

GUIDANCE FOR DISPOSAL METHODS

DISPOSAL BY PRIVATE SALE/TREATY

A disposal by private sale may take place after a period during which the land is put on the open market including advertising and generally marketing including signage that it is available for sale. In this case, the Council will be able to consider the highest bid as representing the best consideration that can be reasonably obtained. A disposal by private treaty can have a closing date and be by way of inviting sealed bids by that date if considerable interest is anticipated.

If land is to be sold by private sale without being marketed, then the reasons justifying a private sale must be recorded in writing. In some circumstances the Council may seek an independent valuation to verify that 'best consideration' is being obtained.

A private sale without the land being marketed may be justified where:

- the land to be disposed of is relatively small in size and an adjoining or closely located landowner(s) is (are) the only potential or likely purchaser(s);
- the nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained;
- the Council's corporate objectives and best consideration can best be achieved by a sale to a particular purchaser;
- the sale is to a non-profit making organisation and the role of that organisation is conducive to the improvement of public services and facilities available within the County Council
- the purchaser has a particular interest in purchasing the premises or a particular association with the premises and where open marketing of the premises may lead that particular purchaser to reduce the value of their offer for the premises or withdraw their interest in the premises altogether;
- the purchaser has a particular interest in purchasing the site or a particular association with the site and where in the opinion of the Portfolio Members for Resources and Economic Regeneration and Development, open marketing of the site may cause undue hardship or unrest for that particular purchaser or where the sale of the premises to a party other than that particular individual would substantially and detrimentally affect the normal operation of the business associated with the premises;
- the disposal is as a result of the Right to Buy scheme.
- the Crichel Down Rules apply and the Council has decided to sell the land to the person from whom it acquired the land.

A legally binding agreement will not be reached until either contracts for the lease or sale of land are exchanged or a development agreement is signed.

DISPOSAL BY AUCTION

Sale by auction may be appropriate where there is no obvious potential purchaser and where speed and best price can be publicly demonstrated.

The authority of the Corporate Directors of Regeneration and Economic Development and Resources will be required, providing the reasons for a sale by public auction. A Council officer shall attend the auction to act on behalf of the Council.

The contract for sale or lease must be ready for exchange at the auction.

The binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed and exchanged.

DISPOSAL BY INFORMAL TENDER

A disposal by informal/negotiated tender differs from a formal tender in that neither the Council nor the successful bidder is legally obliged to enter into a contract for the disposal of the land. The informal tender process allows the Council to identify one preferred bidder with whom it may then negotiate further detailed terms or proposals for the development of the land concerned.

The Council may, as a part of the disposal process, request best and final offers for a sale, or informal development proposals for land that either meet a given specification, or a request for proposals. This process is particularly useful for large or complex development or regeneration sites requiring development and where the proposals may need to be developed in co-operation with the preferred bidder to meet the Council's corporate objectives and to achieve the best consideration that can be reasonably obtained.

Although not a formal tender, after the closing date these are formally recorded by the Head of Legal Services as a record of the offers received.

A binding legal agreement is not created until the exchange of contracts for sale or lease or the signing of a development agreement.

This method is suited to sales where there are uncertainties, particularly planning, and allows for use of conditional contracts, including clauses which can allow for further sums to become payable upon grant of planning permission at different points in the future.

DISPOSAL BY FORMAL TENDER

A sale of land by formal tender may be appropriate where:

- the land ownership is not complex;

- legal documentation for contracts/transfer are in place together with statutory searches and replies to standard enquiries;
- there are no uncertainties as to grant of a planning consent; and
- the Council is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance.

Alternatively, this method can be considered where all matters to enable a tenderer to come to a firm price and raise funding for the purchase are in place and available as part of the tender package. For example, the disposal of land to a developer with an obligation to build industrial units for lease.

Other situations which may benefit from this type of sale are land or property sales which have attracted intense local interest from several local parties with a particular interest, or where late bids have, or are considered likely to be made.

This method can provide a well organised, transparent way of achieving completion when a timeframe is essential, but is often more costly and a longer lead in period is required.

Formal tenders will not be appropriate where the land ownership position is complex or the development proposals for the land are insufficiently identified or otherwise incapable of detailed specification at the pre-tender stage. This is particularly so where a detailed planning permission is required, such as a listed property or property in a Conservation Area.

Authority to use this method will be required from the Corporate Directors of Regeneration and Economic Development and Resources. The formal Tender Procedure to be adopted in such cases will be agreed with the Head of Legal Services.

With a formal tender process a legally binding relationship is formed when the Council accepts a tender in writing. It is essential therefore, that every aspect of the disposal is specified in the tender documents. The tender documents should include a contract for sale or lease which should be completed with the tenderer's details, the tender price, include a deposit cheque to preclude withdrawal of the tender prior to acceptance and be signed by the tenderer. It will be released unconditionally to the Council on submission of the tender.

Sale of land by formal tender will require a detailed specification to be drawn up. This needs to specify the land to be sold, any requirements to be met by the tenderer and any obligations that must be met.

The Council will place a public advertisement stipulating the property for sale. Those who have expressed their interest will then be invited to submit their

tender bids, in accordance with the tender procedure outlined.

DISPOSAL BY EXCHANGE OF LAND

Disposal by exchange of land will be appropriate when it will achieve best consideration for the Authority and is advantageous to the Council and other parties to exchange land in their ownerships.

Authority for a disposal of land by exchange with another land owner for alternative land will be obtained from the Cabinet Member for Regeneration and Economic Development. with the reasons for justifying this manner of disposal being recorded in writing. A binding legal agreement will be created when a contract is exchanged for the exchange.

The exchange will usually be equal in value, however, an inequality in land value may be compensated for by an equality payment or by other means where appropriate..

LATE BIDS AND OTHER CONSIDERATIONS

In the context of the methods of land disposal dealt with in this document, a late bid may occur:-

- in the case of a private sale, after a sale or lease has been agreed, but before exchange of contracts.
- in the case of a public auction, after the auction has been closed, but the reserved price not having been met.
- in the case of a formal tender, after the closing date for tenders, but before acceptance by the Council of the successful tender.
- in the case of an informal or negotiated tender, after receipt of bids, but before exchange of contracts or signing of a development agreement
- in the case of disposal by exchange, after a sale or lease has been agreed, but before exchange of contracts.

Each 'late bid' must be considered in the context of the individual circumstances at the time. The Council's approach to 'late bids' will vary depending upon the method of land disposal used. In each case, its overriding duty will be to obtain the best consideration that it can reasonably obtain (subject to any exceptions in the General Disposal Consent). The Council's approach to late bids is as follows:

- The Council discourages the submission of late bids in all cases when it is disposing of land. It will attempt to minimise problems by aiming for early exchange of contracts.
- Where land is being disposed of by way of formal tender, bids received after the deadline for tenders, will be recorded as late, together with the time and date of receipt. The Cabinet Member for Resources should decide whether to consider late bids after taking advice from the Director of Corporate Resources.

- Except as provided above, until the Council has entered a legally binding contract or agreement with another person it will consider late bids unless there are good commercial reasons for not doing so. This should be explained to any purchaser when a disposal of land by private sale or negotiated/informal tender is agreed.
- Consideration of a late bid does not mean that it will necessarily be accepted even if it is the 'highest' bid. The Council will take into account the likelihood of the late bid proceeding to completion in a timely manner and the possibility of late bids being used as a spoiling or delaying tactic.
- Subject to the above, the Council may, in appropriate circumstances, ask both the late bidder and other interested parties, to submit their best and final bids in a sealed envelope by a set deadline.
- A decision on whether to accept a late bid for a private sale, informal tender or by exchange are to be made either by the Cabinet Member for Regeneration and Economic Development or the Director of Regeneration and Economic Development.

A last minute bid may be rejected for sound commercial reasons. For example, if there is no real certainty of it leading speedily to a contract or is suspected as a spoiling bid.

The Council will at all times bear in mind that the overriding duty, unless a specific decision has been made to take advantage of certain exceptions as mentioned in the General Disposal Consent in order to further corporate objectives is to obtain best consideration.

In considering what amounts to 'monetary value' in terms of best consideration to be obtained, the creation of jobs or desirable social outcomes, although desirable, cannot be quantified by the Council.