

CONTRACT PROCEDURE RULES RELATING TO LAND AND PROPERTY

Introduction

The sale and acquisition of property by the Local Authority will always have a high profile. This is partly because the property in question is often located in the heart of communities and is therefore of considerable importance to those communities.

These Procedure Rules relate to the acquisition and disposal of land and property including freehold interests, leases (and the assignment of leases) and the granting of easements and licences. These Rules must be read and applied in conjunction with the Council's Officer's Scheme of Delegation, the Directors Local Scheme of Authorisation to Officers and the Property Disposal Policy. The Property Disposal Policy only applies to freehold disposals and long leasehold disposals.

ESTABLISHING AND MANAGING THE SALES PROGRAMME

This will be undertaken in accordance with the Property Disposal Policy.

There is a presumption that reports to Members **concerning the indicative programme of sales and property transfers** will be taken in public. The exception is when, and for so long as, information contained within them would prejudice the **Council** or would give an advantage to any person seeking to enter into a contract with the **Council** or would disclose information about the financial or business affairs of a person other than the **Council**.

The reasons for confidentiality, where these exceptions apply, will be recorded on the face of the report.

URGENCY

Sometimes property transactions are urgent.

Where it is considered that it is not reasonably practicable to delay a decision **(which is not a key decision)** until the transaction has appeared in a plan, other means of informing the relevant Overview and Scrutiny Committee in advance of the decision wherever possible will be followed.

Where it is not possible to involve the Overview and Scrutiny Committee in advance of the transaction, then in these circumstances a record of the decision, including the reasons for urgency, will be provided to the Committee as soon as is reasonably practicable. The Overview and Scrutiny Committee will, by these means, be able to hold the Cabinet Member/Portfolio Holder to account for their judgement in relation to urgency.

Where the publication of the intention to make a key decision is impracticable, that decision may only be made where the proper officer has informed the Chairman of the relevant Overview and Scrutiny Committee, public notice has been given and five clear days have then elapsed. Public notice must be given of the reasons. Where the date by which a key decision must be made makes compliance impracticable, the decision may only be made where the decision maker has obtained agreement from the Chairman of the relevant Overview and Scrutiny Committee that the making of the decision is urgent and cannot reasonably be deferred. Public notice must be given of the reasons.

SPECIAL PURCHASER

Some transactions involve disposal of property rights which directly affect:

- An existing leaseholder and/or
- Some other individual with a particular interest in the property in question.

When such a transaction is proposed the bid of a special purchaser will either be above the market value because landed interests are being merged or the Council will be better able to pursue a particular policy objective such as economic development. In either case a negotiated settlement is to be pursued rather than a tender or other competitive process.

Where there is known to be a special purchaser:

- This will be shown on the plan of proposed transactions as the method of disposal.
- A report proposing the use of the special purchaser regime will be submitted to the Cabinet Member/Portfolio Holder with oversight of land and buildings and copied to the Chairman of the relevant Scrutiny Committee.
- The Cabinet will take decisions in relation to special purchaser transactions.

These provisions relating to special purchasers should be read in conjunction with the Property Disposal Policy. This provides, in part, that “In the event that the interested party is a special purchaser the valuation report should clearly set out the value on that basis making it clear that this would be the best price obtainable. In the event that the Council is not minded to accept the special purchaser bid as it is considered to represent an Under Value the guidance section on Under Value applies

INTERESTS

The regime from the Members’ Code of Conduct in relation to declaration of interest applies to property transactions. Members taking decisions (or engaging in policy development or scrutiny) will wish to consider whether the nature of the transaction, the identity of the other party to the transaction and/or the location of the property gives rise to a **disclosable pecuniary or other registrable interest**.

Interests may arise due to the location of the property being in the area where the elected member resides, being in the electoral division which the member represents, or for some other reason to do with the private or public life of the member.

The Cabinet Member/Portfolio Holder will not use delegated powers in relation to property transactions in their own ward.

LOCAL MEMBER

The programme of sales and property transfers will be forwarded to the three Locality Managers and Locality Board chairs for information and communication to Local Members.

TOWN/PARISH COUNCILS

A copy of the annual plan of disposals will be sent to all Town and Parish Councils. The local council where a property transaction is proposed will be informed prior to any public marketing taking place.

VALUATIONS FOR ACQUISITION AND DISPOSAL

All valuations and negotiations shall be the responsibility of the relevant Director responsible for land and buildings (or as delegated). Anyone undertaking the negotiations on their behalf must have appropriate written delegation and must be a qualified Member of the Royal Institution of Chartered Surveyors.

All valuations prepared for the purpose of a transaction must be accompanied by evidence of the values or comparable properties in the locality, or if possible evidence of recent, similar transactions carried out by the Council.

ACQUISITIONS

These Procedure Rules supplement existing arrangements to plan and report proposed acquisitions through the capital programme.

Where a property acquisition is proposed which, for any reason, has not appeared on the capital programme, the relevant Overview and Scrutiny Committee will be given the opportunity to consider the proposal, or if genuine urgency prohibits this, to subsequently consider the acquisition.

No purchase of land or property (freehold or leasehold) may be made without the prior approval of an officer delegated to do so by the Council's Financial Scheme of Delegation. In order to do this the information detailed below must be provided for by this officer (reference to purchase includes the acquisition of a licence):

- (a) a complete description of the land or property that is being considered for purchase;
- (b) a full business case or similar report detailing the reasons for the purchase;
- (c) any information that may affect the value of the property or land, including structural and environmental reports;
- (d) the proposed purchase price or rental value together with evidence of the prices for similar properties in the location;
- (e) evidence of local member consultation;
- (f) member or Cabinet approval as appropriate; and
- (g) any other terms and conditions.

The officer must retain all of this evidence for six financial years after the acquisition has been completed.

Where a company introduces an investment opportunity to the Council for a fee, this does not require a competitive exercise and is exempt from the Public Contracts Regulations 2015. In this situation the Council is not seeking offers or scoping or specifying a service. The Council is responding to an offer that would otherwise not be available to them.

Disposals

The Council's Property Disposal Policy sets out the principles and approach by which the Council will dispose of property assets. Disposals for this purpose means those property assets declared surplus to requirements and to be sold on the open market (excluding service devolution and [disposals of the school estate], housing portfolio and highways infrastructure). The detailed process to be followed for property disposals (and the preliminary steps involved in each decision to dispose) is contained within the Open Market Sales Procedure that is stated in the Council's Property Disposal policy.

Subject to any decisions that are to be taken by Members, the Director of Resources has delegated authority subject to consultation with the Leader, Cabinet Member for Highways and Assets and the Cabinet Member for Finance to authorise sales of surplus Council land and premises and the Estates & Investment Manager has delegated authority to determine the method of sale, having regard to the individual circumstances.

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 must be made following the key decision process.

Upon the approval of the Disposal Schedule by Cabinet and inclusion of the Disposal Schedule in the Capital Programme for approval by Full Council the decision to dispose has been delegated to the **as outlined above**.

For all disposals over £100,000 an Officer Delegated Decision is required and the rules for publication must be followed.

For disposals under £100,000 these will be classed as operational decisions with a record of the decision being taken.

For anything over £500,000 a key decision will be required and the rules for publication must be followed.

Delegated decisions must take account of the Special Purchaser requirements described above.

The authorisation and granting of leases of over 125 years is reserved to the Cabinet (with the exception of academy leases which will be granted in accordance with statutory requirements).

Prior to a disposal being authorised, the following must be considered:

- (a) a complete description of all the land and/or property to be included in the disposal;**
- (b) confirmation that the title of the land is owned by the Council (or in the case of licences that the Licence is still extant and capable of transfer);**
- (c) the legal status of the land and the basis on which it was acquired and is now held;**
- (d) any procedural requirements that may be necessary to dispose of the land and any impediments to development of the land (if relevant);**
- (e) confirmation that the Council has power to dispose of the land;**
- (f) the reason for the disposal and any restrictions which this may impose;**

- (g) a report on any information which is held by the Council on the previous use of the land which may affect its value (e.g. if the site was contaminated);
- (h) a report of a professionally qualified valuer as to current market valuation;
- (i) evidence of local Member consultation;
- (j) 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 (for example, private treaty/public auction/formal or informal 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) a guide price;
 - (vi) any other appropriate terms and conditions.

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 and with the necessary changes having been made).

Undervalue

There may be circumstances where the Council considers it appropriate to dispose of land at an undervalue (i.e. for less than the best consideration that can reasonably be obtained).

Section 128(1) of the Local Government Act 1972 (1972 Act) confers on the Secretary of State power to give a general consent (Consent) for the purposes of land disposals by local authorities carried out under their powers in Part 7 of the 1972 Act. The terms of the Consent mean that specific consent is not required for the disposal of any interest in land which the Council considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. In all cases, disposal at less than best consideration is subject to the condition that the undervalue does not exceed £2,000,000 (two million pounds).

In determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the Council should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue. When disposing of land at an undervalue, the Council must fulfil its fiduciary duty in a way which is accountable to local people.

All disposals must also comply with the Subsidy Control Act 2022.

A disposal at an undervalue will be a key decision taken by Cabinet, will appear on the Forward Plan and the report will be sent to the Chair of the relevant Overview & Scrutiny Committee so that the Overview & Scrutiny Committee can have the opportunity to consider the reason for the disposal at an undervalue.”

Community Asset Transfers

When the Council proposes to make a disposal by way of community asset transfer, a Red Book valuation will be carried out to establish the open market value of the land. A community asset transfer will usually involve a disposal of land at an undervalue and a Cabinet decision will be required.

The Assistant Director (Corporate Assets, Fleet and Capital Programme) has delegated authority subject to consultation with the Cabinet Member for Highways and Assets to authorise the extension of previously approved leasehold CATS to provide for the furtherance of the Councils CAT objectives or to secure grant funding.