

## **DISPOSAL PROCEDURES**

### **INTRODUCTION**

The purpose of this guide is to make the Council's disposal procedures transparent.

#### **General Principles**

All disposals will accord with local government requirements for:

- propriety
- transparency
- value for money

#### **Key Legislation**

- Local Government Act 1972

#### **Key Policies and Guidance**

Appraisal and Valuation Standards (RICS) known as the 'Red Book'

Property in this context shall include land, buildings and any fixtures and fittings that are to be included in the sale.

The Council will keep under constant review its property holdings to ensure that they remain consistent with service provision needs and:

- optimum use is made of land and buildings and they contribute positively toward the proper discharge of the Council's duties and environmental policies.
- expenditure on maintenance and repairs is kept to a minimum commensurate with maintaining the value of a property and its condition so that it is fit for its designated use.
- there is orderly disposal of declared operationally surplus buildings, once a rigorous assessment of the council's future requirements has been carried out.
- property that is declared surplus is dealt with in a manner that will secure optimum benefit, without compromise to the discharge of the council's statutory responsibilities and duties.

It is important that the procedures for the disposal of property are sufficiently robust to ensure that prospective individual purchasers do not gain commercial advantage at the detriment of NPTCBC.

## **RELEASING ASSETS – IDENTIFYING SURPLUS ASSETS**

### **Definition of surplus / under-used property**

A site is deemed surplus to the Council's requirements if:

- (a) It does not contribute to the delivery of the Council's services
- (b) It has no potential for future strategic or redevelopment purposes
- (c) An alternative site has been identified which would achieve a more cost effective service delivery

A site is deemed underused if the income being generated from the site is below that which could be achieved from:

- (a) An alternative use
- (b) Disposing of the site and investing the income.
- (c) Intensifying the existing use.
- (d) Part of the site is vacant and is likely to remain vacant for the foreseeable future.

### **Site Identification**

Sites for possible disposal may be identified in the following ways:

- (a) Through the process of property review.
- (b) Through service departments declaring specific sites as being surplus to requirements.
- (c) Through identifying previously unidentified surplus land from the property management system.

## **VALUATION AND PRE-SALE CONSIDERATIONS**

### **Site Investigations**

Once a potential site has been identified, the valuer will consult with all appropriate interests, to establish whether there are any development constraints on the site.

As soon as practicable, during or preferably before marketing, suitable site, service and location plans should be prepared. Additional site information may be required depending on the case e.g. land surveys, geographical surveys, contamination studies, hydrographic surveys etc. This will be undertaken at the discretion of the appropriate officer with the aim of providing as much information as reasonably possible to purchasers in order that time delays and uncertainties are eliminated as quickly as possible.

The preparatory investigations should include the collation of any existing asbestos inspection/survey reports or an assessment of other contamination, where appropriate.

### **Local Member**

Immediately before to the marketing of each property, the local Member will receive a letter from the valuer informing them of the proposed disposal and enclosing sales particulars if available.

## **Planning**

Where a property has potential for development, re-development or a change of use, that increases market value over existing use, the grant (or prospect) of planning permission can be significant or vital. Therefore, where appropriate investigations into planning potential will be undertaken.

## **Restrictive Covenants and Use of Agreements**

In every disposal, it is the aim of the Authority to ensure that the full value of the land is obtained. If there is any doubt about the potential of the property being sold, it will usually be retained for future disposal once these doubts have been cleared. However, there may be circumstances where it is appropriate for the disposal to proceed without realising potential development value. The use of covenants, restrictions or other appropriate agreements may be necessary to secure a further capital receipt when/if subsequent development take place.

## **Crichel Down Rules**

Although not obligatory for Local Authorities, the Council will have regard to the non-statutory arrangements known as the Crichel Down Rules. These apply to property acquired by or under threat of compulsory purchase powers and, in specific circumstances, may require such property to be offered back to the former owners once it ceases to be required for public purposes.

## **Expenditure set against Anticipated Sale Proceeds**

To maximise the potential of a property, pre and post marketing enhancement expenditure may be required e.g. planning costs, separation works, creation of accesses etc. These works will be financed from the anticipated proceeds of sale, in accordance with the Local Authorities (Capital Finance) Regulations 1997, and subsequent financial regulations.

## **Statutory Requirements**

All relevant legislation will be followed when conducting a marketing exercise. This includes the Estates Agents Act 1979, the Misrepresentation Act 1967 and the Property Misdescriptions Act 1991 or any subsequent amendments or additions thereto.

## **Service Disconnection**

Arrangements should be made for services to be temporarily disconnected and water/heating systems to be drained down (where appropriate), if the occupying service department has not already arranged this.

## **Title Checks**

Legal documents must be checked by the Legal Division to determine whether any covenants or restrictions such as easements, rights of way, claw-back provisions have a material impact on the sale.

A report on title should be obtained and in some cases incorporated in the sale details.

## **PROPERTY SALES**

### **Sales on the Open Market**

The council shall normally sell its property on the open market using the most appropriate advertising practices and marketing methods.

### **Section 123**

This procedure takes full account of the requirements of Section 123 of the Local Government Act 1972

Local Authorities may dispose at less than best consideration where:

- *contributes to economic, social or environmental well being of an area*
- *undervalue less than £2m*
- *comply with normal and prudent commercial practices including valuation report*

The key objective will be to maximise the proceeds of disposal consistent with the statutory obligation to achieve the best price reasonably obtainable in accordance with the provisions of Section 123 of the Local Government Act 1972.

In December 2003 The Welsh Assembly Government issued an Order (The General Disposal Consent (Wales) 2003) which permits the Council to dispose of property without seeking s123 consent, so long as the undervalue of the disposal does not exceed £2 million. The disposal must also be in the interests of the social, economic or environmental well-being of the whole or any part of its area or any or all persons resident or present in its area.

### **Special Purchaser**

In exceptional circumstances, the appropriate officer may decide that the best interests of the Council will be served by dealing with a sale to a single party and not offering the property for sale on the open market. This action will be restricted to cases where there is some specific and quantifiable benefit to be gained from dealing solely with a named party. Examples of such cases would be as follows:

- Where the land to be disposed of is relatively small in size and an adjoining or close landowner is the only potential or likely purchaser.
- Where the land to be disposed of needs to be sold to an adjoining landowner if best consideration is to be obtained.
- Where the Council's land is part of a larger area of land that is proposed for redevelopment or regeneration and the complexity of the proposed development of the overall site is such that the Council's corporate objectives or best consideration can only be achieved by a sale to a purchaser with an existing interest in property in the area.

Unless a “special purchaser” has been identified, i.e. one who is prepared to pay a premium for the site (over and above market value), all potential purchasers are to be given an opportunity to tender / submit an offer in accordance with the Council’s standing orders.

### **METHODS AND TIMING OF DISPOSAL**

The timing of any marketing / disposals will need to be considered against the background of the Council’s budgetary requirements, together with the current state of the property market. Before recommending that a disposal is to proceed, the following factors are to be taken into consideration:

- Is there an immediate need to raise capital receipts?
- Current market conditions
- Potential for the site value to increase in the future
- Maintenance issues

The appropriate officer will recommend a method of disposal and marketing strategy.

The Council will normally dispose of property by way of one of the following methods:

#### **Sale by Formal Tender**

The property will be advertised for sale by tender and interested parties can apply for a Tender Pack, which will contain all the relevant information and documentation required to submit a bid. There will be a closing date and time by which all bids must be received and all tenders will be kept secure until that time when they will be opened in the presence of two or more Council officers and a cabinet member. A binding legal agreement is created upon the acceptance of a tender, notification of which will be sent in writing by the Council’s Solicitor.

In sales by formal tender, any bids received **after** the closing date and time will not normally be considered.

#### **Sale by Informal Tender**

The property will be advertised for sale and informal offers or bids will be sought. These will be considered and further negotiations may take place with parties who submit offers in order to obtain the best deal from the Council’s point of view.

In relation to sales by private treaty and informal tender, it may be necessary to request best and final offers for a property and in both of these methods of disposal, a binding legal agreement is not created until the exchange of contracts between the Council and the purchaser. Where an offer is accepted subject to contract, the Council will make every effort to secure an early exchange of contracts to avoid a situation whereby a late bidder could “gazump” the originally accepted offer. However when accepting an offer subject to contract the purchaser will be informed that the Council may be obliged to consider any higher offers received prior to exchange of contracts.

### **Sale by Private Treaty**

The property will be marketed by the valuer.

### **Sale by Public Auction**

A firm of Auctioneers appointed by the appropriate officer will auction the property. The auctioneer creates a binding legal agreement upon the acceptance of a bid.

### **Option Agreements**

An option gives the prospective purchaser the right to acquire property at some point in the future, following the triggering of certain key events such as the grant of planning permission. This is most appropriate in situations where a specialist planning permission is required, with significant up front costs or the chances of securing planning permission is uncertain.

The future sale price will usually be based on open market value, or a percentage of open market value to reflect the risk and costs of securing planning permission. Fixed purchase prices are usually agreed if the option agreement is for a relatively short period.

## **AUTHORITY FOR DISPOSAL OF LAND & BUILDINGS**

### **Authority**

All acquisitions and disposals of land must be properly authorised.

The Head of Service shall have the power to authorise the acquisition or disposal of land in accordance with his delegated powers.

All acquisitions or disposals, which the Head of Service does not have power under the Constitution to authorise, must be authorised by Cabinet.

In order to avoid allegations of impropriety it is essential that the disposal process, including the method of sale:

- (a) Seeks to secure the best terms reasonably obtainable.
- (b) Allows all interested parties to be identified.
- (c) Affords all interested parties an equal opportunity to purchase.
- (d) Avoids partiality or bias.

Once approval and acceptance is formalised, the valuer will inform the prospective purchaser of the decision in order that legal formalities can begin. Unsuccessful bidders should also be notified in writing as a matter of courtesy but not detailing any information about the Buyers or the bid details.

The valuer must always be alert to Money Laundering Regulations and alert the appropriate Authorities if an approach is being made to acquire property using suspect funds.

## **INSTRUCTIONS OF SOLICITORS / COMPLETION**

On conclusion of negotiations, the heads of terms should be reported to the Legal Division for conveyancing. It shall be the responsibility of the valuer to ensure that Legal is provided with sufficient copies of all plans to be incorporated in the documentation.

On completion of the transaction, Legal shall endeavour to provide the Head of Property with copies of the completed documentation within 5 working days.

## **POST DISPOSAL ACTION**

On completion of a transaction, it will be essential to ensure that:

A copy of the final legal documentation is forwarded to the TPMS so that the master records on the ownership and the Asset Register can be updated.

The following are notified:

- Property Help Desk
- Insurance Officer
- Property Tax Section

Any follow up action to enforce or monitor conditions covering the imposition of restrictive covenants, claw-back mechanisms or obligations to undertake works such as the erection of fencing is undertaken.