

# Housing and City Development Scrutiny Committee

## 18 December 2023

### Asset Disposals Policy

#### 1.0 Purpose

- 1.1 The Council is a major owner of property assets from which services are delivered and Council Plan priorities facilitated. The Council does not have an up-to-date Asset Management Strategy that governs how its significant operational and non-operational buildings will be managed, prioritised for investment or ultimately disposed of if surplus to requirements, but a comprehensive Asset Management Strategy will be developed by the end of this year. In the meantime, it is necessary for the Council to develop and adopt an interim Asset Disposals Policy to ensure that property decisions are made with clarity, transparency and integrity.
- 1.2 This work is being undertaken in the context of the need to generate significant capital receipts from surplus property holdings to finance the Council's capital programme and reduce Council debt, having regard to the Council's voluntary Debt Management Strategy approved as part of the Council Budget for 2021/22.
- 1.3 When property assets become surplus, there will be a presumption for disposal unless there is a strong business case approved for alternative use. This policy applies to all required disposals of both Council freehold and leasehold interests in land and property assets.
- 1.4 All disposals of assets held within the General Fund, either by way of sale or leasing and lettings, must be in a way that delivers Best Consideration. In that respect non-financial benefits (which may include additional economic, strategic, operational, etc., benefits) can be considered in determining whether disposal is Best Consideration or not, providing that they can be quantified in cash terms. It is the case that separate legislative requirements exist for disposals of assets held either in the Housing Revenue Account (HRA) or for Planning purposes.
- 1.5 This policy is only intended for Council disposals – it does not apply when the Council acts on behalf of other landowners.
- 1.6 All decisions relating to the declaration of properties as surplus or methods of disposal will be subject to recommendations from the Head of Property (or their deputy) to ensure Best Consideration.
- 1.7 The purpose of this document is to make the Council's policies, guidance and procedures transparent and public.

## **2.0 The Process for Identifying and Declaring Assets as Surplus**

### **Identification of Surplus Assets**

- 2.1 In relation to property assets held for operational purposes, once that operational use ceases, service departments should declare that property surplus to requirements. Service departments may also consider identifying property as surplus if it is beyond its economic life and a better solution can be found through corporate property planning to better meet service need.
- 2.2 The Council is currently giving consideration to the introduction of a 'corporate landlord' as the future model for the management of its land and property assets. In the event of that model being adopted it is probable that decisions regarding surplus declaration will move to the corporate centre.
- 2.3 In the case of the non-operational property held for income generation purposes within the Council's Property Trading Account, one or more of the following conditions may exist which lead to property being declared surplus:
- it has a risk of excessive void periods;
  - it no longer generates the required levels of income and/or repair costs outweigh revenue;
  - it has a risk of future reduction in income or capital value;
  - it has a significant maintenance backlog or capital cost;
  - it has an excessive management time/cost when compared to the benefits accruing; or
  - there is opportunity for capital growth in an alternative use.
- 2.4 The process for identifying surplus or underperforming property will arise in a number of ways, as follows:
- ongoing review of performance/condition surveys of the commercial portfolio;
  - Service Plans and Service Reviews;
  - regeneration schemes;
  - approaches from third parties, e.g., developers or adjoining owners;
  - requests from community groups or public bodies to transfer assets; and
  - a site-by-site asset rationalisation exercise using the asset register and land mapping.
- 2.5 The identification of underperforming or surplus assets within departments will be monitored via structured annual conversations between the relevant Director and the Head of Property to review business needs and priorities. When land and building assets become surplus there will be a presumption for disposal unless there is a strong approved business case for an alternative use or strategic hold. Land and buildings identified as being surplus will need to follow the procedure set out below.

## **Declaring an Asset Surplus**

- 2.6 For operational properties identified as surplus, the Service is responsible for formally declaring that asset surplus. This is done through a formal decision in accordance with the Council's governance arrangements. Decisions should make the case for sale and, where possible, recommendations for the method of disposal. Recommendations on the method of sale should be made by the Head of Property (or their deputy).
- 2.7 In the case of non-operational property held for commercial purposes, the Head of Property is responsible for bringing forward proposals to declare the property surplus, in conjunction with the Head of Finance and Head of Legal, and otherwise in accordance with the Council's formal governance arrangements.
- 2.8 Recommendations for sale will be captured in an Asset Rationalisation Pro-Forma and approved by the Head of Property. The Asset Rationalisation Pro-Forma should capture relevant comments from the advice given by the Corporate Asset Management Group, which comprises senior officers across the Council, and councillors attending the Asset Rationalisation Board (ARB). Assets being considered for disposal will be presented to the ARB in schedule format, with Asset Rationalisation Pro-Forma only being submitted in relation to either high value or sensitive assets. Should the property not be progressed for sale then the reasons should be clearly recorded, together with a note of the recommendations with the financial and other implications of that decision.
- 2.9 Decisions to dispose will be taken in line with the Council's formal governance arrangements. The Head of Property will determine the disposal strategy to be adopted based on their professional expertise, taking account of external advice where necessary.

## **3.0 Best Consideration and Disposal at an Under-Value**

### **Best Consideration**

- 3.1 The disposal of General Fund land is subject to statutory provisions, in particular to the overriding duty under Section 123 of the Local Government Act 1972 to obtain 'Best Consideration'. Certain other provisions apply to the disposal of open space, which includes the advertising of the intention to dispose through the placing of formal notices in local newspapers for two weeks and to consider any objections raised.
- 3.2 The main consideration in any land disposal is that the Council must not dispose of assets for "**a consideration less than the best that can be reasonably obtained**", unless it has the express consent of the Secretary of State. This is generally interpreted as being the best price achievable in the open market, however, this does not necessarily require the highest offer to be accepted as certain other factors may be considered.

- 3.3 The Council has the power within the Local Government Act 1972 and the General Disposal Consent (England) 2003 to dispose of any asset at less than best consideration, without the requirement for approval from the Secretary of State, if:
- the difference between the unrestricted or market value of the land to be disposed of and the consideration for the disposal does not exceed £2 million; and
  - 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 wellbeing of its area.
- 3.4 There are other statutory provisions that relate to the disposal of assets held in the HRA or for Planning purposes. There are also some areas where additional ministerial consent for sale is needed, e.g., surplus school playing fields.

### **Disposals at an Undervalue**

- 3.5 The default position is that the Council will always dispose of assets to ensure Best Consideration, however, if the Council wishes to dispose of land for less than best consideration then it needs to demonstrate that this is consistent with the organisation's corporate strategic objectives and plans.
- 3.6 In such cases, a business case report following the Government's 5 Case Business Case Model summarising the key facts of any such proposal should be prepared. The business case will be used as a basis for relevant approvals and to test and demonstrate that value for money will be obtained via other means.
- 3.7 The business case will also have a clear recommendation from the Head of Property and advice from Legal Services and Capital Finance. Any decision will be jointly agreed by the Corporate Directors for Growth and City Development and Finance and Resources before final decision by Executive Board.

### **Valuation of Land and Buildings for Disposal**

- 3.8 All necessary valuations for the disposal of land or property at less than best consideration will be carried out by an independent Chartered Surveyor appointed by the Council and the valuation must be carried out in accordance with the RICS Valuation – Global Standards (31 January 2020).
- 3.9 The independent valuation will be undertaken in accordance with the technical appendix to Circular 06/03 – General Disposal Consent. Whilst it is recognised that Section 123 of the Local Government Act does not require an independent valuation when disposing of an interest in land Circular 06/03 does provide that "local authorities are strongly advised in all cases to ensure that they obtain a realistic valuation of that interest, following the advice provided in the Technical Appendix". This ensures that the Council can

effectively demonstrate transparency in meeting with the requirements of section 123 of the Local Government Act 1972.

- 3.10 All decisions will then be entered into a register kept by the Property Team.
- 3.11 If it is considered that an asset is used for social, community and public purposes and the benefits of that service are deemed to outweigh the value of continuing ownership by the Council on behalf of all Council Tax payers, then the Council may consider the transfer of the asset to a community group on terms to be agreed. Any such transfer should be in accordance with the Council's Community Asset Transfer policy and will need to be agreed via the business case process as outlined above.

#### **4.0 Disposing of the Asset**

- 4.1 The method for the disposal of assets will be assessed and determined on a case-by-case basis. The Council will usually use one of the following means to dispose of land and buildings:

- a) **Open Market Disposal (preferred route of disposal):** For freehold disposal and leasehold interests over 99 (virtual freehold), they will be widely advertised, bids invited and then considered on either a formal or informal basis or via open auction.

The Council will advertise the disposal via its own website with links to property related media and marketing agent's websites. Bids will be invited through methods such as auction, informal and formal tender.

When appropriate, independent agents will be appointed to manage the advertisement and the disposal of the land or property and report to the Council the value of the bids received and provide recommendations on which they consider to be the preferred bidder, taking into account the risks associated, financial benefits and statutory requirements.

Where there is more than one interested party, a 'best and final offers' process will be undertaken when appropriate.

Recommendations on the preferred offer will be made on the basis of price and rent, covenant strength, ability to perform, funding, speed of sale, conditionality, risk, etc., to ensure the best return outcome for the Council. The highest cash offer will not be the sole determinant.

- b) **Private treaty special purchaser:** The Council might dispose of an asset to an individual or special purchaser through a private treaty sale. This can be used for both freehold and leasehold disposals. In order to justify a special purchaser disposal, the proposal should meet one, or more of the following criteria:

- the proposed disposal involves both Council land or buildings and an adjoining property or piece of land owned or controlled by the prospective purchaser;
- the disposal is to an existing tenant;
- the disposal is to a third party who, whilst not an adjoining landowner, would bring additional quantifiable social, environmental or economic benefit;
- to enable the purchase of another site that the Council considers necessary to meet its priorities and Council Plan objectives; or
- for the grant of permanent and non-permanent rights, as by definition these are normally a request from a third party.

In such cases an independent external valuation will generally be procured to advise the Council on the value of the asset.

In circumstances where an external valuation is not considered necessary the asset will be valued by the Council's Chartered Surveyors and Registered Valuers and counter-signed. Exceptions to this are when:

- specialist valuation advice is required;
- there are internal capacity issues; or
- if there is a clear conflict of interest.

Appropriate legal advice as to the legality of the proposed arrangements, with particular reference to all relevant Local Government Act and UK Subsidy considerations, will be obtained.

In all circumstances, a private treaty disposal would seek to produce financial benefits, which would be at least equivalent to those obtainable through an open market disposal and should be supported via recommendation from the Head of Property. Should this not be the case then the policy for disposals at less than best consideration as outlined above should be followed.

Any decision to pursue a private treaty special purchaser disposal is entirely at the discretion of the Council and is the exception rather than the general rule.

- c) **Joint development:** Where a redevelopment proposal includes Council land or property and adjoining land, the Council may choose to pursue a joint development with the adjoining landowner and/or Developer or Registered Social Landlord (RSLs).

The details of a joint development arrangement are likely to differ from scheme to scheme but will broadly involve sharing the cost, risk and return from the project.

The benefits and risks of pursuing this method of disposal would require detailed assessment as part of the appraisal for the development.

This form of development may result in State Aid rules being relevant. Any joint development proposal should be guided by Legal Services.

## **5.0 Determining Value/Price**

- 5.1 Best Consideration will be sought via exposure to the market and purchaser competition.
- 5.2 If a property is not exposed to the market the Council will generally seek an independent valuation to ensure that the Council can effectively demonstrate transparency in meeting the requirements of Section 123 of the Local Government Act 1972. In other circumstances the asset will be valued by a Chartered Surveyor and Registered Valuer from within the Property Services Team.
- 5.3 In the circumstances where an internal valuation is used, valuations will be undertaken by a supervised Surveyor and countersigned by a Chartered Surveyor and Registered Valuer in order to promote standards of best practice.

## **6.0 Financial criteria for disposals**

- 6.1 The Asset Rationalisation Disposal Pro-Forma will provide details of the capital and revenue implications of the recommended option. It includes the impact of the current economic conditions, the VAT and insurance implications. This will be presented as part of the business case for disposal.
- 6.2 Once sites are approved as being suitable for disposal and a programme for disposal has been agreed, this will be included on a disposal plan that is then used to inform the Medium-Term Financial Strategy. However, until exchange/completion of contracts has taken place or a lease has been completed, there will always be a risk that the disposal will not take place in the forecast timescale, so the timescale will therefore be indicative.

## **7.0 External Consents**

- 7.1 External consents are required to declare certain types of properties surplus, i.e., playing fields where Sports England consent is required and public open space that has to be advertised. This process should be commenced at the earliest opportunity, as part of the options appraisal and this taken into consideration in forecast timescales.
- 7.2 Other constraints such as legal, planning, statutory authorities/government policy or financial constraints such as the property having been the subject of funding in the past that necessitates the repayment of grant monies will also need to be taken into consideration.
- 7.3 Checks will be made prior to disposal against the Register of Community Assets. Should the property be included, the Council will proceed in the appropriate way.

## **8.0 Governance and Formal Decision-Making Process**

- 8.1 Once a property asset is identified as surplus the Head of Property as the Council's professional lead will instigate the process to dispose. Properties will only be sold after rigorous option appraisal. In order to determine the options, relevant departments should be consulted with, these include all appropriate operational departments, Legal Services, Finance, Procurement and Human Resources, as appropriate. Once the options appraisal has been undertaken, this will be presented for decision with clear recommendation to dispose and via which method.
- 8.2 Recommendations will be developed via the relevant working groups and be agreed by the Corporate Property Asset Management Group, made up of senior officer representatives, including Finance and Legal. Final approval to dispose will be in accordance with the Council's formal governance arrangements and will include advice from Legal, Finance and Property. Terms of any disposal will be as recommended by the Head of Property, in conjunction with the Head of Finance and Head of Legal, in consultation with relevant Portfolio Holders.