

**DISPOSAL AND ACQUISITION POLICY FOR LAND AND BUILDINGS  
(APPENDIX D OF THE ASSET MANAGEMENT STRATEGY)**

**1.0 Purpose**

- 1.1 To provide the guidelines by which the Council shall consider the disposal or acquisition of assets in the delivery of Council services and meeting corporate objectives.
- 1.3 This policy relates to acquisitions and disposals for the freehold and leasehold interest (leasehold where the lease/licence is greater than 7 years).

**2.0 Other Document Links**

- 2.1 This Policy is an appendix to the Council's Asset Management Strategy 2020 – 2025 and links to the Capital Strategy, Corporate Strategy and Asset Investment Strategy and Empty Homes Strategy.

**3.0 Key principles**

- 3.1 The key principles in considering disposal or acquisition of an asset are:

- Its strategic contribution to the Council's objectives
- Potential for future strategic, regeneration or redevelopment purposes
- Disposals to be for the best consideration (in accordance with Section 123 of the Local Government Act 1972\*
- Disposals at an undervalue must fall within the acceptable grounds of Local Government Act 1972, General Disposal Consent (England) 2003\*
- Appropriate disposal procedures and method of disposal\*
- Acquisitions assessed against the Council's capital programme
- Acquisitions meet the AIS criteria (where relevant)
- Appropriate financial appraisal
- Climate Change – environmental cost/value of the asset
- To be advantageous to the Council

\*see Annex A

**DISPOSALS**

**4.0 DEFINITION OF SURPLUS/UNDER USED ASSETS**

4.1 An asset can be considered for disposal if it is surplus or under used, as defined below:

4.2 An asset is deemed to be surplus to the Council's requirements if:

- a) It makes no or minimal contribution to the delivery of the Council's services or corporate objectives
- b) It has no viable alternative use or potential for future service delivery or strategic regeneration/redevelopment or wider community purposes
- c) an alternative asset or site has been identified, which would be more cost effective in delivering the Council's services or objectives
- d) For investment properties, it does not generate sufficient income to be retained for investment purposes when compared to alternative rates of return available
- e) The sale of an asset is required to fund other Council priorities

4.3 An asset is deemed to be under used if:

- a) The income being generated from the site is below that which would be achieved from:
  - i. an alternative use
  - ii. disposing of the site and investing the receipt
  - iii. intensifying the use
- b) part of the site is vacant and is likely to remain vacant for the foreseeable future
- c) it makes insufficient quantifiable contribution to the delivery of the Council's services and objectives

4.4 In the case of open spaces, amenity areas and similar sites, the surplus/under used test should also consider the community value of the asset.

## **6.0 Asset Identification**

6.1 Assets for potential disposal may be identified in a range of ways, including:

- At asset or service review
- Identification of development opportunities
- Assets being identified as surplus or under used
- Local Plan designation
- Direct approach from an interested party
- Identification that disposal delivers another corporate objective
- Identification through day to day estates management
- Community ownership (eg Asset of Community Value)

## **7.0 Asset Review**

7.1 The asset review will assess the performance of the asset, eg:

- Use
- Suitability
- Condition
- Maintenance and operating costs
- Fit with corporate objectives
- Financial (business case)
- Alternative use/options
- Community value
- Environmental value/cost
- Legal
- Planning
- Consultation (eg Councillors, residents, partners)

## 8.0 Disposal Considerations

8.1 The following list (not exhaustive) are considered in assessing an asset for disposal:

### Legal/Legislative Considerations

- The purpose/legislation under which the Council holds the asset
- Legal constraints/powers to dispose
- Disposal within s123 of the LGA 1972 (eg obtaining best value)\*
- Implications of disposing at an undervalue (LGA 1972, General Disposal Consent (England) 2003\*
- Ownership/Title constraints
- Which disposal route to follow\*
- Due diligence
- Terms and conditions of sale
- Other legislation around specific disposals, eg procurement, disposal of allotments and open space, Charities Act, State Aid implications, etc

\*See Annex A

### Financial

- Business case (eg making a loss)
- Optimising the disposal value (eg development potential, adjoining asset marriage value)
- Timing (eg opportunity to increase value in future against opportunity cost)
- Potential to increase value by obtaining outline planning permission

- Cost and method of disposal
- Access to funding or a partnership
- Community arrangement (eg Asset of Community Value)
- Market conditions
- Existing condition of the asset and operational costs

### **Local Considerations**

- Community and environmental 'value' (level of use)
- Any anti-social or community matters
- Cabinet and ward member engagement/consultation
- Community engagement/consultation (where appropriate)
- Local Plan (allocation of asset)

## **9.0 Authorisation**

9.1 The Chief Executive, Executive Manager Transformation and Executive Manager Finance and Corporate Services (s151 Officer) have the authority to approve:

- Sales of sites for electricity sub-stations or gas governors
- Grant, surrender and renewal of leases, licences, wayleaves and easements
- Grants of grazing licences
- Grant, surrender, renewal of leases where the asset has already been let (eg commercial properties)
- Sales of land and property under the value of £25,000

9.2 All other disposals will be reported to Cabinet for approval.

## **10.0 Method of Disposal**

10.1 The Property Services Manager in conjunction with the Executive Manager Transformation will determine the appropriate marketing strategy for the surplus or under used asset (see Annex A). There may be circumstances when an alternative approach is recommended, such as:

- A 'special purchaser' is identified (eg someone who is prepared to pay a premium for the site, or where they have the only interest)
- A partner has been identified
- The asset is being disposed at an undervalue following an appraisal
- An alternative opportunity is identified

10.2 The recommended method of disposal will be reported to Cabinet for approval, where appropriate.

## **11.0 Disposal**

- 11.1 Once approval is in place, the Property Services Manager will be instructed to conduct the marketing, negotiations and instruct Legal to prepare transfer documentation and liaise with Finance and the appropriate service area. Once completed, they will notify appropriate Cabinet and ward members and EMT and update the land ownership database.

## **ACQUISITIONS**

### **12.0 Acquisition Considerations**

- 12.1 The purpose for an asset acquisition must be clear, examples may include: for the delivery of services, meeting corporate objectives, wider regeneration purposes and as part of the Asset Investment Strategy (AIS).
- 12.3 Considerations (not exhaustive) when determining to acquire an asset:

- Fit with corporate objectives
- Appraisal against capital programme and other capital schemes
- Terms and conditions of sale
- Price of asset and if considered to be reasonable/market value
- Location and condition of asset
- 'Fit for purpose' for proposed use
- Fit out works, set up costs, acquisition and associated costs
- Alternative assets for comparison
- Another way of delivering the same outcome
- Operating costs/whole life cost
- Legal, financial and planning considerations
- Timing, local market conditions
- Partnership/community arrangement
- For the wider community benefit/regeneration

### **13.0 Affordable Homes**

- 13.1 Acquisition of residential assets for the purposes of providing accommodation for homeless households.
- 13.2 Properties will be acquired using the Affordable Housing Capital Fund and held in the Council's general fund.
- 13.3 Acquisition of an asset for this purpose must meet the following criteria:

- Demonstration of need
- Location of asset where need is identified
- Managed and maintained by a Registered Provider or directly by the Council (but without providing a Right to Buy opportunity)
- A maximum of 199 properties to be acquired at any one time
- Specific characteristics of the asset to ensure:
  - No structural defects
  - Minimal refurbishment required (unless business case)
  - Minimal management and maintenance liability
  - Freehold (or long leasehold in exceptional circumstances)

## **14.0 Empty Homes**

14.1 As set out in the Empty Homes Strategy 2019 – 2024, the Council will purchase empty homes in certain circumstances.

14.2 Properties will be purchased through specific legislation and funded by the Capital budget. Assets will firstly be considered for use as affordable homes, as set out in 13.0 above, otherwise will be resold on the open market.

## **15.0 Authorisation**

15.1 The Asset Investment Group has delegated authority to approve the acquisition of investment assets that meet the AIS criteria.

15.2 The s151 Officer and Portfolio Holder for Finance have delegated authority to approve the acquisition of the above defined Affordable Housing.

15.3 The Chief Executive, s151 Officer and Executive Manager Transformation have the authority to approve the acquisition of assets up to the value of £25,000.

15.4 All other acquisitions will be reported to Cabinet for approval.

## **16.0 Acquisition**

16.1 Once approval is received, the Property Services Manager, reporting to/working with the Executive Manager Transformation, will commence negotiations to acquire the asset and instruct Legal accordingly.

16.2 The Property Services Manager will keep Cabinet members and EMT updated throughout the process and once completed. They will also inform the relevant service areas and update records accordingly.

16.3 The Property Service Manager will undertake effective estates and building management thereafter.

## ***METHODS OF DISPOSAL***

There are a number of methods by which a property interest may be disposed. Sale by competition is the best way of demonstrating that the best price has been obtained but there are sometimes situations where competition is not appropriate or where best price is not the principle objective.

Sale by competition could be by the following means:

(a) Auction

This is useful when marketing a property has generated a widespread interest and has one advantage of being relatively quick and inexpensive. Auctions can work well where most of the potential purchasers are builders or investors used to auctions or where they are from the locality and know the market in detail. Examples of situations where an auction may be appropriate could be surplus plots of land, residential or office buildings. It is not generally suitable for complex sites or high values because potential bidders are deterred from the expense of making the necessary pre-auction enquiries to enable them to make a binding bid.

(b) Formal Tender

With a formal tender, potential purchasers have to make binding offers in a specified form, by a specified date and with a specified amount of deposit. Formal tenders offer a greater certainty on the timescale of the deal than the informal methods and it is relatively easy to demonstrate and defend the question of obtaining the best price. However, tender documents must be very precise and therefore detailed and as a result the Council risks incurring high abortive costs if the process fails to attract sufficient interest. It would be good practice to prepare and include the contract in the tender documents in order to prevent post tender negotiations and to place a fixed date for completion (although circumstances don't always allow for this).

As any offer is binding it can be seen as a deterrent to potential interested parties because of the expense of making the necessary pre-bid enquiries to allow a binding bid to be made in the first place.

(c) Informal Tender

With an informal tender, non-binding offers are secured by a specified date and a preferred bidder is selected with whom to negotiate actual terms. Theoretically this process should generate more offers than the 'Formal Tender' process, but the negotiation period can be protracted and the offer price may be reduced in the process. If the Council receives more than one attractive offer, they may then ask bidders to submit a second or best offer. This keeps the potential purchasers in a competitive situation and thereby a potential for obtaining increased offers. The 'Informal Tender' process is more likely to be used when the interest in the property is not sufficiently certain to risk the 'upfront' costs associated with the 'Formal Tender' process.

## Alternatives to Sale by Competition

### a) Private Treaty

This should be considered if there is a special purchaser, this may be where the asset would not be of interest to any other buyer (i.e. small areas of land adjoined to an existing dwelling to extend a garden), or the buyer has existing property interests and so would pay a premium, perhaps to merge two sites to make it more developable. In this case, a valuation would be sought from an independent valuer to demonstrate best value had been achieved and negotiations would take place with the relevant party.

Alternatively, it may be where the Council has decided not to obtain best value and instead dispose of the asset to meet a corporate objective:

### b) Transfer to charity/other community group

This should only be considered if it meets the Council's corporate objectives or business case.

### c) Considerations other than for best price

This may relate to buildings of historic interest, where disposal to a body which represents the wider public interest rather than it being redeveloped by a private company purely for profit. For example, if the Council wanted to control the development as part of a wider scheme or to preserve an asset. A valuation certificate would be obtained from an independent valuer in order to demonstrate best value.

## ***Disposal of an Asset for the Best Consideration or at an Undervalue***

Except in the case of land held for housing purposes, the requirements of s123 of the Local Government Act 1972 ('best consideration') and the related General Disposal Consent 2003 should be taken into account.

### a) Best Consideration

S.123 of the Local Government Act 1972 states that "..... except with the consent of the Secretary of State, a Council shall not dispose of land, otherwise than by way of a short tenancy, for consideration less than the best that can reasonably be obtained".

S.123 qualifies 'best consideration' therefore it might not necessarily be the highest price. Other factors, for example, planning, can apply. 'Best consideration' will be Market Value (taking into account conditions and covenants that run with the land as well as planning issues); quality of proposals; regeneration objectives; sale conditions that might bring about other quantifiable benefits; whether the bid appears financially realistic and deliverable; whether the bid is from a special purchaser, etc. This introduces a degree of flexibility in determining 'best consideration'.

### b) General Disposal Consent 2003

There is a general consent for local authorities to dispose of land or grant a lease in excess of seven years for less than best consideration where:



- i) The Authority considers that the purpose for which the land is to be disposed of is likely to contribute to the promotion or improvement of the economic, social or environmental well being of the whole or any part of its area or of all or any persons resident or present in the area.
- ii) The difference between the full Market Value of the land and the actual consideration for disposal does not exceed £2m.

The Consent provides a technical appendix describing the information which must be supplied if an application is made to the Secretary of State for approval of a sale if it does not meet these criteria or if there is doubt.

Authorities are asked to note that these provisions do not apply to certain classes of properties which are not covered by Section 123, which includes land held under the Housing and Planning Acts.

Authorities are reminded that the Consent does not override restrictions on State Aid arising under European Legislation.

### ***Disposals of land to assist the provision of privately let Housing***

A separate legal power (which applies to both housing and non-housing land) exists under Sections 24 and 25 Local Government Act 1988 (and a related general consent) to dispose of land for less than best consideration to assist the provision of “privately let housing” (an expression which includes shared ownership and shared equity schemes, as well as housing for rent). These provisions allow disposals either to registered social landlords or, on a more restricted basis (subject to an annual financial limit) to other providers of housing.