

## **Appendix B** *extract from Property Strategy*

### **Disposal Strategy**

#### **1.1 Purpose of a Disposal Strategy**

- 1.1.1 The County Council owns a range of land and property (assets), which presently (April 2012) has a Balance Sheet value in the region of £1.9billion. These assets need to be actively managed in order to ensure that Councils aims and objectives are realised and that value for money is achieved from their use.
- 1.1.2 As the requirements of the Council evolve there will be significant opportunities to rationalise its land and property as improvements in service design and delivery are realised. To accord with Government advice and best practice the Council has developed and implemented a formal Disposal Strategy to form part of its overall Asset Management Planning process.
- 1.1.3 The objectives of the strategy are to assist the Council in making best use of its resources by rationalising or disposing of surplus or under-performing assets in line with the Councils vision, aims and objectives.
- 1.1.4 The strategy therefore involves three separate and distinct elements
- The process for identifying and declaring assets as surplus,
  - The procedures for managing the asset prior to its disposal and
  - The formal disposal of the asset.
- 1.1.5 By encapsulating these in one document it ensures that the Council's policies, guidance and procedures are clear and transparent. It is intended for use by Council officers and to inform developers and members of the public.
- 1.1.6 It is important that each land disposal is treated on its own merits and nothing in this strategy will bind the Council to a particular course of action in respect of an asset disposal. Alternative methods of disposal, not specifically mentioned in this policy, may be used where appropriate, subject to obtaining proper authority.

#### **1.2 Definition of a Disposal**

- 1.2.1 The transfer of a freehold or a leasehold interest to a third party, surrenders of leases to landlords or assignments of leases to third parties for the payment of a premium or a reverse premium.

### **1.3 Statutory Powers for Disposal**

- 1.3.1 The disposal of assets are subject to statutory provisions, in particular the overriding duty on the Council under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of land which includes the granting of leases in excess of 7 years.
- 1.3.2 This applies to assets held for most Local Authority functions, except for the notable exceptions of disposals of assets held for housing purposes within the Housing Revenue Account or otherwise let on secure tenancies (governed by the Housing Acts) and for planning purposes (governed by planning legislation).
- 1.3.3 The General Disposal Consent (England) 2003 gives a Local Authority the ability to dispose of assets, or grant a lease in excess of 7 years for less than the best consideration reasonably obtainable, where:-
- The Authority considers that the purpose for which the land and property is to be disposed is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of the whole or any part of its area or any persons resident or present in its area; and
  - The difference between the full market value and the actual consideration payable does not exceed £2m
- 1.3.4 If the Council wishes to dispose of assets for less than best consideration, and it is not covered by the General Disposal Consent, the Council can resolve to do so, but will require the formal consent of the Secretary of State for Communities and Local Government (CLG).
- 1.3.5 Such disposals can be subject to a challenge that the Council is needlessly foregoing receipts and it is therefore essential that such disposals only take place in clear furtherance of Council priorities.
- 1.3.6 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 County Council on behalf of all Council Tax payers, then the Council may consider the transfer of the asset to a community group. This may or may not be at less than market value and determined by considerations such as:
- The furtherance of core Council policies.
  - That it is a more effective method of delivering that service.
- 1.3.7 Any such transfer must be conducted in accordance with a consistent policy of transferring these assets to ensure that the Council retains the ability to intervene and seek possession of its asset if it is identified that the transferee is no longer

able to provide the community service that led to the transfer at less than market value. To retain such control it is therefore recommended that transfer be through the grant of a leasehold transfer with highly restrictive user clauses to strictly specify use as a community asset linked to its stated objectives of the group.

## **2 THE PROCESS FOR IDENTIFYING AND DECLARING ASSETS AS SURPLUS**

### **2.1 Definition of Surplus Property**

2.1.1 Property should be regarded as being surplus if:

- It makes no contribution to delivery of the authority's services, corporate aims or objectives, either directly or indirectly, nor generates income and has no potential for future service delivery or community regeneration purposes.
- An alternative site has been identified which would achieve a more cost effective delivery of service and the existing site has no potential for future alternative service delivery or regeneration purposes.
- Its disposal is important for the delivery of the Councils aims and objectives

### **2.2 Definition of Under-Performing Property**

2.2.1 Property should be deemed to be under-performing and with potential for being declared surplus to requirements if:

- Part of the property is vacant and likely to remain vacant for some time.
- The beneficial use or financial return (in terms of both revenue and capital growth) generated from the property is below that which could be achieved from an alternative use, or from a disposal and an alternative investment opportunity.

### **2.3 Identification Process**

2.3.1 The process for identifying surplus or underperforming property will arise in a number of ways as follows:-

- Service Asset Management Plan processes
- Service reviews declaring property no longer meeting operational needs.

- Property review processes
- Accommodation/Service Strategies
- Condition Surveys
- Local Plan designation and development of a Local Development Framework.
- Master-Planning exercises
- Regeneration schemes
- Property has potential for development or redevelopment and service can be relocated.
- Capital Accounting valuation processes which considers development/ alternative uses.
- Approaches from third parties e.g. developers, adjoining owners.
- Entering into development partnerships such as asset backed vehicles or local housing companies.
- Requests from community groups or public bodies to transfer assets.
- Where a statutory duty to transfer arises.

2.3.2 For the avoidance of doubt where a Service Grouping no longer require a property but do not want it placed on the open market for sale although would like it demolished and the cleared site retained by the Council, a property is not classified as surplus. A property should only be classified as being surplus if both building and site are no longer required and are available for disposal.

2.3.3 Until such time as a property is formerly declared “surplus” to the County Council’s requirements the service grouping is responsible for its repair, maintenance and demolition costs.

## **2.4 Disposal of non surplus or under-performing assets for community regeneration**

2.4.1 It is acknowledged that there are occasions where the Authority may wish to dispose of property that is not formally classified as surplus or considered to be under-performing. Examples include disposals to developers for community regeneration schemes by way of asset backed vehicles or nominated registered housing associations for the development of affordable housing and extra care schemes.

2.4.2 The Council has approved a Policy for the “Disposals of Land at an Undervalue” which was approved by Cabinet on 11<sup>th</sup> November 2009.

## **2.5 External consents and formal notification of a disposal**

- 2.5.1 External consents are required to declare certain types of properties surplus i.e. schools where DfE and Sports Council consent is required and public open space that has to be advertised. This process should be commenced at the earliest opportunity as it can take some considerable time to obtain these consents.
- 2.5.2 Once a property has been identified as being potentially surplus, Asset Management will establish whether there are any constraints on the site such as legal, planning, statutory authorities and government policy. It will also establish whether there are any financial constraints such as the property having been the subject of funding in the past that necessitates the repayment of grant monies.

## **2.6 Notice Procedure**

- 2.6.1 Service Departments must give the Assets Team within the Regeneration and Economic Development Directorate at least three months written notice of their intention to vacate County Council property. In instances where properties are leased in by the Authority, Assets will send a trigger notice to the occupying service and a joint decision will be taken as to whether to renew the lease and preferably heads of terms for a new agreement.
- 2.6.2 At the expiry of the three months period of notice, the Service Department must leave the property in a clean and tidy condition to the satisfaction of the of Asset Management. It is important that the following actions are properly considered and responsibility for carrying out agreed between Asset Management and the Service department:
- meter readings
  - servicing contracts
  - intruder and fire alarms
  - draining down of pipes
  - handover of keys
  - removal of furniture and equipment
  - security
  - risk assessment
  - responsibility for ensuring payments for outgoings such as NNDR are stopped

## **2.7 Formal Decision Making Process**

- 2.7.1 Once a property falls within the category of surplus, Assets will then instigate a process of consultation before seeking a formal approval, as set out in the Councils

constitution, to declare a property as being surplus to requirements. Properties should only be sold after rigorous option appraisal testing for retained future authority needs and those of related bodies. Consultees will include other Council Services including the Community Development Team to notify of any potential Third Sector interest, Ward Members, Public Sector partners, local Parish and Town Councils and tenants of the property if appropriate.

2.7.2 The Authority has developed a separate strategy for the transfer of assets to the community, but the overarching strategy should be that a transfer should only take place if it is:-

- supported by a robust business case,
- the transferee has sound long term management and governance arrangements
- the proposed use for the property meets the authority's aims and objectives and community strategy,
- there is an agreed time scale within which a disposal is expected to be completed, and,
- certainty of funding.

### **3 THE PROCEDURES FOR MANAGING THE ASSET PRIOR TO ITS DISPOSAL**

#### **3.1 Management Responsibilities**

- 3.1.1 Assets are responsible for the management of the surplus property from the agreed date at the end of the three month formal notice period. If any temporary use is to be made of a surplus property for storage, temporary occupation, etc, this must be first agreed with the Assets. No demolition work is to be carried out to any surplus property without the prior inspection of the property by the Asset Management and their approval in writing. Assets, in consultation with the Service department, will be responsible for formally advising all interested parties that with effect from a specified date ,Assets are responsible for a property with details of the and the lead contact officer during the disposal stage.

#### **3.2 Budget Responsibilities**

- 3.2.1. It is acknowledged that the costs of holding the property between declaration as surplus and disposal can be significant and the Service Grouping will retain responsibility for all outgoings required to manage the property prior to its disposal. The Service Grouping will benefit from full saving upon disposal.
- 3.2.2. Once the property is sold the budget transferred to Assets is transferred back to Service Grouping who then benefit from full saving. This will ensure Service Groupings are incentivised to rationalise property.
- 3.2.3. If a property has to be demolished prior to its disposal, then the costs for doing so will be met by the Capitalised Maintenance Budget, subject to budget availability and Assets determining whether it is in the best interests of the Council to do so, in terms of maximising the return to the Council.
- 3.2.4. Expenditure in relation to school buildings such as heating, lighting, rates, water, caretaking and cleaning are part of a delegated school budgets and the resources, on closure, stay within the Dedicated Schools Grant. There is no scope to direct these funds to Assets unless in relation to Aided schools, Foundation schools or Academies. In these circumstances, any costs associated with empty properties will be addressed by Assets through its Surplus Property Budget, with any exceptional costs to be treated as outside the Planning and Assets cash limit.

#### **3.3 Data collection**

- 3.3.1 A schedule of all surplus and potentially surplus property will be held within Assets .The schedule should be kept up to date at all times by the Assets Strategy team and available on a view only basis to key service representatives.

## **4 THE FORMAL DISPOSAL OF THE ASSET**

### **4.1 Timescale**

4.1.1 Surplus assets should be disposed of as expeditiously as possible. It is acknowledged however that in the interests of proper budgetary planning, the timing of a disposal needs to be considered against the background of the authority's budget and capital programme requirements, current state of the market, local and regional planning framework and potential for property value to increase in the future. Once these factors have been assessed the disposal will be included in the Council's formal Disposal Programme.

- i. Consideration should be given to obtaining planning consent or investment in the property prior to disposal to enhance its value and make it more attractive to the market.
- ii. In times when the market is not conducive to a disposal, a temporary use should be found for a property if possible, to circumvent the payment of Empty Property rates and security costs. In cases where there is an external letting then this should be by way of a contracted out lease under the Landlord and Tenant Act 1954 so that vacant possession can be easily obtained.

### **4.2 Disposal Process**

4.2.1 All disposals should be arranged and managed by Assets. The Council should obtain the best consideration by the most appropriate method of disposal although consideration does not necessarily need to be financial.

4.2.2. Where appropriate, a planning brief will be prepared and included in sales particulars. It is acknowledged that purchasers will have their own development preferences and it is important not to be too prescriptive in stifling innovation to ensure best consideration is achieved and potential bidders are not deterred. On sensitive or large sites it is accepted that a brief will be required but given the resources and potential delays that this would cause. Assets will have the discretion as to whether a brief is required.

Consideration needs to be given at all times to the confidentiality of all property transactions particularly until legal formalities are completed.

### **4.3 Valuations**

4.3.1 A valuation of the property for disposal should be undertaken at the earliest opportunity in the process by a suitably qualified member of the Royal Institution of Chartered Surveyors, and continually reviewed through the disposal process. All valuation should be counter-signed and approved by the Valuer's line manager.

Where it is decided to negotiate a disposal to a single party, rather than offer on the open market, all negotiations for disposals should be conducted or advised by a suitably qualified property professional, preferably a member of the Royal Institution of Chartered Surveyors.



4.3.2 Ombudsman guidance recommends that all negotiations should be conducted at the offices of the Council and with two people negotiating. Clearly both are unrealistic for every case but there may well be certain circumstances when one or both are appropriate to ensure and demonstrate that best practice is being adhered to.

**4.4 Disposal at less than best consideration**

4.4.1 The policy to be followed in disposals of land at an undervalue is referred to above. In addition where a disposal is undertaken at less than best price, then to protect the authority’s interest in the event of subsequent sales, it should include, where appropriate an asset lock, claw back or uplift clause, restrictive covenants, ransom strip retention, user rights or right of preemption.

4.4.2 Also a valuation should be undertaken to identify the undervalue (unrestricted less restricted value) and an attempt should be made to financially value the economic, social or environmental benefits to the authority and community which justify a disposal at less than best price.

4.4.3 The overriding factor to be considered when disposing at below the best price is to ensure that it is within the authority’s power to so, and the reasons are well documented, transparent and justifiable.

**4.5 Method of disposal**

The most appropriate method of disposal should be adopted from the following and Appendix C sets out an operational guidance note for each method of sale:-

METHOD:	WHEN USED:
<p><b>OPEN MARKET DISPOSALS</b></p> <ul style="list-style-type: none"> <li data-bbox="336 1464 636 1503">• Private Sale/Treaty</li> <li data-bbox="336 1794 485 1832">• Auction</li> </ul>	<p>Limited interest with one or a small number of purchasers with a narrow valuation band . The land may or may not have been marketed as available for sale. A binding legal agreement is created on 'exchange of contracts' between the Council and the purchaser.</p> <p>Wide interest and easy to allocate a reserve. The sale will be advertised in advance and available to any interested party. A binding legal agreement is created upon the acceptance of a bid by the auctioneer</p> <p>Appropriate for sales where there are uncertainties such as planning, and, large or</p>

<ul style="list-style-type: none"> <li>• Tender –Informal</li> </ul> <p><b>DIRECT NEGOTIATION WITH SPECIAL PURCHASER</b></p> <p><b>DISPOSAL BY EXCHANGE OF LAND</b></p> <p><b>EXCEPTIONS</b></p>	<p>complex redevelopment sites. Involves a public advert that requests informal offers or bids that meet a given specification or set of objectives. The Council may then negotiate further or more detailed terms with one or more individuals submitting the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts between the authority and the chosen bidder.</p> <p>Wide interest,,land ownership not complex, no uncertainties regarding the grant of planning permission, wide valuation band. Marketed via a process of public advert and tenders submitted by a given date in accordance with a strict procedure. A binding legal agreement is created upon the acceptance of a tender by the Council</p> <ul style="list-style-type: none"> <li>• Sale to adjoining owner or lessee where special circumstances appertain.</li> <li>• Conditional disposal where authority is selling for a particular purpose i.e. to a developer for regeneration, to a nominated housing association for social housing development</li> <li>• Sales to former owners under the Crichel Down rules</li> </ul> <p>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.</p> <p>The exchange will usually be equal in value. but an inequality in land value may be compensated for by an equality payment or by other means where appropriate.</p> <p>Other methods of disposal may be used where circumstances warrant.</p>

**4.6 Dealing with Late Bids**

- 4.6.1 The Guidance from the Local Government Ombudsman recognises the problem caused to local authorities by 'late bids'. The Guidance says that difficulties are less likely if Councils ensure that exchange of contracts take place as quickly as possible after the decision to sell (or lease) is made. It suggests that local authorities should be allowed to sell at an agreed price within a reasonable period of reaching a 'subject to contract' agreement. Guidance for dealing with late bids is set out in Appendix C

#### **4.7 Tenure**

- 4.7.1 In cases where the Council does not wish to exercise any control over the future use of the property, other than through the planning process, then the disposal of the freehold will obtain the best price. In certain instances however, the Council may want to exercise some control of the future use of the land. In such cases restrictive covenants and/or claw back clauses may be appropriate or a leasehold disposal for a term necessary to ensure the satisfactory completion of the scheme. For example, a leasehold transfer to the community will usually need to be for at least 25 years to obtain the necessary grant funding.
- 4.7.2 A leasehold disposal to a developer for a major town centre mixed use regeneration scheme may need at least 150 years to secure institutional funding. Due to the complexity and time frames involved a Development Agreement will also usually be entered into before a formal disposal is concluded, plus in many instances a section 106 agreement setting out conditions and contributions to the community through the planning system. It is recommended that the property disposal and section 106 agreements be negotiated in parallel in order to maximise the benefits to the authority.
- 4.7.3 It is now becoming the norm for major regeneration disposals to be negotiated by dedicated teams of assets, finance, and legal professionals representing the authority, developer and funding bodies. Unless the Council has the necessary skills in-house it is recommended that the use of appropriate private sector specialists for these types of disposals is considered.

#### **4.8 Disposal Costs**

- 4.8.1 Surveyors Fees should be recovered from purchasers in accordance with the existing fees and Charges policy. At present these are:-
- Responsive Sales – 2% of disposal price with an initial £200 processing fee
  - Open market disposals – 2.5% of disposal price with a minimum fee of £1,000

Purchasers would also be responsible for the payment of the Councils actual legal costs

#### **4.9 Marketing Strategy**

4.9.1 An appropriate marketing strategy should be developed, either in house or for external disposal, with all costs being charged to the appropriate property cost centre.

#### **4.10 Performance Management**

4.10.1 Capital Receipts targets will be assessed annually and progress will be monitored by the Asset Management Plan Working Group and reported bi- annually to the Capital Member /Officer Working Group.