

# WESTMORLAND AND FURNESS COUNCIL

## Cabinet

<b>Report Title</b>	Property Disposal Policy
<b>Date of Meeting</b>	12 September 2023
<b>Report Author</b>	Allan Harty, Assistant Director (Corporate Assets, Fleet & Capital Programme) Matt Messenger, Strategic Asset Management Lead
<b>Director</b>	Pam Duke – Director of Resources (Section 151 Officer)
<b>Lead Cabinet Members</b>	Cllr Peter Thornton – Cabinet Member for Highways and Assets Cllr Andrew Jarvis – Cabinet Member for Finance
<b>Why is this a key decision?</b>	1. Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council’s budget for the service or function to which the decision relates. For these purposes, savings and expenditure are “significant” if they are equal to or greater than £500,000 and/or <b>(No)</b> 2. Is likely to be significant in terms of its effects on communities living or working in an area comprising on two or more wards in the area of the Council – <b>(No)</b>
<b>Wards Affected</b>	All
<b>Identify exempt information and exemption category</b>	Not applicable
<b>Appendices (if any)</b>	Appendix 1 – Property Disposal Policy (September 2023) Appendix 2 – Amendments to the Council’s Constitution

### 1. Executive Summary

1.1 Council services are producing policies for the work of our newly integrated teams. As part of this process the ‘Property Disposal Policy’ has been written to set out the principles and recommended approach for the disposal of council property assets. This policy sets out steps to be followed to achieve best practice, ensure the maximum benefit of the asset is realised in the context of Council Plan Priorities and to complement Strategic Asset Management Strategy commitments to deliver a modern, effective and fit-for-purpose property portfolio and healthy working environment.

### 2. Recommendations

**For the reasons set out in this report, Cabinet is recommended to:**

- 2.1 Adopt the ‘Property Disposal Policy’ attached at Appendix 1; and
- 2.2 Recommend to Council the required amendments to the Constitution attached at Appendix 2.

### **3. Information: The Rationale & Evidence for the Recommendations**

- 3.1 The Westmorland and Furness Council Property Disposal Policy sets out the principles and recommended approach for the disposal of council property assets (excluding service devolution and disposals of the school estate, housing portfolio and highways infrastructure). It is relevant to officers, members, community groups and other interested parties.
- 3.2 This policy complements the Council Plan, Delivery Plan & Performance Management Framework, Constitution and Scheme of Delegation.
- 3.3 The council's corporate property portfolio consists of circa 550 buildings of differing age, function and efficiency and 1,200 non-housing assets, including land parcels.
- 3.4 The council's emerging Strategic Asset Management Strategy will support Council Plan and Delivery Plan & Performance Management Framework commitments to deliver a modern, effective and fit-for-purpose property portfolio and a healthy working environment. This drives the focus of the Corporate Assets Team to make best use of council assets to enable efficient delivery of services. This may mean improving buildings, changing their use, selling or leasing to partner organisations and community groups to achieve Council Plan objectives, or disposal on the open market and reinvestment of capital receipts in our frontline services.
- 3.5 The Property Disposal Policy sets out the steps to be followed to achieve best practice in relation to asset sales and to ensure the maximum benefit of the asset is realised in the context of Council Plan Priorities. The policy sets out the process for ensuring any form of disposal considers all relevant factors, enabling appropriate, timely and transparent judgements in each individual case to ensure all our communities have equality of opportunity.
- 3.6 Preliminary steps involved in each potential decision to dispose are illustrated within the document. These are:
- Stage 1: Asset declared surplus to service needs,
  - Stage 2: Asset offered for use by other council services,
  - Stage 3: Asset assessed for retention for income generation,
  - Stage 4: Asset screened for transfer to partner organisations,
  - Stage 5: Asset screened for Community Asset Transfer.
- 3.7 Where the screening and assessment stages do not lead to a re-use of the asset or a transfer to a partner or community organisation the asset will usually be sold on the open market. Best practice in asset management is to reduce operational holding costs of surplus properties to as close to zero as possible. This is facilitated by planning ahead and completing these preliminary steps as early as possible so that a property can be sold, transferred or redeveloped as soon as it is vacated by a council service.
- 3.8 The detailed technical process for property disposals is included within an appended 'Open Market Sales Procedure' to the policy document. This procedure is followed by officers in the Corporate Assets Team when managing all asset disposals.

#### **4. Link to Council Plan Priorities: (People, Climate, Communities, Economy and Culture, Customers, Workforce)**

- 4.1 Property disposals can directly contribute to a range of Council Plan Priorities, dependent upon end-use.
- 4.2 The Council Plan prioritises supporting people in need and reducing inequality by tackling the wider determinants of health such as access to good quality housing and jobs. Property disposals will often directly facilitate new housing, new employment opportunities and new business creation. This can link to the Council Plan priority to promote sustainable, inclusive, economic growth.
- 4.3 The Council Plan prioritises the provision of leadership in the drive to become zero carbon. The Corporate Assets Team are working with council colleagues and external partners to attempt to identify disposal opportunities to contribute to biodiversity net gain and broader environmental initiatives.
- 4.4 The Council Plan prioritises confident, empowered resilient communities. Where disposal results in housing schemes, the provision of local occupancy and affordable housing in areas where house prices are high in relation to average income is a vital component of increasing resilience through ensuring families and residents can continue to live within a specific local area. Where there is scope for community asset transfer or devolution of assets to town or parish councils such disposals will enable local communities to shape their own destiny.
- 4.5 The Council Plan prioritises a confident, empowered and inclusive workforce. This is facilitated by the creation of a healthy working environment that enables everyone to fulfil their potential and a place where the whole workforce is focussed on delivering great services. The Property Disposal Policy and emerging Strategic Asset Management Strategy will guide the key focus of the Corporate Assets Team to make best use of council assets to enable efficient delivery of services. This may mean improving buildings, changing their use, selling or leasing to partner organisations and community groups to achieve Council Plan objectives, or disposal on the open market.
- 4.6 In addition to any direct contribution to Council Plan priorities arising from the re-use of assets, open market property disposals will generate capital receipts that can be re-invested into council services and delivery of Council Plan priorities.

#### **5. Consultation Outcomes**

- 5.1 The Property Disposal Policy was the subject of a briefing on 27 June 2023 to Cabinet members.
- 5.2 Lead Cabinet members were consulted on an initial draft version of the policy during April.
- 5.3 Minor amendments were made to the draft document following these consultations.

#### **6. Alternative Options Considered**

- 6.1 Option 1 (Recommended): See *section 2*.

- 6.2 Option 2: Cabinet could request that further amendments are made to the Property Disposal Policy prior to adoption.
- 6.3 Option 3: Cabinet could choose not to support the adoption of a 'Property Disposal Policy.' This is not recommended and would go against the ethos of council services producing policies to provide guidance and transparency to the work of our newly integrated teams. This would also increase the risk of challenges and complaints from stakeholders, particularly those who have been unsuccessful in attempts to purchase surplus council property.

## **7. Financial Implications and risk**

- 7.1 There are no direct financial implications of Cabinet agreeing to the proposed Property Disposal policy, however the policy itself supports the reduction of the Council's property portfolio which could result in the generation of capital receipts and the reduction in operational holding costs incurred by the Capital Programme and Assets budgets. In some instances where the disposal of the asset is part of a wider change programme the capital receipt could be ringfenced for future use as part of that business case. Most assets however result in a general capital receipt being achieved that can be used for funding any capital scheme.

## **8. Legal and Governance Implications**

- 8.1. The Policy seeks to set out the broad objectives for the disposal of Council Property and set out the principles on which decisions to dispose or not dispose will be taken. In disposing of assets, the Council needs to consider and comply with relevant legislation, including Subsidy Control and Financial Regulations and its Constitution to ensure it is not acting ultra vires.
- 8.2 Under Section 1 of the Localism Act 2011, the Council has a general power of competence to do anything that individuals generally may do; however, that general power is subject to other statutory limitations.
- 8.3 S123 of the Local Government Act 1972, provides that (except for a tenancy or leasehold term assignment of less than 7 years) the Council shall not dispose of land for consideration less than the best that can be reasonably obtained. It must obtain "best consideration", unless the General Disposal Consent (England) 2003 can be applied or a specific consent is obtained. A Council can be found to have breached S123 if it has (1) Failed to take proper advice (2) failed to follow proper advice for reasons that cannot be justified; or (3) has followed advice that was so plainly erroneous that in accepting it the Local Authority must have known, or at least ought to have known, that it was acting unreasonably.
- 8.4 When determining whether to dispose of land for less than best consideration the Council should have regard to several factors including its accountability and fiduciary duty to local people, its community asset use and transfer policy, all normal and prudent commercial practices, clear and realistic valuation advice on the asset in question and Subsidy control rules.
- 8.5 The General Consent allows specified circumstances where the consent can be applied:

- 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 person's 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).

8.6 Each disposal will need to be considered on a case-by-case basis to ensure that the Council complies with legislative framework and its Constitution. Sales of Public Open Space, freehold reversions, allotments and Subsidy Control require careful consideration to ensure the Council is compliant.

Under the draft Property Disposal Policy (page 8 paragraph 1.4), a disposal means a disposal of property (freehold or on long leases).

The Constitution sets out the requirements for any disposals within the Contract Procedure Rules: Land and Property and identifies transactions which may require further Cabinet decision, such as (but not limited to) transactions at an under-value, disposals to a Special Purchaser.

8.7 Where a disposal is agreed, officers will also need to comply with the Access to Information Procedure Rules and Finance Procedure Rules and any other appropriate parts of the Constitution.

8.8 In addition the Council officers need to consider whether the disposal will be a Key Decision and comply with the requirements in this regard. If the estimated value (combined value where more than one property is to be disposed of) of the property is greater than £500,000, disposal capital value or aggregate rental value over the term of the lease, a decision on the sale or transfer will need to be made through the key decision process. It is proposed that on receipt of the report by Cabinet and Council on the 'surplus assets' list, a delegation to the Director of Resources will be contained within the report to approve the sale and procedure. Acceptance of offers will be agreed by the Director of Resources in consultation with the Leader, Cabinet Member for Finance and Cabinet Member for Highways and Assets for any transactions in excess of £0.500m. Such powers and functions may be exercised by the Assistant Director (Corporate Assets, Fleet & Capital Programme) on behalf of the Director of Resource pursuant to appropriate authorisations under the Local Scheme of Authorisation. Currently whichever authority is being sought, the following information must be provided: (a) a complete description of all the land and/or property to be included in the disposal or transfer; (b) confirmation from the Chief Legal & Monitoring Officer that the title of the land and/or property is owned by the Council (or in the case of licences that the Licence is still extant and capable of transfer); (c) the reason for the sale or transfer and any restrictions which this may impose; (d) a report on any information which is held by the Council in the previous use of the land which may affect its value (e.g. if the site were contaminated); (e) the estimated value of the land and/or property;

(f) evidence of local member consultation (g) recommendations on the following: (i) issues that need to be resolved before marketing the land and/or property can commence; (ii) the preferred method of disposal (private treaty/public auction/formal tender); (iii) the title to be transferred; (iv) steps that need to be undertaken to maximise the value of the asset prior to disposal e.g. planning applications; (v) the minimum price that the Council is prepared to receive together with an asking price. Where it has been decided that the disposal of the land and/or property will be by formal tender, the requirements of the Contract Procedure Rules relating to tenders shall be applied (where appropriate).

## **Constitution Amendment**

8.9 The Constitution will require amendment as outlined in Appendix 2. It is our understanding that all list of surplus assets will be presented to Cabinet for approval and that the list of surplus assets will also be presented to Council for approval of inclusion in the Capital Programme.

8.10 The Disposal Policy seeks to ensure that the council deals with its surplus assets in a transparent way. If the Disposal Policy is agreed by members, it is anticipated that some of the risks in disposing of Council assets will be mitigated by following the mechanisms as set out in the Disposal Policy and in compliance with the legislative and constitutional framework. Legal services will support the disposal procedure by dealing with the transfer documentation (for example, lease or freehold transfer) when required.

## **9. Human Resources Implications**

9.1 The adoption of a Property Disposal Policy will support the creation of a healthy working environment which will enable our workforce to fulfil their potential and a place where the whole workforce is focussed on delivering great services.

## **10. Equality and Diversity Implications (including the public sector equality duty, Armed Forces Families, Care Leavers and Health inequalities implications)**

10.1 There are no equality and diversity implications arising from the report.

## **11. Background Documents**

11.1 The legacy councils Property Disposal Policies were consulted in the preparation of the proposed Westmorland and Furness Council Property Disposal Policy.