



PROPERTY DISPOSAL POLICY



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PROPERTY DISPOSAL POLICY

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1. INTRODUCTION

An owner of property is usually free to dispose of it as and when – and in whatever manner – he or she chooses. But local authorities are subject to constraints when they come to dispose of land or buildings in their ownership. Some of these constraints are enshrined in law; others arise because of a general expectation that local authorities should be seen to act fairly when disposing of land, as in other aspects of their work.

Changing requirements and the regular review of properties will, at times, lead to some property assets becoming surplus. In addition, there may be circumstances in which a disposal is considered the best way to achieve one or more of the objectives of the Council. The purpose of this policy is to provide a framework for the disposal of such property assets.

Legal Powers

Under the Local Government Act 1972 local authorities have powers to dispose of property in any manner they wish, subject to certain constraints which may include a requirement to obtain the consent of the Secretary of State. Under Section 123 of the Local Government Act 1972 (**Appendix A**) principal councils have a duty not to sell land for a consideration less than the best consideration reasonably obtainable unless the Secretary of State's consent has been obtained. However, the Local Government Act 1972: General Disposal Consent (England) 2003 (**Appendix A**), gives a general consent provided that any undervalue of the interest does not exceed £2 million and the transaction is considered by the local authority to help secure the promotion or improvement of the economic, social or environmental well-being of its area.

These powers provide the backdrop against which decisions to dispose of property in the Council's ownership must be made.

2. WHAT IS A DISPOSAL?

For the purposes of this policy, a disposal of property is considered to be a disposal if it consists of -

- a) a freehold transfer; or
- b) a grant of a term exceeding seven years; or
- c) the assignment of a term which, at the date of the assignment, has more than seven years to run.

3. AIMS AND REASONS FOR THE COUNCIL HOLDING PROPERTY

The reasons for the Council holding property, as set out in the **Corporate Property Strategy**, are:

- To support the achievement of the **goals and objectives set out in the Corporate Plan**;
- To provide property from which to deliver a **direct service to the public** e.g. Community Parks and Leisure Centres;

- To provide property which **supports service delivery** e.g. Town Hall and Customer Service Centre;
- The use of non-operational property as an investment to make a financial return to support service delivery or to aid delivery of the **Corporate Plan** and **Sustainability objectives**.

The aims for the property portfolio are:

- To use the Council's property holdings to meet current and future corporate/service requirements and allow flexibility of use;
- To use property economically, efficiently, effectively;
- To provide clean safe accommodation/premises for staff/public;
- To support economic, social or environmental well-being;
- To produce income/capital to support budgetary requirements.

Projected proceeds from disposals are taken into account in the preparation of the Medium Term Financial Strategy.

4. OPEN SPACE

The Council will not normally dispose of any core recreational open spaces identified in the Open Space and Playing Pitch Assessment Reports and the Open Space and Playing Pitch Strategy. Disposal will only be contemplated in exceptional circumstances as set out in that Strategy.

The Council will contemplate disposal of 'incidental open space' and areas of landscaping or parts of these – particularly where it will improve the management of the land benefiting the wider public, will reduce an unacceptable and significant impact on a neighbouring property resulting from mis-use of open space and/or clears up anomalies of past land sales, acquisitions, transfers.

In contemplating these sales, the legal requirements of the Council to advertise proposed sales of public open space and consider objections must all be complied with. This will mean all applicants will have to meet the costs of advertising the proposed sale.

The Council will also not agree sales where it judges that the personal safety for users of the remainder of nearby open space will be detrimentally affected e.g. where a narrow alleyway is created.

The Council will also not contemplate sales which lead to the wholesale loss of, or detract from the visual quality/amenity of the surrounding area or may apply covenants on sales to retain the open nature of landscaped areas and/or to require the provision of certain standards of new boundary fencing, walling or delineation.

Consideration of any detrimental impact of such sales on neighbouring properties not financially involved in nor benefiting from the sale will also need to be given and this may also be grounds for the Council not to contemplate a sale.

5. IDENTIFICATION OF SURPLUS AND UNDER USED PROPERTY

Property will be identified as surplus if it does not meet any of the reasons or objectives for the Council holding property assets as set out above.

It is the responsibility of each Service, through its annual **Service Delivery Plan**, to identify any property or part thereof, that is under used or surplus to their individual service delivery requirements. Following the identification of surplus property, or part thereof, it should be referred to Assets and Estates to consider any other potential uses for the property. This will include the identification of any other parties that may be interested in the property, e.g. other Services, County Council Departments or external organisations.

6. PROPERTY DISPOSAL RESPONSIBILITIES

Minor Disposals

A minor disposal generally arises when an application is received from adjacent or neighbouring owner(s) to purchase the freehold or leasehold interest (in excess of seven years) of a small or inconsequential area of land in the Council's ownership where the land is surplus to requirements, has no development value or open market opportunity and has a market value of less than £6,000. It is permissible in these cases to open 'confined' negotiations with the adjacent or neighbouring owner in order to achieve the most advantageous financial result or for reasons of good estate management; e.g. if the land is 'landlocked' or is difficult or expensive to maintain.

There may also be circumstances where it is in the Council's interest to initiate a minor disposal e.g. land surplus to requirements or for reasons of good estate management.

However, departure from open marketing should only be considered in the circumstances as outlined in this section and on professional advice. In cases where there is more than one other contiguous land holding, consideration should be given to alternative disposal strategies (e.g. sealed informal tenders) to obtain the best price.

In the first instance, any formal application to purchase received should be forwarded to Assets and Estates.

Major Disposals – Always refer to Assets and Estates

A major disposal is any disposal not covered by the minor disposal definition above.

Assets and Estates will advise on the appropriate method of disposal.

7. ASSET DISPOSAL THRESHOLDS

When disposing of an asset, the correct authorisation channel must be adhered to, with a completed Executive Decision Record. The following table outlines the financial thresholds:

Capital Receipt Value or annual rent (£)	Decision Authority
0 – 6,000	Legal Services Manager
6,001 – 100,000	Head of Legal and Democratic Services in consultation with the Leader of the Council or the relevant Deputy Leader for the transaction.
100,001 – 500,000	The Leader of the Council or the relevant Deputy Leader for the transaction.
500,001 +	Full Council

Where an urgent decision is required to safeguard the interests of the Council and the decision is not within the approved budget or policy framework, part 3, section 5 of the Constitution of the Council must be followed.

8. PREPARATION FOR DISPOSAL

The stages of preparation for disposal should include the following:

- (i) **Internal Circulation** - To give Services an opportunity to comment or express an interest within a time limit of 21 days. To include circulation to relevant ward members.
- (ii) **Legal Consultation** - To report fully on the Council's title and any rights or obligations which might affect it. Where it is intended to include covenants or conditions legal advice should be obtained prior to negotiations.
- (iii) **Former Owner** – Consider if there is an obligation under the **Crichel Down Rules** to offer the land back to a former owner. A summary of these rules and procedures is at **Appendix C**.
- (iv) **Inspection** - The purpose will be to identify development potential or any matter which is likely to hinder the disposal.
- (v) **Physical Constraints** – Check the Council's own records, and also those of statutory undertakers, if appropriate.
- (vi) **Define Development Potential** - Appraisal of potential disposal property should always consider the means by which maximum sale proceeds can be generated. In straightforward cases, the equivalent of an "outline planning consent" for the most valuable use available should be secured. Where the Council wishes to consider ensuring a desired use of property to achieve its policy objectives, it will be necessary to introduce absolute user clauses in leases and

restrictive covenants, where appropriate. A claw back provision can be negotiated, so that the Council can participate in the benefits of any future increase in value due to a more valuable planning consent.

- (vii) **Consideration of Method of Disposal** – See **Appendix D** which considers the options available. **Appendix E** provides guidance aimed at minimising or addressing the difficulties presented by late or revised bids.

N.B. Special Purchaser - It may be prudent to deal with a special purchaser if it would result in capital receipts above that which would be paid in the general open market, or in the furtherance of achieving one or more of the Council's Corporate objectives, subject to compliance with the Council's legal requirements.

9. SUMMARY

Local Authorities are subject to constraints when they come to dispose of property in their ownership. There is a need for clear, transparent and approved procedures to be adopted. The aim of this policy is therefore to provide a framework for best practice in dealing with disposals. It sets out:

- the reasons why the Council holds property;
- the case for open space;
- the circumstances in which the disposal of a property interest might be desirable;
- who in the Council is responsible for dealing with disposals;
- the procedures to be adopted prior to a disposal;
- the delegated powers related to disposals;
- the different methods of disposal;
- how to deal with late and revised bids and;
- how to deal with “minor disposals”.

s.123 Local Government Act 1972 (as amended)

Disposal of land by principal councils

- (1) Subject to the following provisions of this section, [and to those of the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010,] a principal council may dispose of land held by them in any manner they wish.
 - (2) Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.
 - (2A) A principal council may not dispose under subsection (1) above of any land consisting or forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them.

[(2AA) Subsection (2A) does not apply to a disposal to which the provisions of regulations made under [section 1](#) of the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010 apply.]
 - (2B) Where by virtue of subsection (2A) above [or in accordance with the provisions of regulations made under section 1 of the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010] a council dispose of land which is held-
 - (a) for the purposes of section 164 of the Public Health Act 1875 (pleasure grounds); or
 - (b) in accordance with section 10 of the Open Spaces Act 1906 (duty of local authority to maintain open spaces and burial grounds),the land shall by virtue of the disposal be freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with the said section 164 or, as the case may be, the said section 10.
- (3)-(6) *[repealed]*
- (7) For the purposes of this section a disposal of land is a disposal by way of a short tenancy if it consists-
 - (a) of the grant of a term not exceeding seven years, or
 - (b) of the assignment of a term which at the date of the assignment has not more than seven years to run,

and in this section “public trust land” has the meaning assigned to it by section 122(6) above.

Appendix B

The Local Government Act 1972: General Disposal Consent (England) 2003

1. The First Secretary of State ("the Secretary of State"), in exercise of the powers conferred by sections 123(2), 127(2) and 128(1) of the Local Government Act 1972, hereby gives consent to a disposal of land² otherwise than by way of a short tenancy³ by a local authority in England in the circumstances specified in paragraph 2 below.

2. The specified circumstances are:

a) the local authority considers that the purpose for which the land is to be disposed 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;

i) the promotion or improvement of economic well-being;

ii) the promotion or improvement of social well-being;

iii) the promotion or improvement of environmental well-being; and

b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).

Interpretation and savings

3. (1) In this instrument -
"local authority" means:

i) London borough council;

ii) a county council;

iii) a district council;

iv) a parish council and parish trustees acting with the consent of a parish meeting;

v) a National Park authority;

vi) a Metropolitan Borough Council

vii) a joint authority established under Part IV of the Local Government Act 1985;

viii) a police authority established under section 3 of the Police Act 1996;

² By section 270, land includes any interest in land, and any easement or right in, to or over land.

³ By sections 123(7) and 127(5), a short tenancy is a tenancy, which is granted for seven years or less, or the assignment of a term, which has not more than seven years to run. Disposals by way of a short tenancy do not

need consent, see sections 123(2) and 127(2) of the 1972 Act.

Disposal of Land for Less than Best Consideration

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ix) the Metropolitan Policy Authority;

x) the London Fire and Emergency Planning Authority;

xi) the Broads Authority;

xii) the Council of the Isles of Scilly;

and any other person to whom, by virtue of statute, section 123(2) or section 127(2) of the Local Government Act 1972 applies;

"unrestricted value" means the best price reasonably obtainable for the property on terms that are intended to maximise the consideration, assessed in accordance with the procedures set out in the Technical Appendix.

(2) Nothing in this instrument shall be construed as giving consent to a disposal for any purpose for which the consent of the Secretary of State is required by virtue of section 25(1) of the Local Government Act 1988, section 133(1) of the Housing Act 1988, section 32(2) or section 43(1) of the Housing Act 1985, or otherwise as having effect as a consent for any purposes other than those of Part 7 of the Local Government Act 1972.

Citation and revocation

4.(1) This instrument may be cited as the Local Government Act 1972 General Disposal Consent (England) 2003 and shall come into effect on 4 August 2003.

(2) The Local Government Act 1972 General Disposal Consents 1998 are hereby revoked insofar as they apply to England.

Signed by authority of the First Secretary of State

FORMER OWNERS – CRICHEL DOWN RULES

Successive Governments have accepted the basic principle that land, whether in agricultural or other use originally, should be offered back to former owners or their successors if it was acquired by or under threat of, compulsion or under statutory blight provisions, and if it had not been materially changed in the interim, and was found to be surplus to requirements or otherwise appropriate for disposal. Disposals to former owners under these arrangements will be at current market value.

This principle was established in the 1954 Crichel Down case and has been used as a guideline for policy ever since.

ODPM Circular 06/2004 sets out the revised arrangements under which the rules should apply. The Rules are non-statutory but it is recommended, by central government, that they be followed.

The general obligation to offer back will not apply to the following types of land:

- 1) agricultural land acquired before 1 January 1935;
- 2) agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition;
- 3) non-agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition.

The date of acquisition is the date of the conveyance, transfer or vesting declaration.

Full details and other exceptions from the obligation to offer back are explained in the Circular:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7691/1918885.pdf

DISPOSAL METHODS

There are four principal methods of disposal available:-

(i) **Private Treaty** – After a reasonable period of exposure to the market, negotiations are carried out between the seller and prospective buyers (or their respective agents) privately and in comparative secrecy, normally without any limit on the time within which they must be completed before contracts are exchanged.

In the event that two or more interested buyers are identified the Council may consider moving on to the Informal Tender method at (iv) below

Advantages:

- allows a flexible approach;
- time pressures are seldom imposed on either the seller or buyer; and
- it is widely understood and accepted by the general public.

Disadvantage:

- the proceedings cannot always overcome suspicions of unfair dealings, and it is therefore a method to be used with caution.

(ii) **Formal Tender** – Requires a great deal of preparation, as the tender document forms the contract for sale. A full appraisal of the transaction needs to be carried out, including a valuation which may be used to provide a guide price, in order to have a baseline against which to assess the tenders when they are returned.

Advantages:

- it can be concluded quickly where it is unconditional;
- it avoids tentative time-wasting enquiries;
- the Council does not need to accept any tender if the offer is not satisfactory;
- the tender procedure should guarantee complete fairness; and
- as bids are not public, tenderers should put forward their best offer.

Disadvantages:

- potential purchasers are often put off by the procedure whereby they commit themselves contractually upon making any financial offer;
- there is little room for discussion about the scheme itself, and this method is too robust and inflexible to take account of any conditional offers, e.g. subject to planning etc.

In view of the inflexibility and disadvantages of the formal tender procedure there should, in normal circumstances, be a presumption against this method for the disposal of property.

Current **Contract Procedure Rules** do not state that they apply to the sale of property. They do however regulate formal tender procedures, therefore, in the

event of a disposal by formal tender Contract Procedure Rules should be followed.

(iii) **Auction** - To achieve success with this method of disposal, external auctioneers will inevitably be used. The auctioneer should be briefed at an early stage, and fully involved in preparing conditions of sale and fixing the reserve price. The reserve should be approved by the Council and conveyed to the auctioneer immediately before the auction. It should also be recorded in a sealed letter which the auctioneer will have available at the time of sale. Sale by auction requires preparation of all contractual details beforehand in order that a binding contract may be effected immediately a bid is accepted. Development land should only be considered for auction with planning permission and after pre-marketing.

Advantages:

- Certainty: contracts are exchanged on the fall of the hammer;
- open process of competitive bidding may lead to a price in excess of that by private treaty;
- Regional/national marketing by the auction house.

Disadvantages:

- the seller has no control over who buys;
- funds to meet the sale price must be available within a specified period, and this may put off purchasers who need to raise finance;
- potential purchasers have to consider the transaction during the marketing period, with no opportunity to discuss alternative ways to structure the deal;
- the winning bid need only be marginally more than the second highest bid, and need not represent the maximum the purchaser would have been willing to pay;

Mortgageable houses should not be sold by auction.

(iv) **Informal Tender (sealed bids)** – *The Local Government Ombudsman has issued the following guidance on informal tendering:*

“Informal tendering is a process by which offers are invited but perhaps without a firm closing date. Unlike a formal tendering process (when tenders are submitted in sealed envelopes all of which are opened together) offers in the informal process are opened as they are received. Offerers may be invited to increase their bids, possibly having been told that that a higher bid has been received. Whilst the practice of informal tendering (which might also be described as extended auction) does frequently give rise to complaints, the Ombudsman accepts that such a procedure may sometimes be appropriate and may result in the Council obtaining a higher price for the land than if bidding was restricted to a single sealed tender. At the end of such an extended auction process all parties still expressing interest should be asked to submit a final bid by a specified date”.

Advantages:

- the most advantageous terms for the Council can be formulated even in very complex cases;

- the Council does not need to accept any tender if the offer is not satisfactory;
- as bids are not public, tenderers should put forward their best offer. (Though not necessarily going to achieve best price because in an auction situation people are sometimes prepared to bid more than they had envisaged, particularly when they see others prepared to bid at that level)
- most useful as a tool for resolving competing interests following private treaty marketing.

Disadvantages:

- lacks the certainty of the Formal Tender procedure,
- can be frustrating since post-tender negotiations can be protracted and may not be successful; and
- the requirement to negotiate raises some of the disadvantages of a sale by private treaty.

Conclusion

Each method engenders varying degrees of fairness and transparency. For each disposal case appropriate prior approval for the method of disposal should be obtained. The principles and rules set out in this policy should be followed in all disposal cases. In a disposal by formal tender, the procedures set out in Contract Procedure Rules should be followed, even though it is not specifically stated in those Rules that they refer to the sale of property.

Appendix E

Dealing With Late Bids

A difficult situation arises when the Council receives a higher offer after another offer has been accepted “subject to contract”. Such difficulties are less likely to occur if exchange of contract takes place quickly after the decision has been made to whom to sell the property. When accepting an offer the Council’s position should be made clear, in writing, that in the event of any higher offer being received before a contract is exchanged it may be obliged to consider it.

There are very good reasons for laying down strict rules of compliance with the procedures, particularly time-scales. This is to ensure that all interested parties are treated equally and that the Council operates in an efficient and cost effective manner by reducing uncertainty and delay. Above all, the principle that parties should not benefit from the tactic of an intentional late bid is paramount. Nevertheless, there may be, at times, genuine late bids and where the proposed disposal involves a substantial capital receipt the Council must be able to make decisions that avoid foregoing significant increases in sums achievable.

Whilst it may be appropriate to maintain a policy of disregarding any late bids in a tender exercise, the Council may find itself missing the opportunity to secure best consideration where a late bid substantially exceeds bids received on time. Indeed, case law suggests that Councils can be found to fall short of achieving best consideration if rival bids are not fully investigated.

Where a higher offer is received after one has been accepted, the applicant should be advised that an earlier offer has been accepted, subject to contract. Unless there is a particular reason why the higher offer should be accepted, e.g., an ability to proceed immediately when the original bidder was not able to do so, then the first applicant (whose offer has been accepted) should, at least, be given the opportunity of matching the higher offer.

Dealing With Revised Bids

The Council may be faced with the successful bidder from an informal auction seeking to substitute a lower bid. This process might also be repeated as the successful bidder in effect explores to find the level of the next bid below his or her own believing that the Council will be prepared to accept any offer above that next bid. The general obligation to obtain the best price which can reasonably be obtained for the land may mean that these bids have to be considered.