix.

2.27 **BC and the leaseholder's contractual relationship under the CA**

- 2.28 The CA was signed in September 2022. A target date to agree a vacant possession strategy has passed without an agreement but the CA remains live until September 2024 with both parties able to agree to a 12-month extension if suitable progress has been made prior to that date.
- 2.29 The aim of the CA is for both parties to jointly work up a business case for a potential sale of the Site, subject to minimum net land receipts being achieved.
- 2.30 Minimum net land price receipts are stated in the CA and are set out in the Confidential Appendix.
- 2.31 Whilst the CA is a legal contract, it does not obligate either party to commit to a sale even if the minimum net land price receipts are achieved, albeit there is a Good Faith clause contained in the documentation.
- 2.32 The CA's ultimate business plan objective is to generate both a capital receipt for each party (no less than minimum land price) and to ensure the Site is brought forward as a regeneration initiative in accordance with its employment status set out in the Wycombe District Local Plan 2019.
- 2.33 The CA envisages a site sale to a third party, not the leaseholder as is now being considered. In fact, the CA specifically excludes either BC or the leaseholder from bidding for the Site.
- 2.34 The CA also specifically mentions that any sale must meet S123 guidelines as set out the Local Government Act 1972. This guidance states that any Council selling land must seek to obtain "best price that can reasonably be obtained in the market." If there is doubt, or a party wishes to sell to someone else or off market, prudence suggests that an independent valuer confirms that the transaction meets S.123 guidance.
- 2.35 **Leaseholder's unsolicited financial proposal:**
- 2.36 In October 2023, the leaseholder formally approached BC to acquire a long lease on the Site.
- 2.37 It has secured financial backing to upgrade WAP. A pre- condition of the funder is that the Leaseholder acquires the Site on a long leasehold basis.
- 2.38 A copy of the Leaseholder's latest proposal is contained in Appendix 1 of the Confidential Appendix.
- 2.39 The Leaseholder has indicated that the window for this transaction is limited as its funder has set strict timeline for progress.

- 2.40 It has also said that “it may lose interest in the running of WAP if it cannot secure an equity partner to finance an upgrade of facilities.....the airpark, as is, is financially unviable and urgently needs a cash injection.”
- 2.41 The CA does not cater for this scenario, so any decision is subject to mutual discretion.
- 2.42 *Outline of Leaseholder’s proposed financial offer.*
- 2.43 To pay BC an unconditional cash payment in return for a new 150-year lease subject to a peppercorn payment.
- 2.44 The Leaseholder will continue to pay its current contracted rent on a reduced WAP demise. All other terms of the lease will remain as currently drafted other than those referred to in the Confidential Appendix.
- 2.45 The Leaseholder will seek to deliver open storage on land allocated for employment use elsewhere on WAP at its cost. Net income generated from this use to be split on the terms set out in the Confidential Appendix.
- 2.46 The Leaseholder will remain obligated to keep BGC on site in accordance with its current agreement.
- 2.47 BUT: the Leaseholder would not be under a contractual obligation to progress a planning application on the Site nor to carry out improvements anywhere on WAP.
- 2.48 If the Leaseholder does not invest an agreed sum in WAP within an initial period, BC will receive a further payment on terms stated in the Confidential Appendix.
- 2.49 **Benefits of the transaction for the Council:**
- 2.50 *Financial.*
- 2.51 Significant capital receipt to BC, which exceeds the current MTFP target figure for the Site.
- 2.52 BC will virtually maintain its current income stream from its existing WAP ownership despite selling off on a long leasehold basis a major part of the estate.
- 2.53 Potential significant increase in revenue for the Council if the Leaseholder achieves planning and delivers an open storage development. This income will contribute to Property & Asset's increased Revenue MTFP target.
- 2.54 *Non-financial.*
- 2.55 The development potential of the Site would be brought forward 25 years, thus realising the aspirations of the Wycombe District Local Plan 2019.
- 2.56 Enable the Leaseholder to create a modern “best in class” aerodrome by granting a long lease which is needed to secure funding to invest in their existing buildings and facilities.

2.57 **Recommendation:**

2.58 If BC is seeking a capital receipt from this asset today, then the recommendation is to accept the Leaseholder's financial proposal. Whilst the figure is marginally below the minimum price stated in the CA, Officers believe that the terms for the overall transaction are in line with market pricing today, particularly as the Site is being acquired on an unconditional basis and most of the current rent remains payable to BC. In addition, further site assembly and planning needs to be achieved before any comprehensive development can take place.

3. Other options

3.1 *Seek to renegotiate financial terms with the Leaseholder to achieve a better final financial output.*

3.2 The Leaseholder has said that there is no further room for negotiation so there is a risk that if BC seek to vary the terms currently put forward, the Leaseholder and its funder may terminate discussions.

3.3 If the capital receipt is a priority for BC, this is not a recommended option to pursue.

3.4 *Progress as outlined in the CA.*

3.5 Continue to progress a vacant possession strategy and once achieved to then carry out a formal marketing of the Site for a planning compliant redevelopment scheme.

3.6 Agree detailed parameters for a sale with the Leaseholder in accordance with the CA.

3.7 This is a realistic option but quantum of cash receipt and timing both uncertain.

3.8 The Leaseholder may also decide to not support this strategy whereupon a sale would not be possible.

3.9 Again, if the capital receipt is a priority for BC, this is not a recommended option to pursue.

3.10 *Do nothing.*

3.11 BC will be unable to take a capital receipt on the Site until lease expiry which is some years away.

3.12 BC will have a significant gap in its MTFP Capital Receipts target, which will mean that alternative receipts will need to be identified, or the capital programme reduced through Member agreement.

3.13 BC will not realise the local plan aspirations to bring the Site forward as a employment led regeneration initiative.

4. Legal and financial implications

4.1 *Legal.*

4.2 Local authorities are given powers under the Local Government Act 1972 to dispose of land in any manner they wish. The main constraint is that the disposal must be for the best consideration reasonably obtainable pursuant to section 123(1) of the Local Government Act 1972.

4.3 It is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. Section 128(1) of the 1972 Act confers on the Secretary of State power to grant a general Consent for the purposes of land disposals in certain circumstances. The terms of the consent mean that specific consent is not required for the disposal of any interest in land which the authority considers will help to secure the promotion or improvement of the economic, social or environmental well-being of its area. Authorities can also rely on the well-being criteria when considering disposals at less than best consideration.

4.4 Additionally, the difference between the unrestricted value of the land to be disposed of and the consideration of the disposal does not exceed £2,000,000. The “best value consideration report” will confirm this.

4.5 A “best value consideration report” can be obtained with four-weeks' notice. This would be prepared by an independent valuer if Cabinet approve the Officers' recommendations. The valuation advice will be prepared in accordance with S123 Local Government Act 1972 provisions and will confirm that the offer can be relied upon to provide best value for the site in the circumstances.

4.6 The Leaseholder's current financial proposal is included in Appendix 1 of the Confidential Appendix. This will be finalised once Member approval is obtained to dispose of the Site.

4.7 Legal services' external consultants have undertaken an initial review of the title to the property and have seen the most recent Heads of Terms. A detailed legal report will be undertaken prior to exchange of the transaction and will be shown to the inhouse legal team for approval.

Financial.

4.8 **Capital Implications:** The capital receipt target included in the MTFP for the disposal of the Site will be exceeded by the level of bid received from the leaseholder.

4.9 **Revenue implications:** The loss in Revenue income from rent as part of the sale of the Site will be absorbed and managed across the Property portfolio within existing Property Rental MTFP Revenue budgets. Detail of this is set out in the Confidential Appendix.

- 4.10 There will be a one-off cost to the Council for legal and consultancy fees on the disposal. This will be funded by reducing the net capital receipt received from the disposal. Because of the way such costs are accounted for (as an offset against the receipt), no technical budget change is required for this. If for whatever reason the transaction does not take place and costs have been incurred, they will need to be written off to Revenue and funded from within Service Budgets in Property.
- 4.11 **Asset Status:** The land asset for site B is held on the Council's balance sheet. On sale, this figure will be adjusted to reflect the reduced ownership of WAP. The long-term lease qualifies as a 'disposal' of the asset, and therefore part of the asset will no longer be held on BC's balance sheet. This is a non-cash change and does not impact on General Fund.
- 4.12 **Covenant status of purchasing entity:** Further due diligence will be needed on the covenant status of the purchasing entity and verifying their sources of funding as part of the finalisation of the transaction.

4a Director of Legal & Democratic Services comment

- 4.13 The Director has read and approved the report.

4b Section 151 Officer comment

- 4.14 The Capital Receipt is budgeted for in the MTFP; not progressing this deal at some point will result in a gap in the funding for the Capital Programme which will either require new receipts or a reduction in the Programme. Best Value for the site needs to be achieved.
- 4.15 The Revenue impacts from loss of income will be managed within the existing MTFP revenue budgets, in Property.
- 4.16 If the transaction does not go ahead then the Property service will need to find revenue savings to fund the costs, as there will be no offsetting Capital Receipt.

5. Corporate implications

- 5.1 Property – report prepared by Property.
- 5.2 HR – Not relevant.
- 5.3 Climate change and sustainability – a sale may have a positive impact on improving the EPC and MEES rating of the property if AAA ultimately invest in the property.
- 5.4 Value for money – A report is to be obtained from Independent Chartered surveyors seeking confirmation that the transaction meets the compliance criteria of S123 of the Local Government 1972 which states that except with the consent of the Secretary of State, a local authority shall not dispose of land "for a consideration less

than the best that can reasonably be obtained". This will be prepared prior to presenting a paper to Cabinet.

6. Local councillors & community boards consultation & views

- 6.1 Ongoing discussions held with Cllr Chilver who in principle supports the transaction.
- 6.2 Ongoing consultation has also been held with relevant local Councillors including Ward members prior to matter being put to Cabinet.

7. Communication, engagement & further consultation

- 7.1 A communications plan has been discussed with Property team's communication forward plan lead. No specific plan is needed at this stage as the transaction is a disposal of a legal interest.

8. Next steps

- 8.1 *Next steps if Leaseholder offer is to be pursued.*
- 8.2 Finalise negotiations with the Leaseholder on a Without Prejudice/Subject to Contract basis.
- 8.3 Obtain a S.123 valuation report from a RICS registered valuer and ensure Best Consideration as an issue is suitably addressed.
- 8.4 Seek approval from internal procurement team for the overall transaction as the opportunity has not been marketed in accordance with the CA.
- 8.5 Agree Consultation strategy with key stakeholders including BGC.
- 8.6 *Next steps if the Leaseholder offer is to be rejected.*
- 8.7 Inform the Leaseholder of the decision and seek clarity from them as to whether it wishes to continue investigating a disposal of the Site to a third party or whether it is prepared to increase its offer.

9. Background papers

- 9.1 None other than appendices attached.
- 9.2 If you have any questions about the matters contained in this report, please get in touch with the author of this report, Paul Redstone (paul.redstone@buckinghamshire.gov.uk) or his Head of Service (john.reed@buckinghamshire.gov.uk).

10. Your questions and views

- 10.1 If you have any questions about the matters contained in this report, please contact the author of this report. If you have any views that you would like the cabinet member to consider, please inform the democratic services team by 5pm on 20 February 2024. This can be done by email to democracy@buckinghamshire.gov.uk.

