
Subject:	APPROPRIATION OF ASSETS
Meeting and Date:	Cabinet – 1 March 2017
Report of:	Roger Walton, Director of Environment and Corporate Assets
Portfolio Holder:	Councillor Trevor Bartlett, Portfolio Holder for Property Management and Public Protection
Decision Type:	Key Decision
Classification:	Unrestricted

Purpose of the report: To appropriate the land and property listed in appendices A and B to be held for the purposes of Section 120 of the Local Government Act 1972.

Recommendation: It is recommended that:

- (i) Cabinet agree the principle that the commercial property assets listed in appendices A and B currently held for the purposes of the Housing Act 1985 are appropriated pursuant to section 122 of the Local Government Act 1972 to be held for the purposes of section 120 of the Local Government Act 1972.
- (ii) The relevant accounting transactions are undertaken during the 2017/18 financial year to reflect the appropriation of the assets from the Housing Revenue Account (HRA) to the General Fund (GF).
- (iii) The Director of Environment and Corporate Assets is authorised to approve the precise areas of land to be appropriated and to make the appropriation.

1. Summary

1.1 This report seeks to obtain approval for commercial property assets currently held for the purposes of the Housing Act 1985 and accounted for within the Housing Revenue Account (HRA) to be appropriated by the General Fund (GF) in accordance with the provisions of the Local Government Act 1972.

2. Introduction and Background

2.1 As at 31 March 2016 the Council owned 4,373 dwellings, 906 garages, 12 shops, an operational office, a mobile phone mast site, two car parks and various areas of land held for the purposes of the Housing Act 1985 and accounted for in the HRA.

2.2 Property assets such as shops and garages were originally provided under Housing Act powers in connection with housing accommodation provided by the Council but over time the policy of right to buy has resulted in areas becoming increasingly mixed between HRA and privately owned housing. The effects of this are:

- Only 19% of garages are currently let to Council house tenants. Consequently, it can no longer be claimed that the primary purpose of these assets is to contribute to the achievement of a housing objective;
- Shop premises are let on commercial leases and serve a mixed tenure community;

- Other properties such as the Albany Place Car Park and the Camden Crescent car park were acquired for Housing Act purposes but have not been developed for housing;
- The William Muge and Snelgrove sheltered housing schemes have been demolished and the sites are now cleared, awaiting development opportunities;
- These assets are all currently accounted for in the HRA. They have a declining net income and require an alternative approach.

2.3 It is clear that these properties are now serving the community as a whole, and not just housing tenants. As the properties are no longer required for Housing Act purposes it is recommended that they should be appropriated so as to be held for another statutory purpose. The related accounting entries should be in the General Fund and not the Housing Revenue Account as the properties proposed for appropriation are no longer required for “housing (HRA)” purposes.

2.4 The shops, commercial properties, car parks, garages and land listed in the appendices, have remained in the HRA as a result of being acquired using housing powers having originally been provided in connection with housing accommodation provided by the Council but can no longer be legitimately claimed to held for the purposes of providing housing accommodation under Part II of the Housing Act 1985. A list of the properties proposed for transfer can be found in Appendices A and B.

2.5 The powers available to the Council to appropriate land are contained within Section 122(1) of the Local Government Act 1972, which provides that a council “...may appropriate for any purpose for which the council are authorised ... to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation...”.

2.6 Section 120(1) Local Government Act 1972 provides:

(1) For the purposes of —

- (a) any of their functions under this or any other enactment, or
- (b) the benefit, improvement or development of their area,

a principal council may acquire by agreement any land, whether situated inside or outside their area.

2.7 It is therefore recommended that Cabinet approves the appropriation of the commercial property assets listed in appendices A and B which are currently held for the purposes of the Housing Act 1985 to be held for the purposes of section 120 the Local Government Act 1972 with effect from 2017/18. If the recommendation is approved, ownership of the assets will not change; the Council will continue to own all the assets. It is only the statutory purpose for which the assets are held and the way in which they are accounted for, that will change.

3. Identification of Options

3.1 Option 1: To do nothing.

3.2 This is not recommended. The assets were originally provided by the Council in connection with its housing function but for the reasons described above they are no longer required for that purpose. Consequently, it is now more appropriate for these assets to be held for a different statutory purpose and accounted for accordingly.

- 3.3 Option 2: To approve the recommendation so that the commercial assets referred to above can be appropriated and held for the purposes of the Local Government Act 1972 rather than the Housing Act 1985.

This is the recommended option because, for the reasons outlined above, it is no longer considered appropriate to hold the assets referred to within the HRA in accordance with the provisions of the Housing Act 1985.

4. Resource Implications

- 4.1 The proposed appropriation of assets means that the income they generate (as shown in the table below) will be accounted for in the General Fund for 2017/18 and the HRA budget will be adjusted to reflect this. Details of the financial considerations related to the recommendation are attached at Appendix C.

Asset Category	Net Income £000
Garages	165
Shops	34
Mobile phone mast	11
Garage plots	17
Total	227

- 4.2 The Budget and Medium Term Financial Plan being presented to Cabinet and Council on 1st March 2017 do not include the adjusted figures. If the proposal is approved then General Fund and HRA revenue budgets will be adjusted accordingly and these changes will be reported in the first quarterly budget monitoring report for 2017/8.
- 4.3 The appropriation of these properties will not alter the Council's total asset value as the assets remain in the ownership of the Council; it is purely the accounting treatment that is amended.
- 4.4 The General Fund Capital Financing Requirement (CFR) will be increased by the equivalent amount of the valuation of the commercial property portfolio and the HRA CFR will be decreased by the equivalent value. This will result in an increase in the borrowing headroom for the HRA should there be a requirement for additional borrowing in the HRA in the future.
- 4.5 The appropriation and consequential financial adjustment transfers the risks and returns related to these assets from the HRA to the General Fund. The General Fund will receive the rental income and take responsibility for managing and maintaining the shops, mobile phone mast site, car parks and garage portfolio and the liability of any outstanding repairs.

5. Corporate Implications

- 5.1 Comment from the Section 151 Officer: No further comments to add. (HL)
- 5.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.
- 5.3 Comment from the Equalities Officer: The report does not specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>

6. **Appendices**

Appendix A – Schedule of Commercial Properties

Appendix B – Schedule of Garages

Appendix C – Business Case

7. **Background Papers**

None.

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Appendix A: Schedule of commercial properties to be transferred.

Asset	Asset Value 2015-16 £
1/ 1A Sheridan Road Dover CT16 2BZ	33,000
5/ 5A Sheridan Road Dover CT16 2BZ	48,000
9 Sheridan Road Dover CT16 2BZ	18,000
13 Sheridan Road Dover CT16 2BZ	28,000
62 Cornwallis Avenue Aylesham CT3 3HQ	26,500
63 Cornwallis Avenue Aylesham CT3 3HQ	30,000
64 Cornwallis Avenue Aylesham CT3 3HQ	26,500
65 Cornwallis Avenue Aylesham CT3 3HG	26,500
66 Cornwallis Avenue Aylesham CT3 3HQ	30,000
67 Cornwallis Avenue Aylesham CT3 3HG	26,500
68 Cornwallis Avenue Aylesham CT3 3HQ	30,000
69 Cornwallis Avenue Aylesham CT3 3HG	60,000
Hobart Crescent Telecoms Mast Dover CT16 2HP	62,500
Camden Crescent Car Park Dover	25,569
Albany Place Car park Dover	40,256
Garages	3,338,900
William Muge Site	240,000
Snelgrove Site	280,000
Total Value	4,370,225

Appendix B: Schedule of garages to be transferred.

Address	No of Garages
ASTOR AVENUE, DOVER	7
AUCKLAND CRESCENT, DOVER	44
AYCLIFFE, DOVER	11
BISHOP JENNER COURT, PRESTON	3
CANUTE ROAD, DEAL	34
CAULDHAM CLOSE, CAPEL-LE-FERNE	12
CHURCHILL CLOSE, ST MARGARETS AT CLIFFE	14
CLEVELAND CLOSE, DOVER	13
CORNWALL HOUSE, DEAL	12
DELANE ROAD, DEAL	9
DIANA GARDENS, DEAL	12
DOLA AVENUE, DEAL	14
EDGAR ROAD, DOVER	14
EDINBURGH HOUSE, DEAL	17
ELIZABETH CARTER AVENUE, DEAL	8
ETHELBERT ROAD, DEAL	20
FLORIDA CLOSE, DOVER	13
FREEMENS WAY, DEAL	20
FRIARS WAY, DOVER	12
GEORGE STREET, DOVER	6
GODWYNE CLOSE, DOVER	5
GREEN LANE, DOVER	143
HAROLD ROAD, DEAL	8
HAROLD STREET, DOVER	11
HAZELWOOD MEADOW, SANDWICH	43
KIMBERLEY CLOSE, DOVER	17
LEYBURNE ROAD, DOVER	18
LITTLE AVENUE, DEAL	10
MAINE CLOSE, DOVER	10
MELBOURNE AVENUE, DOVER	7
MOUNT ROAD, DOVER	10
ORCHARD ROAD, EASTRY	1
OWEN SQUARE, WALMER	17
PALMERSTON AVENUE, WALMER	23
PENCESTER COURT, DOVER	4
PILOTS AVENUE, DEAL	12
PRIMROSE ROAD, DOVER	8
QUEENS LEA, WEST HOUGHAM	8
QUEENS RISE, RINGWOULD	9
QUEENS ROAD, ASH	3
REECE ADAMS HOUSE, CAPEL-LE-FERNE	1
SHERIDAN ROAD, DOVER	3
SIMCOE TERRACE, DOVER	6
ST BARTS ROAD, SANDWICH	20
ST DAVIDS AVENUE, DOVER	9
ST EDMUNDS ROAD, DEAL	2
ST GILES CLOSE, DOVER	8
ST MARTINS ROAD, SHOLDEN	24

ST MONICAS, DOVER	2
ST RICHARDS WALK, DOVER	28
STOCKDALE GARDENS, DEAL	8
SUNNY CORNER, DOVER	5
TEMPLESIDE, TEMPLE EWELL	17
THE GATEWAY, DOVER	2
THE LINCES, DOVER	6
TRAVERS ROAD, DEAL	9
TRINITY PLACE, DEAL	12
WELLESLEY AVENUE, WALMER	6
WESTBURY CRESCENT, DOVER	19
WILLIAM PITT AVENUE, DEAL	18
WILSON AVENUE, DEAL	8
WILTON CLOSE, DEAL	7
WOLFE TERRACE, DOVER	6
WYNDHAM ROAD, DOVER	6
YORK HOUSE, DOVER	11
TOTAL	905

GARAGES

1. Background

- 1.1 The Council currently owns 905 individual garages within garage blocks mainly located in the 3 urban areas of Dover, Deal and Sandwich. The garages were originally provided as a facility to be used by Council tenants and are located in areas where most of the surrounding housing was owned by the Council and let to Council tenants. However, over time the ability of tenants to exercise the right to buy their home has meant that Council housing estates have become residential areas comprising a mix of different tenures and as a result the tenure profile of garage tenants has fundamentally changed. We estimate that since the introduction of right to buy, around 54% of the Council's housing stock has been sold.
- 1.2 Section 122(1) of the Local Government Act 1972 provides that a council "...may appropriate for any purpose for which the council are authorised ... to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation...". This general power must be read subject to section 19(2) of the Housing Act 1985 which states that where a local authority has acquired or appropriated land for the purposes of Part II of the Housing Act 1985 "...they shall not, without the consent of the Secretary of State, appropriate any part of the land consisting of a house or part of a house for any other purpose".
- 1.3 However, because there is no linkage in respect of land between Council housing tenancies and garage tenancies, Secretary of State's consent is not required.
- 1.4 The number of garages let to private residents over recent years has significantly exceeded the number let to Council house tenants. Since 2005/06 73% of garages that have become available for letting have been allocated to private residents and the current position is that 66% of garages are let to private residents and 19% to Council house tenants, 10% are void, many are in the process of being re-let and there are a number which are longer term voids and require major repairs. The remainder are currently used by EKH for short term storage purposes so that the Council can comply with its legal obligations following tenancy repossessions.

2. Transfer of Garages from the HRA to the General Fund – Financial Impact

- 2.1 The transfer will not have a significant impact on the financial position of the HRA or its continued surpluses. The associated income, net of repairs and management costs will accrue to the General Fund.
- 2.2 The financial position of the HRA as summarised in the Council's MTFP 2017/18 – 2020/21 is as follows:
- HRA balance at 31/03/16 £1.013m;
 - Projected surplus for 2016/17 £2,999,988 (before transfer of £3m to the Housing Initiatives Reserve);
 - Forecast surplus for 2017/18 £2,499,962 (before transfer of £2.5m to the Housing Initiatives Reserve);
 - HRA balance at 31/03/18 forecast at £1,038k

2.4 The strategy is to continue to maintain a positive balance in the HRA of around £1m and therefore the transfer of funds to the Housing Initiatives Reserve will be adjusted accordingly.

2.5 A breakdown of the (declining net) income and expenditure relating to garages is shown below and based on actual figures for 2015/16, estimated costs for 2016/17 (based on actual costs for 10 months) and estimated costs for 2017/18.

2.4 Rent Income

2.4.1 The standard rent charged for most Council garages in the current year is £11.10 per week. The rent paid by non-Council tenants includes VAT. There are a small number of garages where a higher rent of £17.22 is charged to reflect their location, for example, garages within relatively close proximity to Dover town centre.

2.4.2 The Council is not restricted in what it can charge for garage rents in the same way as for house rents. It is considered that rent levels are broadly in line with rents charged by commercial operators and rents have been subject to modest increases over the past couple of years. It is proposed that some external professional advice is obtained to inform the approach to future rent increases.

2.4.3 The level of rent arrears and bad debts is relatively low and this reflects the fact that the process for repossessing a garage is relatively quick and simple therefore avoiding the accumulation of arrears.

2.5 Demand

2.5.1 Demand for garages varies according to location. Key factors influencing demand are the condition of the garage and immediate surrounding environment, perceived security and garage condition.

2.5.2 Currently, around 5-6 applications to rent a garage are received per week. Garages are currently not proactively marketed and applications for tenancies are as a result of people knowing that they can be available for rent. A more pro-active approach to marketing will also be considered.

2.6 Garage Condition/Repairs

2.6.1 Routine responsive repairs are currently normally undertaken by Mears, the Council's responsive repairs contractor, at the time a garage has become void or in response to a repair request from a tenant. An analysis of responsive repair costs for the past 10 years shows that the typical annual cost is approximately £60k per annum.

2.6.2 The garage stock has been maintained but has not been the subject of any recent significant investment. The condition is variable and some blocks currently require investment to make garages more lettable.

2.6.3 A stock condition survey is currently being carried out in relation to housing assets which includes the garage stock. Results of the survey are expected in May 2017 and will help inform future planned investment decisions. A survey undertaken by the Council's own Property Services Team suggests that it would be prudent to make a budget provision of £75k per annum for future planned maintenance. The expectation is that this will reduce void periods, may increase rent income and result in reduced expenditure on responsive repairs. Therefore, the net surplus shown in the table at 2.8.1 for 2017/18 is considered to be very prudent.

2.7 Garage Management

2.7.1 Day to day management of garages is currently undertaken by East Kent Housing and mainly involves routine administrative work including:

- Receiving garage applications. These can be made on-line, on a garage waiting list application form or via letter/phone call. EKH receives around 5-6 applications per week.
- Registering applications on an Excel based waiting list.
- Arranging for void garages to be inspected and for any contents to be cleared and repairs carried out.
- Making offers of garage tenancies and arranging for garage tenancy agreements to be signed. EKH lets around 3 garages per week. Council tenants are currently given priority over private residents and this may need to end when the garages are transferred.
- Setting up the garage tenancy on the Northgate housing management system so that rents can be collected.
- Managing rent arrears and enforcing tenancy conditions including taking action to terminate tenancies and re possess garages.
- Carrying out regular inspections of garage areas – typically every 3 months – and arranging repairs, removal of rubbish, etc.
- Managing disputes between garage tenants – e.g. inappropriate use of garage areas, garage access being blocked etc.
- Carrying out pre and post inspection of repairs.

2.7.2 It is estimated that the work involved in undertaking the above tasks equates to 1.0 FTE and it is proposed that following transfer, the day to day management of garages will be reviewed to determine whether it should remain the responsibility of EKH or transfer back to the Council.

2.8 Financial Summary

2.8.1 The table below summarises the financial information for the garages.

	2015/16 £	2016/17 £	2017/18 £
Income:			
Gross Rent Income	(461,921)	(470,262)	(474,960)
VAT payable	62,313	58,962	60,000
Void Rent Loss	61,668	74,717	70,000
Rent arrears	2,821	9,388	10,000
Net Income	(335,119)	(327,195)	(334,960)
Expenditure:			
Management	35,000	35,000	35,000
Responsive Repairs	60,000	60,000	60,000

Planned Maintenance	0	0	75,000
Total Expenditure	105,000	105,000	170,000
Net Surplus	230,119	222,195	164,960

3. SHOPS

3.1 Background

3.1.1 The Council owns a number of commercial properties most of which are already accounted for within the General Fund. However, there are 12 shops which are located on the ground floor of two blocks of flats which were built to provide Council housing that are currently accounted for within the HRA. The blocks are located in Sheridan Road, Dover (4 shops) and Cornwallis Avenue, Aylesham (8 shops).

3.2 Leases & Rent Income

3.2.1 The shops are let on commercial leases and the rents charged reflect market rates for the type and size of premises.

3.2.2 The length of leases vary but, more recently, shops that have become vacant been re let on a 5 year lease.

3.2.3 Rents are subject to a periodic review, typically at the end of the lease period for 5 year leases and 3 years for longer leases. The review will identify the new market rent to be charged.

3.2.4 Monthly or quarterly invoices are raised for the rent and any initial rent recovery action is undertaken by East Kent Services.

3.2.5 The current annual gross rent income is £39,200.

3.3 Demand

3.3.1 Historically the Council hasn't needed to actively market these premises and vacancy rates have been low.

3.4 Management

3.4.1 The properties are currently managed directly by the Council and the management cost related to these properties is minimal.

3.5 Repairs/Maintenance

3.5.1 Shop tenants are required under the terms of their lease to carry out internal repairs at their own expense and to make a proportionate contribution to the cost of any repairs required to the fabric of the building. The blocks within which the shops are located form part of the housing portfolio managed and accounted for within the HRA. External maintenance is therefore funded by the HRA with a proportionate recharge to leaseholders.

3.5.2 A small allowance of £5k will be allocated for external maintenance of these shops within the General Fund.

4 **MOBILE PHONE MAST SITE**

4.1 **Background**

4.1.1 There is one mobile phone mast currently located on land accounted for within the HRA. The site is in Hobart Crescent, Dover.

4.2 **Rent Income**

4.2.1 The Council currently charges an annual ground rent of £11,363. There is minimal maintenance associated with the site and the site is not considered to have any realistic development potential.

5 **GARAGE PLOTS**

5.1 **Background**

5.1.1 For many years the Council has operated a practice of granting licenses to residents to allow them to erect their own garage on land owned by the Council. Typically the land is located close to, or adjoining, an area of land originally developed to provide Council housing. Initially, the majority of licenses would have been granted to Council tenants living nearby and because of this association, the land has been held within the HRA. However, as result of right to buy, the tenure of housing within the vicinity of these areas of land has become much more diverse. As a result, there is no longer a direct link between the provision of Council housing and ownership of the land. Currently, of the 152 garage plots, 126 (83%) are leased to private residents.

5.2 **Fee Income**

5.2.1 The Council currently charges £132.93 per annum for a garage plot licence.

5.2.2 If the plots are leased to non-council tenants, VAT has to be charged and therefore the amount of rent income DDC keeps is reduced as the VAT element is passed to HMRC. Currently, the annual income being generated amounts to £17,242.

5.3 **Management**

5.3.1 This service is currently managed by East Kent Housing but may be brought back under direct Council control if this is the decision taken in respect of garages. It is expected that the service can be incorporated within the 1.0 FTE identified for the management of garages.

6 **Vacant Sites**

6.1 **Background**

6.1.1 In 2008 the Council approved the closure of four sheltered housing schemes to protect the long term financial viability of the HRA. These schemes included William Muge and Snelgrove, both situated in Harold Street, Dover. The sites have since been demolished and cleared and as such are no longer providing a housing service.

6.1.2 Attempts to sell these sites to Housing Associations and other potential developers have not been successful and it is important that they are brought into positive use. It is considered that these sites still have the potential for future development and by appropriating them to the General Fund they can form part of the Property Investment Strategy and developed for private rental or disposal.

6.2 Management

- 6.2.1 The sites are currently cleared and secured and as such require minimum management and incur minimal costs.