



Hinckley & Bosworth
Borough Council

A Borough to be proud of

DISPOSAL STRATEGY:

- **Land & Property
(operational and
investment)**

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1. INTRODUCTION

The purpose of this strategy is to provide a framework with transparency and fairness for the disposal of property assets in accordance with the Property Asset Management Plan.

Local Authorities are subject to constraints when they come to dispose of land or buildings in their ownership. Some of these constraints are enshrined in law; others arise because of a general expectation that Local Authorities should be seen to act fairly when disposing of land as in other aspects of their work. The Constitution of the Council also sets out various requirements and responsibilities.

Changing requirements for service delivery and the regular review of properties will at times lead to some land and/or property assets becoming surplus. In addition, there may be circumstances in which a disposal is considered the best way to achieve one or more of the strategic objectives of the Council.

Legal Powers:

Under the Local Government Act 1972 local authorities have powers to dispose of property in any manner they wish, subject to certain constraints.

Under the Local Government Act 1972: General Disposal Consent (England) order 2003, Councils may dispose of land at less than the best consideration reasonably obtainable provided that any undervalue does not exceed £2 million and the transaction is considered by the local authority to help secure the promotion or improvement of the economic, social or environmental well-being of its area. Disposals at greater under-value require consent of the Secretary of State. A disposal for the purposes of the 1972 Act consists of -

- a) a freehold transfer; or
- b) a grant of a term exceeding seven years; or
- c) the assignment of a term which, at the date of the assignment, has more than seven years to run. (The Council currently has no such assets).

Since the 1972 Act, Government policy has introduced the concepts of Community Asset Transfer, community rights in respect of Assets of Community Value, and recognition of the Social Return on investment. The Localism Act 2011 further extends rights and powers for communities and individuals.

Councils may also be restrained from disposing of land for a purpose that was not the purpose for which it was acquired under legislative powers and this is particularly relevant for:

- Allotments
- Open Space and Burial Grounds
- Pleasure Grounds

This strategy applies to freehold or long leasehold disposal of commercial or operational land and buildings except for Council housing which is subject to alternative arrangements.

2. REASONS FOR THE COUNCIL HOLDING PROPERTY

The reasons for the Council holding property are:

- To provide Council services
- For Economic Development purposes
- To facilitate Council policies
- As investment to make a financial return to support service delivery
- Strategic acquisition for redevelopment
- Social Housing

The aims for the Asset Management Service are to facilitate:

- Use of the Council's property holdings to meet current and future corporate/service requirements and allow flexibility of use;
- Use of property economically, efficiently and effectively;
- Provision of clean, compliant and safe accommodation/premises for staff/public;
- Support for economic, social and environmental well-being;
- Production of income/capital to support budgetary requirements.
- Use of appropriate assets for approved purposes by voluntary and Community groups
- Advice for the Medium Term Financial Strategy.

3. IDENTIFICATION OF SURPLUS AND UNDER UTILISED PROPERTY

OPERATIONAL AND COMMERCIAL PROPERTY

Property will be identified as surplus if it does not meet any of the reasons or objectives for the Council holding property assets as set out above or is identified as performing inadequately – functionally or financially.

It is the responsibility of each Service, in conjunction with the Estates and Asset Management Service, to identify any property or part thereof that is under utilised or surplus to individual service delivery requirements. Following the identification of surplus property it should be referred to the Estates and Asset Manager in his role as Corporate Property Officer (CPO) to consider any other potential uses for the property. This will include the identification of any other parties that may be interested in the property, e.g. another Service, County Council Departments, partners or external organisations.

Other referral may be required (in liaison with SLB) with:

- The Corporate Operations Board
- The Asset Management Strategy Group (AMSG)
- The Executive
- Council

HOUSING LAND (HRA)

From time to time requests are received from members of the public to sell small pieces of land forming gardens of Council houses or adjacent landscaping (formally on the HRA).

Matters relating to HRA land shall be referred to the Chief Officer for Housing, Community Safety and Partnerships and as required the Portfolio Member for Housing for an in-principle decision about disposal. Any approved disposal shall then proceed in accordance with this strategy.

On larger pieces of HRA land, consideration should be given to the aims within the Council House Investment Strategy which include:

- Investment in the existing stock to maintain good quality homes.
- Investment in new build/acquisitions of affordable housing.
- Refurbishment and regeneration of stock which no longer meets needs.
- Environmental improvements to estates.

Decisions will be taken during 2012/13 on investment levels into these priorities and linked to this will be work on the use of HRA land, including how capital receipts from the sale of HRA land are used.

OPEN SPACE

From time to time requests are received from members of the public to sell small pieces of land forming open space.

The Council will not normally dispose of any core recreational open spaces identified in its open space audit and open space strategy i.e. 'Town Parks', 'Country Parks', 'Neighbourhood Parks', 'Nature Reserves' and other local play areas. (exceptional circumstances might be for instance where this is seen as beneficial for recreational use of the site or will significantly benefit the wider community rather than the individual applicant).

The Council will contemplate disposal of 'incidental open space' and areas of landscaping or parts of these – particularly where it will improve the management of the land benefiting the wider public, will reduce an unacceptable and significant impact on a neighbouring property resulting from miss-use of open space and/or clears up anomalies of past land sales, acquisitions, transfers.

In contemplating these sales, the Council must comply with its legal requirement to advertise proposed sales of public open space and consider objections prior to deciding to dispose of the site. (Applicants / proposed purchaser will be required to meet the costs of advertising the proposed sale).

There is no legal requirement for the Council to provide a reason for not selling, however, the Council may refuse to sell on the following grounds:-

- it judges that the personal safety for users of the remainder of nearby open space will be detrimentally affected e.g. where a narrow alleyway is created; or
- it will result in the wholesale loss of, or detract from the visual quality/amenity of the surrounding area. Alternatively, in such cases it may apply covenants on sales to retain the open nature of landscaped areas and/or to require the provision of certain standards of new boundary fencing, walling or delineation; or

- it is considered that there will be detrimental impact of such sales on neighbouring properties not financially involved in, or not benefiting from the sale.

4. PROPERTY DISPOSAL RESPONSIBILITIES

Major disposals being significant regeneration sites are (normally) the responsibility of the Regeneration Service under the Head of Planning. The balance of disposals is the responsibility of the Estates and Asset Management Service under the Corporate Property Officer. The principles set out in this strategy should be followed in all disposal cases.

Minor Disposals

A minor disposal is where the sale price does not exceed £5,000 or as defined in the Financial Procedure Rules.

The disposal shall proceed in accordance with the Financial Procedure Rules. There may be circumstances where it is in the Council's interest to initiate a minor disposal e.g. land surplus to requirements or for reasons of good estate management.

However, departure from open marketing should only be considered in the circumstances as outlined in this section and on professional advice. In cases where there is more than one other contiguous land holding, consideration should be given to alternative disposal strategies to obtain the best price. In the case of minor disposals, the Estates and Asset Management Service is responsible for the disposal of its property assets in accordance with this strategy.

Major Disposals

A major disposal is any disposal not covered by the minor disposal definition above.

The disposal shall proceed in accordance with the Financial Procedure Rules

When a property has been identified as surplus to the requirements of the Council, the CPO should be notified. If the Asset is not identified as a key disposal under the Acquisition and Disposal Strategy it should be processed by the Asset Management Service to ascertain the value of sale. On successful completion of this process CPO may seek Executive approval to it being declared surplus and add the record to the acquisition and disposal strategy for an appropriate programmed sale.

Disposal at less than best consideration

In contemplating a disposal or in marketing the premises, opportunities might come forward to consider a Community Asset Transfer or a community request in respect of an Asset of Community Value. It is recognised that disposals through these mechanisms may likely produce a receipt less than best consideration.

Also there might be opportunities where the Council wishes to facilitate a policy objective by sale at lower value.

Disposals at less than best consideration shall have the formal support of the Service whose policy is being supported and for major disposals shall require approval by Council – unless already approved within the Property Asset Management Plan or other Council approved policy. In such cases the RICS Guidance Note should be consulted.

Whether or not Ministerial consent is required, the Valuer shall provide the following figures in all cases:

- (a) unrestricted value;
- (b) restricted value;
- (c) the value of voluntary conditions.

5. DISPOSAL METHODS

As a general principle, disposal with open marketing is the appropriate way to attract interest and secure best consideration. However there are circumstances where alternatives should be considered.

These are the principal methods of disposal available:-

Private Treaty – sole party without marketing

This is to be considered where there is unlikely to be more than one party interested in the property at an open-market price or there is clearly a special-interest purchaser likely prepared to pay above the market price.

This generally arises when an application is received from adjacent or neighbouring owner(s) to purchase the freehold or leasehold interest of a small or inconsequential area of land in the Council's ownership. If the land is surplus to requirements as identified in the Acquisition and Disposal Strategy, has no development value or open market opportunity and has a market value of less than £5000. It is permissible in these cases to open 'confined' negotiations with the adjacent or neighbouring owner in order to achieve the most advantageous financial or economic result e.g. if the land is 'landlocked' or is difficult or expensive to maintain.

It might also arise in special circumstances where an adjacent owner can gain advantage by combining land to give rise to:

- Ransom value
- Betterment value
- Overage

In such cases it is necessary to establish both the open-market value and the value advantage to the proposed purchaser.

Private Treaty – with open marketing

After a reasonable period of exposure to the market, negotiations are carried out with interested parties and a clear highest bidder might emerge.

In the event that two or more interested buyers are identified at similar prices it is possible to consider moving on to the Informal Tender method below

Advantages:

- allows a flexible approach;
- time pressures are seldom imposed on either the seller or buyer; and
- it is widely understood and accepted by the general public.

Disadvantage:

- the proceedings cannot always overcome suspicions of unfair dealings, and it is therefore a method to be used with caution.

Formal Tender

Requires a great deal of preparation, as the tender document forms the contract for sale. A full appraisal of the transaction needs to be carried out, including a valuation which may be used to provide a guide price, in order to have a baseline against which to assess the tenders when they are returned.

Advantages:

it can be concluded quickly where it is unconditional;
it avoids tentative time-wasting enquiries;
the Council does not need to accept any tender if the offer is not satisfactory provided this is made clear in the invitation to tender;
the tender procedure should guarantee complete fairness; and
as bids are not public, tenderers should put forward their best offer.

Disadvantages:

potential purchasers are often put off by the procedure whereby they commit themselves contractually upon making any financial offer;
there is little room for discussion about the scheme itself, and this method is too robust and inflexible to take account of any conditional offers, e.g. subject to planning etc.

In view of the inflexibility and disadvantages of the formal tender procedure there should, in normal circumstance, be a presumption against this method for the disposal of property.

Current **Contract Standing Orders** do not state that they apply to the sale of property. They do however regulate formal tender procedures, therefore, in the event of a disposal by formal tender Contract Standing Orders should be followed.

Auction

This method is to be considered when value is difficult to establish or where there could be numerous bidders, especially for small parcels of development land.

To achieve success with this method of disposal, external auctioneers will inevitably be used. The auctioneer should be briefed at an early stage, and fully involved in preparing conditions of sale and fixing the reserve price. The reserve should be approved by the appropriate delegated authority route and conveyed to the auctioneer before the auction. It should also be recorded in writing which the auctioneer will have available at the time of sale. Sale by auction requires preparation of all contractual details beforehand in order that a binding contract may

be effected immediately a bid is accepted. Development land should only be considered for auction with planning permission and after pre-marketing.

Advantages:

Certainty: contracts are exchanged on the fall of the hammer;

- open process of competitive bidding may lead to a price in excess of that by private treaty;
- Regional/national marketing by the auction house.

Disadvantages:

- the seller has no control over who buys;
- funds to meet the sale price must be available within a specified period, and this may put off purchasers who need to raise finance;
- potential purchasers have to consider the transaction during the marketing period, with no opportunity to discuss alternative ways to structure the deal;
- the winning bid need only be marginally more than the second highest bid, and need not represent the maximum the purchaser would have been willing to pay;
- Mortgageable houses should not be sold by auction.

Informal Tender (sealed bids)

The Local Government Ombudsman has issued the following guidance on informal tendering:

“Informal tendering is a process by which offers are invited but perhaps without a firm closing date. Unlike a formal tendering process (when tenders are submitted in sealed envelopes all of which are opened together) offers in the informal process are opened as they are received. Offerers may be invited to increase their bids, possibly having been told that a higher bid has been received. Whilst the practice of informal tendering (which might also be described as extended auction) does frequently give rise to complaints, the Ombudsman accepts that such a procedure may sometimes be appropriate and may result in the Council obtaining a higher price for the land than if bidding was restricted to a single sealed tender. At the end of such an extended auction process all parties still expressing interest should be asked to submit a final bid by a specified date”.

Advantages:

- the most advantageous terms for the Council can be formulated even in very complex cases;
- the Council does not need to accept any tender if the offer is not satisfactory;
- as bids are not public, tenderers should put forward their best offer. (Though not necessarily going to achieve best price because in an auction situation people are sometimes prepared to bid more than they had envisaged, particularly when they see others prepared to bid at that level)
- most useful as a tool for resolving competing interest following private treaty marketing.

Disadvantages:

lacks the certainty of the Formal Tender procedure, can be frustrating since post-tender negotiations can be protracted and may not be successful; and

- the requirement to negotiate raises some of the disadvantages of a sale by private treaty.

6. PREPARATION FOR DISPOSAL

The stages of preparation for disposal should include the following:

- (i) Internal Circulation to COB members - To be carried out prior to declaring property surplus in order to give Services the opportunity to comment or express an interest within a time limit of 21 days.
- (ii) Legal Consultation - To report fully on the Council's title, any rights or obligations which may be bound to the site and any restraints on disposal which might be in place due to legislation. Where it is intended to include covenants or conditions, legal advice should be obtained prior to negotiations.
- (iii) Former Owner – Consider if there is an obligation under the Crichel Down Rules to offer the land back to a former owner. A summary of these rules and procedures is in *Appendix A*.
- (iv) Inspection - The purpose of which will be to identify development potential or any matter which is likely to aid or hinder the disposal.
- (v) Physical Constraints – Check the Council's own records, and also those of statutory undertakers, if appropriate.
- (vi) Define Development Potential - Appraisal of potential disposal property should always consider the means by which maximum sale proceeds can be generated. In straightforward cases, the equivalent of an "outline planning consent" for the most valuable use available should be secured.
- (vii) Where the Council wishes to consider ensuring a desired use of property to achieve its policy objectives, it will be necessary to introduce restrictive covenants, where appropriate.
- (viii) An overage provision may be contemplated, so that the Council can participate in the benefits of any future increase in value due to a more valuable planning consent or significant uncertainty in valuation.
- (ix) Consideration of Method of Disposal as set out above to consider the options available. Financial Regulations provide guidance aimed at minimising or addressing the difficulties presented by late or revised bids.

- (x) Special Purchaser - It may be prudent to deal with a “special purchaser” if it would result in capital receipts above that which would be paid in the general open market, or in the furtherance of achieving one or more of the Council’s Corporate objectives, subject to compliance with the Council’s legal requirements.

7. DISPOSAL DUE TO Compulsory Purchase Order

The procedure for obtaining a Compulsory Purchase Order is already enshrined in legislation and therefore is not set out here. This strategy does not apply to Compulsory Purchase Order situations until a disposal stage has been reached e.g.:

- General vesting Declaration
- Notice of Entry and Notice to Treat
- Agreed transfer of title

At such stage the procedure generally as set out in section 4 onwards shall apply with further administrative steps being taken as appropriate once the Notice to Treat crystallises as an acquisition of title.

Appendix A

FORMER OWNERS – CRICHEL DOWN RULES

Successive Governments have accepted the basic principle that land, whether in agricultural or other use originally, should be offered back to former owners or their successors if it was acquired by or under threat of, compulsion or under statutory blight provisions, and if it had not been materially changed in the interim, and was found to be surplus to requirements or otherwise appropriate for disposal. Disposals to former owners under these arrangements will be at current market value.

This principle was established in the 1954 Crichel Down case and has been used as a guideline for policy ever since.

ODPM Circular 06/2004 sets out the revised arrangements under which the rules should apply. The Rules are non-statutory but it is recommended, by central government, that they be followed.

The general obligation to offer back will not apply to the following types of land:

- 1) agricultural land acquired before 1 January 1935;
- 2) agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition;
- 3) non-agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition.

The date of acquisition is the date of the conveyance, transfer or vesting declaration.

POLICY

The Council shall follow the guidelines of the Crichel Down rules.