

Subject: Acquisitions and Disposals Policy

Report to: Constitution Working Party 15 February 2021
Council 23 February 2021

Report by: Monitoring Officer



SUBJECT MATTER/RECOMMENDATIONS

This report recommends that Council adopt the revised Acquisitions and Disposals Policy and summarises the key revisions within the policy and the underlying rationale for change.

RECOMMENDATIONS

It is recommended that Council:

- 1) adopt the updated Acquisitions and Disposals Policy at Appendix 1 to this report; and
- 2) give the Monitoring Officer delegated authority to make any consequential revisions to the Constitution.

1. INTRODUCTION

This report seeks approval and adoption of the Acquisitions and Disposals Policy. The policy provides the framework for decision making in relation to acquisitions and disposals of property with the exception of Right to Buy related transactions.

2 ACQUISITIONS AND DISPOSALS POLICY

2.1 The policy was last updated on 23 April 2019. The revisions currently proposed have the following effects:

- 2.1.1 clarifying the position in relation to the Use of Retained Right to Buy Receipts, which now fall under a separate policy, approved at the last meeting of the Policy & Resources Committee and confirming that Right to Buy property transactions do not fall under this policy;
- 2.1.2 updating the Scheme of Delegation and related financial thresholds for property transactions so that:
 - i) there is officer delegated authority up to £150,000 for new leases and licences replacing the previous £50,000 limit (for Beacon Park and South Denes Energy Park a different limit applies)

- ii) there is officer delegated authority up to £200,000 for transfers of freehold and leasehold land replacing the previous £100,000 limit (for Beacon Park and South Denes Energy Park a different limit applies);
- 2.1.3 adding a Strategic Director to the consulting parties in relation to all non-Committee decisions;
- 2.1.4 clarifying procedures under the Scheme of Delegation at lower financial thresholds, i.e. who may makes decisions under the minimum thresholds in the Scheme;
- 2.1.5 clarifying the Gateway procedure for decision-making on acquisitions as shown in Appendix 3 to the policy and referenced further in section 8;
- 2.1.6 simplifying the section on financial considerations in relation to acquisitions and
- 2.1.7 updating the procurement section post-Brexit.

4. FINANCIAL IMPLICATIONS

None from the updates

5. RISK IMPLICATIONS

None from the updates

6 LEGAL IMPLICATIONS

None from the updates

7 CONCLUSIONS

Several sections of the policy have benefitted from streamlining and clarification, particularly in relation to procedure and delegated powers for decision making.

8 BACKGROUND PAPERS

A comparison document at Appendix 2 to this report shows tracked changes between the current policy and the updated version.

Areas of consideration: e.g. does this report raise any of the following issues and if so how have these been considered/mitigated against?

Area for consideration	Comment
Monitoring Officer Consultation	Via ELT
Section 151 Officer Consultation	Via ELT
Existing Council Policies	As agreed by Council 23 April 2019
Financial Implications	See section 4
Legal Implications (including human rights)	See section 6
Risk Implications	See section 5
Equality Issues/EQIA assessment	None
Crime & Disorder	None
Every Child Matters	None



Property Acquisitions and Disposals Policy

Document created	January 2019 v1 Updated February 2021
Agreed by Policy and Resources Committee	23 April 2019
Review date	January 2022

Part 1	Acquisitions Policy
1	Background
2	Purpose of the Policy
3	Policy Aims
4	Relevant Legislation
5	Process
6	Use of Retained Right to Buy Receipts
7	Use of Compulsory Purchase Orders
8	Risks
9	Financial Considerations
10	Delegated Decisions
11	Monitoring & Review of the Policy

PART 1 - ACQUISITIONS POLICY

1 BACKGROUND

There are a number of reasons that GYBC may wish to acquire properties. These include but are not limited to:

- it contributes towards the provision of Council services;
- there is a direct link to improving the economic, social and environmental wellbeing of the community;
- it leads to strategic benefits to the authority in relation to regeneration or redevelopment proposals;
- the acquisition furthers the provision of services for the community by third parties;
- the property is already maintained by the Council (and there is an advantage in owning it);
- revenue income generation and/or capital growth, and local community benefit purposes.

2 PURPOSE OF POLICY

This policy has been written to allow for the variety of circumstances which may lead to GYBC acquiring properties. It does not cover the buy back of property previously subject to the Right to Buy.

3 POLICY AIMS

This policy covers acquisitions of residential and commercial property and land. Regardless of tenure this policy aims to set out general principles of due diligence which need to be applied. The process established by this policy creates a gateway system which allows officers freedom to act with agility in the marketplace and while providing reassurance to members that actions are well thought out, proportionate and subject to appropriate checks and controls.

Each potential acquisition will be assessed on a case-by-case basis and in line with the criteria set out in this policy; considering the financial implications of the acquisition and the relative merits in value for money terms.

A proposed acquisition will only be progressed if the criteria are met and the relative financial benefits can be demonstrated, having regard to the principles set out in this policy.

4 RELEVANT LEGISLATION

Section 111 of the Local Government Act 1972 gave local authorities the power to do anything “which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions”. When using this power, a local authority would need to identify which of their functions an activity was ‘incidental’ to. This situation was relaxed in the Local Government Act 2003, which permitted local authorities to pursue certain forms of commercial activity through a company structure. This was subject to statutory guidance for the use of trading powers.

The General Power of Competence, introduced by the Localism Act 2011, permits a local authority exercising the general power: to do it in any way whatever, including— (a) power to do it anywhere in the United Kingdom or elsewhere, (b) power to do it for a commercial purpose or otherwise for a charge, or without charge, and (c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area. This would mean that a local authority

would have to set up a company to manage property purely for financial gain. But as mentioned, most authorities hold and manage commercial property as an adjunct to other functions

5 PROCESS

This document sets out a 'Gateway' procedure for acquisitions. This is a standard methodology for controlling expenditure at member level at timely and proportionate intervals whilst allowing officers to progress permitted transactions under delegated authority. Please see the related flowchart of the process at Appendix 3. Points below describe the actions on the flowchart as per the numbering. In some cases, dependent the specifics of the acquisition and the wording of the committee approval, not all actions in the Gateway procedure will need to be completed.

Actions 1a & 1b: Dependent upon the nature of the project, the relevant committee shall approve the acquisition/objectives of the acquisition programme, the financial parameters and any other pertinent criteria (such as partnering arrangements, timescales etc). On committee approval of a project delegated authority shall be passed to the appropriate Heads of Service or Directors in consultation with the S151 Officer to make acquisitions within the parameters and meeting the other criteria of that project.

Actions 2, 3 & 4: Following approval, officers will run a financial appraisal based on best estimates and desktop research. For example agreed financial parameters are set within the appraisal model. Values and market rent information are taken from existing comparable data. Build costs (where applicable) and professional fees are set at generic, generous, broad-brush levels at this early stage. The asking price is used as guidance for a purchase price.

At this early 'no cost' stage, it will be quickly apparent whether an acquisition (including any build) merits further investigation or should be stopped before incurring abortive costs. Should the acquisition (and any building scheme) merit further investigation, the officer will discuss with the Head of Property and Assets, consulting the Housing Director where necessary and a decision will be made on whether to take the scheme forward.

Action 5: This is Gateway 1. The relevant officer presents the acquisition (including any building scheme) to the appropriate Director. They should have a file of evidence of the data used to enable an informed decision to be made on whether to proceed. This gateway will release a small amount of abortive budget to refine the business case with professional input. Suggested fees are up to £10,000 to cover the costs of architects, planning consultants, cost consultants, lawyers as required for high level input.

Actions 6 & 7: Due diligence is undertaken based on the additional information obtained at action 5 to refine the appraisal. The refined appraisal is reported to the relevant S Director and permission sought to make a conditional offer, Subject to Contract. This is Gateway 2.

Action 8: Once those conditions (for example a full survey or report on title) have been met, the Head of Property and Assets/appropriate Director, if comfortable, would be in a position to authorise purchase. This is Gateway 3.

Action 9: Full budget is released. Contracts can be exchanged and completed on the property and any works packages can be authorised. At this point, the chairperson of the relevant committee should be informed by email of the successful purchase.

At each Gateway, an appraisal signature should be sought from Housing or Assets as applicable and Finance to show consultation across the relevant affected departments and independent checking of the financial appraisal.

Should an acquisition not fit within the parameters but still meets strategic objectives, it is recommended that after Gateway 1, it is taken to the relevant committee for a decision as to new parameters.

6. USE OF RETAINED RIGHT TO BUY RECEIPTS

In relation to all acquisitions acquired by the Council to be held in the Housing Revenue Account or General Fund and funded through the use of Retained Right to Buy Receipts, decision making and delegated authority is set out in the Use of Retained Right to Buy Policy.

7. USE OF COMPULSORY PURCHASE ORDERS

The Council's approach to the use of Compulsory Purchase Orders (CPOs) will be set out in a separate policy. CPOs may be considered when the Council needs to acquire a property from a freeholder or leaseholder, or the tenant(s) of a freeholder or leaseholder, for the purpose of carrying out of development, redevelopment or improvement on or in relation to the land. Such acquisitions will be carried out in accordance with the requirements of CPO requirements and the CPO Policy.

8. RISKS

Risks to be considered and mitigated in any proposal include:

- Acquisition Risk – there is always the potential for a downturn in the property market at some point in the future which could impact on sales receipts if and when an acquisition is disposed of.
- Due to the nature of the property market, decisions may need to be taken quickly in order to put offers forward. Offers, where appropriate will be subject to conditions and will be subject to due diligence being undertaken before proceeding to acquire. Agility will need to be built into any request for authority to proceed.
- Cost Risk – abortive costs, including legal costs, survey fees, and officer time all may be incurred in abortive transactions including costs for initial feasibility investigations. These costs are inevitable as acquisitions are part of the ongoing strategy for the Council. The proposed process reduces these costs to the minimum for the longest possible period. However, in a rising market or market with increased competitive activity from smaller property companies, the Council could be one of several bidders for any good quality assets available in the Borough. It is likely that the Council will be an unsuccessful bidder on a number of occasions. The Council need to be aware of this possible outcome. This 'competition' could be a measure of success in relation to some policy objectives for acquisitions.
- Lack of suitable sites - The local property market is restricted and is dominated by assets that may not be good quality. There may therefore be a shortage of suitable stock in the Borough.
- Property Market risk - property is an inherently riskier asset than other asset classes because of its physical characteristics, which need to be managed and maintained. This is ideally compensated by increased returns. However, the property market is not a certain market and the Council may not achieve target returns if market conditions significantly worsen.
- Void Risk - close management of the asset portfolio is critical to the success in delivering additional income to the Council. The existing arrangements will be extended to cover these assets and marketing of the assets in a timely and efficient manner is crucial. Long

term voids will have an impact on the overall revenue budget with no income to offset the costs of owning a property. It is therefore important to monitor the level of voids over the entire portfolio, with an allowance being made for this within the financial plan.

- Refinancing Risk - the Council exposure to increasing debt will need to be considered as part of its Treasury Management function and will be reviewed annually. Therefore when assessing investment opportunities we will use appropriate timescales for repayment.
- Liquidity Risk – property is an inherently illiquid asset that yields higher returns on long-term investment. This means that funds are not easily accessible once committed.
- Many investment transactions happen prior to even coming to the market. Information is vital and getting to know about properties for sale is important. This can be done through contacting property owners and agents in the Borough proactively.

A thorough legal, financial and practical due diligence process will help to mitigate these and other property specific, risks. The Council will robustly evaluate risks of acquisitions on each occasion in order to act in the best interests of its Council taxpayers.

9. FINANCIAL CONSIDERATIONS

Factors to be considered with any investment at an early stage are: Available budget, available cash flow, ability to cover capital costs of investment and revenue costs of interest payable and the ownership costs of the property.

Internal rate of return (IRR) is the interest or inflation rate that yields a zero Net Present Value. The Council will in accessing the viability of an acquisition for the asset seek to deliver an internal interest rate that as a minimum meets the cost of borrowing whilst factoring in any additional risk which should be reflected in the IRR. In some cases, an acquisition will not meet this criteria, but the reason for this will be justified in relation to the achievement of other Council objectives and explicitly referenced in the Committee request for approval of the project.

Therefore, a low risk investment would only be required to repay the borrowed capital and the interest, so an IRR of 3% would be sufficient. For higher risk investments such as build for sale housing development, the IRR should be higher reflecting borrowing costs plus the price of the additional risk, such as values dropping, slow sales, competitor schemes, cost inflation etc. This is known as Risk Premium. In some cases, reflecting the particulars of the asset and which service will own it, there is no requirement for an acquisition to repay debt but only to service interest costs.

It will be for officers to recommend an IRR in the initial report and for members to approve or revise at Stages 1a & b (see appended process).

10. DELEGATED DECISIONS

Under this policy the power to approve a programme of acquisitions will sit with the appropriate committee however the expenditure limit for the project must be agreed by Policy and Resources

Committee up to £950,000 and by Council above that figure.

Once a specific programme of acquisitions and the related expenditure limit are approved by members, delegated authority is given to key officers within the Council to authorise expenditure within the limits set by the programme.

11. MONITORING AND REVIEW OF THE POLICY

The policy will be monitored and be subject to review every two years unless there is a fundamental change of legislation.

PART 2 – DISPOSALS POLICY

Part 2	Disposals Policy
1	Aims of this Policy
2	The Surplus Test
3	The Under-Used Test
4	Meaning of Disposal
5	Meaning of Best Consideration
6	Means of identifying surplus or under-used land/property
7	Disposal Criteria
8	Marketing Strategy
9	Valuation
10	Decision Making
11	Means of Disposal
12	Timings of Disposals and Due Diligence
13	Other Steps to Facilitate the Disposals Process
14	References

THE DISPOSAL OF PROPERTY OWNED BY GREAT YARMOUTH BOROUGH COUNCIL

1. AIMS OF THIS POLICY

1.1. It is government policy that local authorities should dispose of surplus and under-used land and property wherever possible. Under the Local Government Act 1972 local authorities have powers to dispose of property in any manner they wish, subject to certain constraints which may include a requirement to obtain the consent of the Secretary of State.

Under Section 123 of the Local Government Act 1972 (see Appendix 1) principal councils have a duty not to sell land for a consideration less than the best consideration reasonably obtainable unless the Secretary of State's consent has been obtained.

However, the Local Government Act 1972: General Disposal Consent (England) 2003 gives a general consent provided that any undervalue of the interest 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. There are other forms of consent or exception set out in legislation.

These powers provide the backdrop against which decisions to dispose of property in the Council's ownership must be made.

1.2. The way the Council manages its property assets can have a significant impact both on the quality of services delivered to the public and the local environment. Effective asset management is essential in bringing 'agility' to land and property assets so that the delivery of the Council's goals and objectives are realised in a sustainable manner, at the right time and on budget.

1.3. The Council will consider the business case for disposing of any assets that:

- (a) are no longer of use to it and unlikely to be in the future or
- (b) which provide limited benefit which is disproportionate to the opportunity cost of the capital tied up in the asset or the costs of required improvements
- (c) are held as investment (residential or commercial) assets for the purpose of generating rental income and/or capital appreciation to be released through sale.

1.4. Each asset disposal is treated on its own merits and nothing in this Policy will bind the Council to a particular course of action in respect of a disposal. Alternative methods of disposal not specifically mentioned in this Policy may be used where appropriate, subject to obtaining the necessary committee approval.

1.5. This Policy:

- sets out the procedure to be adopted in connection with the disposal of surplus and under-used assets and ensures that requests to purchase Council owned assets are dealt with in a fair and consistent manner and that any person who may have an interest in making an offer to purchase, has the opportunity to do so in circumstances no less favourable than anybody else;
- distinguishes requests for small areas of land that may be considered for sale by private treaty and larger areas with development potential that should be sold on the open market.

1.6. There will be occasions where the procedure may need to be changed, particularly for larger, more complex land/property sales. Properties acquired through Compulsory Purchase Orders (CPO) shall be disposed of in accordance with the principles of this Policy and the CPO Policy but are not required to meet the 'Surplus' or 'Under-Used' tests set out in this Policy.

2. THE 'SURPLUS' TEST

Land/property will be deemed surplus to the Council's requirements where:

- (a) it makes no contribution to the delivery of the Council's services, strategic or corporate objectives;
- (b) an alternative site has been identified which would be more cost effective in delivering the Council's services, strategic or corporate objectives;
- (c) it has no potential for strategic or regeneration/redevelopment purposes in the near future;
- (d) it will not contribute to the provision of a sustainable pattern of development;
- (e) it makes no contribution to protecting and enhancing the natural, built and historic environment, including making no contribution to helping to improve biodiversity.

3. THE 'UNDER-USED' TEST

Land/property will be deemed to be under-used if:

- (a) part of the site is vacant and is likely to remain vacant for the foreseeable future;
- (b) the income being generated from the site is consistently below that which could be achieved from:
 - (i) disposing of the site and investing the income;
 - (ii) an alternative use;
 - (iii) intensifying the existing use;
- (c) only part of the site is used for service delivery and this could be delivered from an alternative site;
- (d) it makes no contribution to protecting and enhancing the natural, built and historic environment, including making no contribution to helping to improve biodiversity.

In the case of open spaces, amenity areas and similar sites, the under-used test should also consider the 'community value' of the asset, which would include visual amenity and not be limited solely to income generation or whether the site is vacant etc.

4. MEANING OF DISPOSAL

For the purposes of this Policy, a disposal means any freehold disposal, by sale or exchange, of Council owned land/property (including buildings) and any disposal by the granting of a lease or licence for a period greater than 7 years.

Leases of 7 years or less or assignment of a term which has not more than 7 years to run are not covered by this Policy, as they are exempt from the statutory requirement to obtain best consideration. It also excludes any disposals by the Council through the Right to Buy.

5. MEANING OF BEST CONSIDERATION

‘Best consideration’ means achieving maximum ‘value’ from the disposal, not just maximum price. Disposal at less than market value must contribute to the ‘promotion or improvement of the economic, social or environmental wellbeing of the area’ [see section 1.2 of Appendix 1].

6. MEANS OF IDENTIFYING SURPLUS OR UNDER-USED LAND/PROPERTY

Surplus or under-used land/property may be considered for disposal:

- (a) following an asset management review
- (b) following a review of operational costs and income of an asset;
- (c) following the identification of development opportunities;
- (d) through a corporate property portfolio review;
- (e) through the declaration of specific sites as being surplus to requirements;¹
- (f) through Local Plan designation;
- (g) following a direct approach from an interested party;
- (h) where the disposal helps to deliver other Council objectives e.g. the provision of housing in the Borough;
- (i) where management of the land/property is considered suitable for community ownership or has been determined as an ‘asset of community value’.

7. DISPOSAL CRITERIA

7.1 Open space (including, parks, playing fields & informal open spaces (excluding amenity land on Council housing estates) of ‘public value’ whether or not there is public access to it – assets in this category are considered to be valuable community resources, to be enjoyed by the wider community. Open space also enhances the quality of urban life, the character of residential areas, the environment etc. There will be a general presumption against declaring these assets as surplus/under-used unless:

1. alternative provision of equivalent community benefit is made in the locality; or
2. the area in question no longer provides a valued opportunity for sport, recreation or leisure; or
3. there is an excess of provision taking into account the long term recreation and amenity value of such provision; or
4. sport, recreation and leisure facilities can be retained and enhanced through the redevelopment of a small part of the site; or
5. there is over provision in the area; or

¹ Where an under-used asset is generating an income, a cost/benefit analysis must be carried out to establish whether it is in the Council’s best interests to dispose of the site.

6. the asset is required for the regeneration of the area.

(a) The Council is required by law to advertise the disposal of land designated as 'public open space' in a local newspaper for two consecutive weeks and to consider any objections received. No final decision about the disposal will be made until any objections have been considered, as the response may be material to the decision. Public response may also be an important factor in any determination by the Secretary of State of an application by the Council for specific consent to the disposal.

(b) There will be a general presumption against disposal of land designated as 'Local Green Space' either through the Local Plan or a Neighbourhood Plan.

7.2 Amenity land - certain rights, environmental or economic conditions may preclude the sale of amenity land for example:

(a) the land is subject to rights of way over it;

(b) the land is a landscaping feature of the local environment, or designated public open space;

(c) sale of the land would incur additional costs for the Council (for example, the re-siting of lamp posts or telephone cables) unless a purchaser is willing to finance the additional costs (payable in advance);

(d) the land has been identified for future regeneration or development by the Council;

(e) following a request to purchase amenity land, a review identifies future regeneration or development opportunities for the Council;

(f) the sale of the land may prejudice future development by the Council;

(g) there are management or other issues that would cause inconvenience to the Council if the land was to be sold.

Approaches from private individuals to buy Council owned amenity land (e.g. green space land on council housing estates) to benefit their existing residential property will be considered where:

- there is a broader community benefit to the disposal e.g. a rationalisation of small parcels of 'backland' open space, either rarely used or often misused; or
- there are management/financial issues for the Council e.g. the land is costly to maintain; or
- the applicant has extenuating circumstances e.g. there are health grounds in relation to the applicant and/or their family and the sale of the land would improve their quality of life and would not adversely affect the quality of life of others in the neighbourhood – (the applicant will need to provide evidence to support and justify the application to purchase).

Where the Council considers that amenity land has development potential and agrees to dispose of the land, the valuation will reflect this. An overage clause may be applied and/or restrictive covenants placed on any future development.

Disposals of amenity land will normally be by private treaty. However, where the Council considers that the amenity land may be of interest to persons other than the applicant, the Council may dispose of the land on the open market.

7.3 Commercial Properties

There will be a general presumption against declaring the following categories of assets as surplus/under-used:

1. units designed to meet the needs of new and developing small businesses where there is anticipated to be demand for such units from different occupiers in future;
2. offices/rooms within business centres that have communal reception areas, facilities and services;
3. shop units where there is a community need for continued retail occupation, or where the integrity of a building or parade of shops might be adversely affected by the sale of individual units;
4. sites in industrial estates and sensitive locations where management control by the Council is required to ensure that amenity is maintained;
5. land or property which provides revenue income for the Council where disposal would adversely impact on the Council's revenue budget.

7.4 Community Asset Transfer and Assets of Community Value

Every town, village or neighbourhood is home to buildings or amenities that play a vital role in local life. They might include community centres, libraries, swimming pools, village shops, markets or pubs. Local life would not be the same without them, and if they are closed or sold into private use, it can be a real loss to the community. Community Asset Transfer is a transfer of land, buildings or structures (assets) owned by a public body to community/voluntary groups or social enterprises.

A list of 'Assets of Community Value' (ACVs) as defined by the Localism Act 2011 which have successfully passed through a nomination and listing process is held on the Council's website. ACVs may be in private or Council ownership.

In reviewing the future of any listed ACV within its ownership, the Council will assess all the options including Community Asset Transfer (transferring it to a voluntary or community organisation at less than best consideration to achieve wider social benefits), use of the asset in a different way, or disposing of it on the open market.

Community organisations operate on a business model, often using volunteer effort and have community intelligence about local needs and sources of funding not available to local authorities. They are in a position to run a community asset as a social enterprise. The business plan for the community asset transfer to a community organisation must demonstrate financial viability.

The Council may either advertise all community asset transfer opportunities or consider transfer requests from organisations which currently manage a property, without seeking other bids.

A community asset transfer should contribute to the Council's policies and targets. Where there are competing interests, the Council will consider which of the proposals put forward are viable and sustainable in the long term. The Council will deal with competition for a specific asset by identifying its key objectives in that area, using, for example, deprivation indices, local priorities and the current mix of buildings and services in the area and assess which bid best meets those objectives.

7.5. Disposal of property assets (residential or commercial)

In disposing of property or land which the Council owns which may have been specifically purchased as an investment or to facilitate development or redevelopment of the land or property or for some other purpose, when disposing of that land or property it is normal Council policy to achieve 'best consideration' as *Section 123 - Local Government Act 1972* (see appendix 1.2.).

They may be times when the Council may wish to dispose of the property/land at an 'undervalue'. For the benefit of any doubt, any such disposal still needs to comply with 'normal and prudential commercial practices, including evidence of obtaining the view of a professionally qualified valuer'. This is in line with *The General Consent 2003* as outlined in appendix 1.2. In those cases where disposal at an under value will promote or improve the economic, social or environmental wellbeing of the area this will be recorded and will be permitted so long as the relevant limit on such disposals is not exceeded.

7.6 For all of the above criteria and for information only, the relevant ward Councillors should be made aware that the site is being considered for disposal at the earliest opportunity and any comments or feedback taken into consideration before a decision is made.

8. MARKETING STRATEGY

Where applicable, the Head of Property and Asset Management, in consultation with the relevant Director, will determine the marketing strategy for the disposal of surplus or under-used land or property. The marketing strategy may be conducted in-house or through an external agent. Costs should be recovered from the eventual purchaser where appropriate or practical or will be recovered from the sales proceeds.

9. VALUATIONS

9.1 Although there is no particular prescribed route to achieve the best price reasonably obtainable, there may be circumstances in which an actual sale to the market is the only way to achieve it as opposed to one particular sale at a price according to an independent valuation.

9.2 Before disposing of any interest in land for a price which may be less than the best consideration reasonably obtainable, a realistic valuation of that interest will be obtained. This will apply even for disposals by means of formal tender, sealed bids or auction, and irrespective of whether the Council considers it necessary to make an application to seek the Secretary of State's specific consent. By following this procedure, the Council will be able to demonstrate that it has adopted a consistent approach to decisions about land disposals by carrying out the same step by step valuation process on each occasion. Supporting documents will provide evidence, should the need arise, that the Council has acted reasonably and with due regard to its fiduciary duty.

9.3 The return from any disposal is to be maximised unless there are over-riding factors identified in the Corporate Plan or otherwise agreed by the Chief Executive or relevant Committee, that take precedence over the receipt of capital e.g. preferred use or preferential purchaser.

10. DECISION MAKING

10.1 This policy sets out delegated powers in relation to disposals of the Council's assets.

10.2 The Head of Property and Asset Management has delegated authority to deal with:

- (i) sales of sites for electricity sub-stations and gas governors;
- (ii) the grant, surrender and renewal of licences, wayleaves, and easements;
- (iii) grants of grazing licences;
- (iv) grant, surrender and renewal of leases where the Property concerned has been previously let;
- (vi) rent reviews

10.3 Appendix 2 to this policy sets out further delegated powers for asset disposals.

10.4 Except with the consent of the Secretary of State, the Council cannot dispose of land otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.

Disposals of land/property by way of a short tenancy, for a consideration less than the best that can reasonably be obtained, will only proceed on the specific authority of the relevant Director on a report of the Head of Property and Asset Management justifying the reasons for disposal at less than the best that can reasonably be obtained.

10.3 The Council is required by law to advertise the disposal of land designated as 'public open space' in a local newspaper for two consecutive weeks and to consider any objections received. No final decision about the disposal will be made until any objections to the disposal have been considered.

11. MEANS OF DISPOSAL

The most commonly used method of disposal shall be:

1. Private Treaty – a sale of land/property negotiated with one or a small number of interested parties either through a direct approach from an individual(s) or through a marketing exercise.

A private sale without marketing the land may be justified where for example:

- (a) the land to be disposed of is relatively small in size and an adjoining or closely located landowner is the only potential or likely purchaser;
- (b) the Council's corporate objectives and best consideration can best be achieved by a sale to a particular purchaser;
- (c) the purchaser has a particular interest in purchasing the land or a particular association with the land;
- (d) the nature of the Council's land ownership and that of the surrounding landownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained;
- (e) the Council's land is part of a larger area of land that is proposed for development, redevelopment or regeneration and the nature and complexity of the proposed development of the overall site is such that the Council's corporate objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area.

2. Public Auction – a sale of land/property by open auction available to anyone. The sale will be publicly advertised in advance. Reasons justifying sale by this method and how the reserve price is determined must be recorded in writing.

3. **Formal Tender** – a sale of land/property by a process of public advert and tenders submitted by a given date. This is a suitable mechanism where there are identified development proposals. A fair and transparent tender process will need to be adopted.

4. **Exchange of Land** – a transaction involving the exchange of Council owned land with another land owner. The land acquired by the Council will meet at least one of its corporate objectives and will be 'equal' in financial worth to the land exchanged whether from the value of the land itself or where a payment is made in addition to the land exchanged.

5. **Informal Negotiated Tender** – a transaction involving 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 who submitted the most advantageous bid or bids.

In some cases a property will be sold via an estate or other agent.

12. TIMING OF DISPOSALS & DUE DILIGENCE

The timing of any marketing/disposals will need to be considered against the background of the current market conditions, potential for the site value to increase in the future, whether there is a need to raise capital receipts and current planning policies.

In order to properly assess the likelihood of and business case for disposal, the following issues which have the potential to prohibit disposal or influence the sale price will be reviewed:

12.1 - the title is reviewed to identify whether there are any title issues which may impact upon the disposal process or the value which could be achieved from disposal.

12.2 Unregistered land - If the land/property identified for disposal is unregistered, then it is important that the title deeds are located as soon as possible and checked for evidence of the Council's title. This can be achieved through a voluntary application to the Land Registry to register the land/property before it is put on the market.

12.3 Restrictive covenants - The land/property may be subject to restrictive covenants which limit or restrict its use or the extent to which development can be carried out on it. Whether these are a concern will depend upon the likely use of the land/property following disposal, particularly where surplus land/property is being sold for re-development. A restrictive covenant against a certain type of development may have a significant adverse effect on the land value.

12.4 Ransom strip - It will generally be sensible to resolve ransom strip issues prior to offering the property to the open market; it is crucial if the property is to achieve full value on the open market that it has adequate access rights. If development is anticipated, then access may need to be by a different route than that used historically, either because of a physical aspect of or defect with the existing access or for planning purposes or as a consequence of intensification of use. By whichever route access is obtained, a title review should be carried out to establish whether any ransom strips are present. A ransom strip is an area of land which is owned by someone other than the Council. If access is only possible via a ransom strip, then the person with title to that strip will hold the key to unlocking the development potential of the land and that may involve payment to the ransom strip owner, either in return for a formal right of way or transfer of ownership of the strip. In some cases, the Council may want to retain some land to provide access to land remaining in its ownership.

12.5 Rights of way and other easements - It is important to establish the nature of any easements benefitting the land/property, so that any that are missing can be addressed, if possible. As well as access rights, the property may benefit from rights to run services over adjoining land, rights to light, rights of support or other property specific rights. Also to check whether the land/property is subject to any rights which might adversely affect the proposed disposal and subsequent development, for example, public or private rights of way or rights of support.

12.6 Retaining rights over adjoining land - It may be the case where surplus land/property is being disposed of, that the Council will be retaining adjoining land. In that case, the Council will consider whether it needs to reserve any rights over the land/property being disposed of for the benefit of that adjoining land, most commonly, access to the public highway or mains utilities.

12.7 Outline planning consent - Assessing whether an application for a change of planning use might have the potential to increase the value of the surplus land/property. If the change of use is obtained by the Council, it removes an element of risk and uncertainty for potential buyers, which may lead to an increase in the purchase price that they are willing to pay.

12.8 Development agreements - The Council as landowner may, through a development agreement, engage a developer to carry out the development of the site on its behalf. Arrangements may comprise a grant of a lease of the whole site with the developer receiving a fee based partly upon the development value. In circumstances where there is a development agreement or the grant of a lease associated with the disposal, this may trigger the need for an EU tendering exercise

13. OTHER STEPS TO FACILITATE THE DISPOSAL PROCESS

When due diligence in accordance with section 12 of this Policy has been completed, the following will be considered, although not all may be required depending on the type of disposal or basis of the original acquisition:

1. Legislation and Secretary of State guidance governing the disposal process;
2. General guidelines which are applicable, for example, the Crichel Down rules. The Crichel Down Rules are rules that guide how public authorities should dispose of land previously acquired by compulsory acquisition, or land acquired under the threat of compulsory purchase. They are to be applied by any public body disposing of land that was acquired for a purpose for which the authority had compulsory purchase powers at the time of acquisition, whether or not those powers were relied on to acquire the land.
3. Carrying out a site inspection to establish what specific issues there are on the ground, for example, drainage, boundary problems or illegal occupiers. It will also assist when instructing legal advisers or other professionals, who may only have seen the property on plans or in photographs. For some disposals, it may be appropriate for the various professionals to undertake a site visit.
4. Producing a sales pack to circulate to interested parties, including title information and replies to standard pre-contract enquiries.
5. Considering the most appropriate pricing structure. In some cases, it may be appropriate to use an overage arrangement whereby the Council receives future payments representing any uplift in value of the land/property once it has been developed or once it has been developed and sold on. A calculation of the overage that the Council is likely to receive and the likelihood of that sum being

correct given changing market conditions will be important pieces of information in assessing the business case for disposal of surplus/under-used land/property.

6. Considering whether the transaction is caught by the public procurement rules.

7. Considering whether the transaction is caught by the State Aid rules.

14. REFERENCES

(a) A bank reference will be obtained in every case where a lease, tenancy or licence is being granted at a rent or fee in excess of any financial limit as may be defined in Financial Regulations and/or Scheme of Delegations to Officers, unless the relevant Director has agreed to dispense with this requirement.

(b) In every case where a lease, tenancy or licence is to be granted to a limited company at a rent or fee in excess of any financial limit as may be defined in Financial Regulations and/or the Scheme of Delegations to Officers, a guarantor will be required, unless the relevant Director has agreed to dispense with this requirement.

APPENDIX 1

1. LEGAL POWERS

Section 123 - Local Government Act 1972

1.1 In general, the Council is required to achieve the **‘best consideration reasonably obtainable’** when it is disposing of land. Section 123 imposes a duty on the Council to achieve a particular outcome (namely the best price reasonably obtainable): it is not a duty to conduct a particular process (e.g. to have regard to particular factors).

If the disposal is under the 1972 Act, there is neither express power to include covenants on a disposal, nor a prohibition. Where the disposal is a lease, that lease will contain terms and similarly, on the conveyance/transfer of freehold property or on the assignment of a lease, covenants may likewise be included by virtue of section 111 of the 1972 Act.

Under Section 123(2A), the Council must follow certain statutory requirements to advertise the disposal of land that consists of or forms part of an open space.

General Consent

1.2 If the Council seeks to dispose of land or buildings at less than the market value, then it has to obtain the consent of the Secretary of State Communities and Local Government. However, the Secretary of State has issued a number of ‘general consents’ i.e. a set of conditions which, if they apply to a particular transfer, means that the Council does not need to obtain specific permission to transfer at an ‘undervalue’. However, the undervalue itself still needs to comply with ‘normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer’.

The most important of these consents is the General Disposal Consent 2003 (‘the General Consent’) which permits the Council to dispose of land at less than its market value, without the need to seek specific permission from the Secretary of State, provided that:

- the purpose for which the land is to be transferred is likely to contribute to the ‘promotion or improvement’ of the economic, social, or environmental well-being of the area; and
- the difference between the market value of the land and the actual price paid for the disposal (if any), is not more than £2,000,000.

The General Consent has been issued to provide local authorities autonomy to carry out their statutory duties and functions and to fulfil such other objectives as they consider to be necessary or desirable. The General Consent does not require the Council to undertake a tendering process i.e. to market test a disposal. However, when disposing of land at an undervalue, the Council remains aware of the need to fulfil its fiduciary duty in a way which is accountable to local people. The Council will not divest itself of valuable public assets, unless it is satisfied that the circumstances warrant such action.

In justifying a disposal of land/property at undervalue, the Council will have regard to the following:

- what community benefits will be realised by the disposal;
- how the interests of local people will be better served by the disposal;
- the financial viability of the Council’s plans for the land;
- the State Aid implications of the disposal;

- the Council's future plans for the land;
- the market value of the land and the difference between that and the proposed disposal value.

Housing Act 1985 (as amended)

1.5 Under s32 the local authority has the power to dispose of land and dwellings held for housing purposes. Secretary of State consent will be required unless the disposal is covered by one of the General Consents relating to the disposal of:

- vacant dwellings for owner occupation;
- occupied dwelling houses to secure tenants;
- dwellings to tenants who have the right to buy acquiring with others;
- dwellings on shared ownership terms;
- housing authority land; and
- reversionary interest in houses and flats.

Disposals are to be at market value, but discounts may be applicable to qualifying applicants. For details of criteria for disposing of individual council properties (other than through the right to buy) please refer to the Housing Asset Strategy.

Local Government Act 1988 – Section 25

1.6 The Council may provide a Registered Social Landlord with any financial assistance or gratuitous benefit of land for development as housing accommodation. This includes:

- land for development or access, easements and rights;
- dwelling houses for refurbishment;
- financial assistance for prevention of homelessness; and
- loans to RSLs.

The aggregate value of financial assistance or gratuitous benefit provided by the disposal or grant must not exceed £10 million.

Town and Country Planning Act 1990 – Section 233

1.7 The disposal of land held for planning purposes, follow principles similar to those of s123 of the Local Government Act 1972 and its requirement to obtain best consideration reasonably obtainable. However, it must be noted that the General Consent does not apply and a specific consent from the Secretary of State will be required if the Council is considering disposal at an undervalue.

Under s233(2), the Council must obtain the consent of the Secretary of State

to dispose of common land, which may involve the requirement to provide land in exchange.

State Aid

1.8 All land/property disposals need to comply with the European Commission's State Aid rules¹¹. When disposing of land 'at less than best consideration', depending on the nature of the transaction, the Council may be 'subsidising' the purchaser. Where this occurs, the Council must ensure that the nature and amount of subsidy complies with the State Aid rules, particularly if there is no element of competition in the disposal process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit, with interest, being recovered by the Member State (the UK) from the recipient.

Public Procurement

1.9 A straightforward disposal of land/property for a market value price will not be caught by the Public Contracts Regulations 2006. However, when disposing of land the Council is involved in determining the scope of the future development of its land and its intention is to impose on the purchaser certain obligations as to the nature of the development and also perhaps the standards to which the works must be constructed (usually through a development agreement or grant of a lease associated with the disposal), then where the values involved exceed the relevant threshold, it is likely that such an arrangement may be construed as a public works contract triggering the need for compliance with the processes set out in Regulations, as well as compliance with the authority's own contract and procurement procedures.

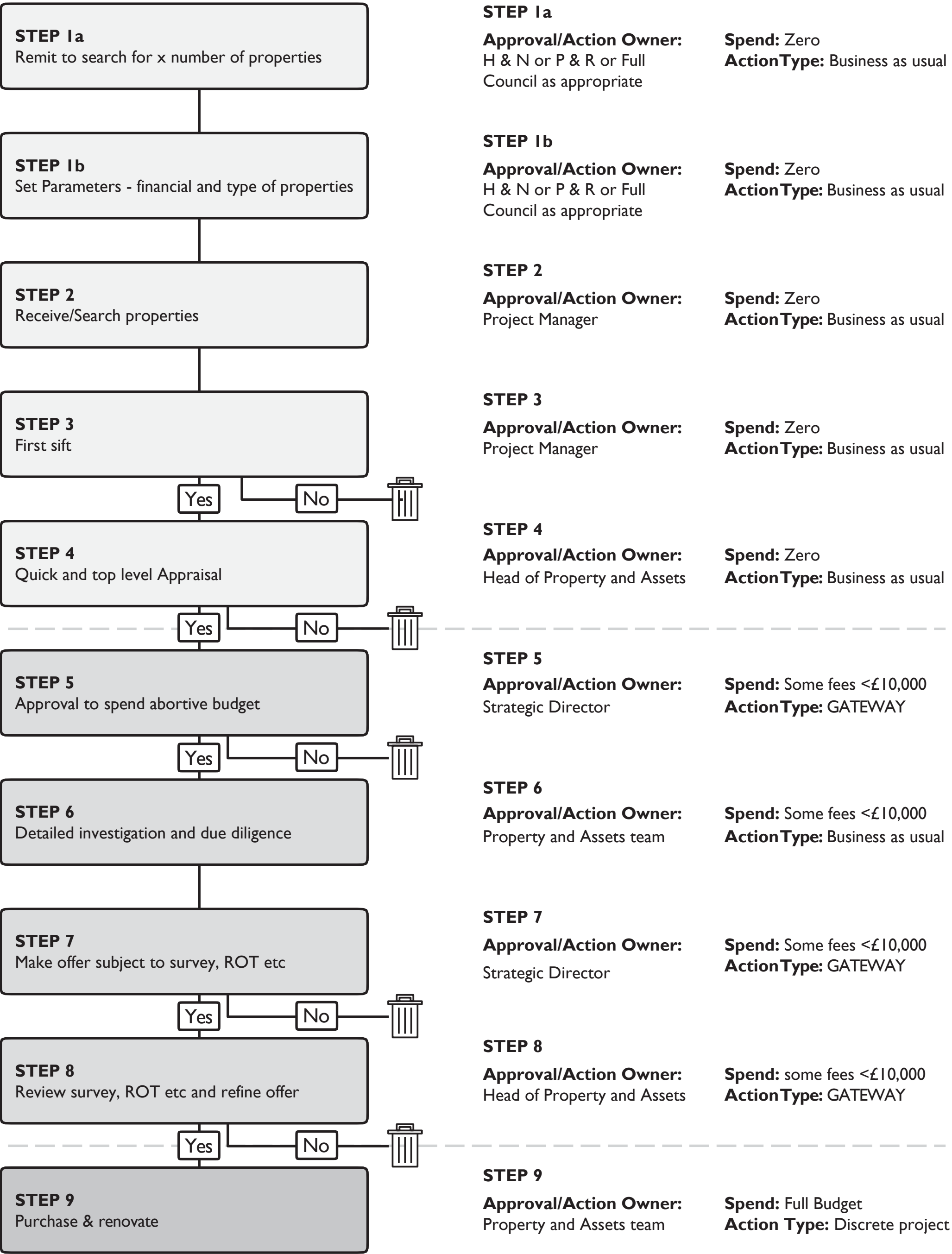
The applicability or otherwise of the public procurement rules will depend on the particular nature of the transaction, how it is structured and its detailed provisions. As a general rule, the risk will be higher the more the Council specifies its requirements for any full development and conversely will be lower the more the Council is willing to take a 'hands off' approach. The Council must therefore give due consideration to the possibility of public procurement rules applying to any particular disposal of land and obtain case specific legal advice before entering into any agreement.

APPENDIX 2 Delegation Scheme for Property Disposals

Policy & Resources Committee	<p>New leases and licences where the premium or annual rental payment is over £150,000.</p> <p>Where the lease or licence or transaction is subject to an existing legal agreement the Head of Property and Asset Management in consultation with the Director of Finance (Section 151 Officer) and a Strategic Director may approve the transaction.</p> <p>*see exception for Beacon Park and Energy Park</p>
Policy & Resources Committee	<p>Transfers of freehold or leasehold land or property where the consideration is over £200,000</p> <p>Where a lease is subject to an existing legal agreement the Head of Property and Asset Management in consultation with the Director of Finance (Section 151 Officer) and a Strategic Director may approve the transaction.</p> <p>*see exception for Beacon Park and Energy Park</p>
Head of Property and Asset Management in Consultation with Chairman/vice Chairman and Group Leaders of Policy and Resources Committee, a Strategic Director and the Director of Finance (Section 151 Officer)	<p>Beacon Park and Energy Park South Denes.</p> <p>New leases and licences where the premium or annual rental payment is over £50,000</p>
Head of Property and Asset Management in Consultation with Chairman/vice Chairman and Group Leaders of Policy and Resources Committee, a Strategic Director and the Director of Finance (Section 151 Officer)	<p>Beacon Park and Energy Park South Denes.</p> <p>Transfers of freehold or leasehold land where the consideration is over £50,000</p>
Head of Property and Asset Management in consultation with the Director of Finance (Section 151 Officer) and a Strategic Director	<p>New leases and licenses where the premium or annual rental payment is between £10,000 and £150,000</p>
Head of Property and Asset Management in consultation with the Director of Finance (Section 151 Officer) and a Strategic Director	<p>Transfers of freehold or leasehold land or property where the consideration is between £10,000 and £200,000.</p>

Disposals below the minimum thresholds in this table (£50,000 for Beacon Park and Energy Park South Denes and £10,000 elsewhere) may be agreed by the relevant Head of Service, save for disposals of the assets listed in 10.2 which are reserved to the Head of Property & Asset Management.

Property Acquisition





GREAT YARMOUTH
BOROUGH COUNCIL

Document created

January 2019 v1



	<u>Updated February 2021</u>
Agreed by Council <u>Policy and Resources Committee</u>	23 April 2019
Review date	January 2021 <u>2022</u>

Property Acquisitions and Disposals Policy

Part 1	Acquisitions Policy
1	Background
2	Purpose of the Policy
3	Policy Aims
4	Relevant Legislation
5	Process
<u>6</u>	<u>Use of Retained Right to Buy Receipts</u>
<u>7</u>	<u>Use of Compulsory Purchase Orders</u>
<u>68</u>	Risks
<u>79</u>	Financial Considerations
<u>8</u> <u>10</u>	Delegated Decisions
<u>911</u>	Monitoring & Review of the Policy

PART 1 - ACQUISITIONS POLICY

1 BACKGROUND

There are a number of reasons that GYBC may wish to acquire properties. These include but are not limited to:

- it contributes towards the provision of Council services;
- there is a direct link to improving the economic, social and environmental wellbeing of the community;
- it leads to strategic benefits to the authority in relation to regeneration or redevelopment proposals;
- the acquisition furthers the provision of services for the community by third parties;
- the property is already maintained by the Council (and there is an advantage in owning it);
- revenue income generation and/or capital growth, and local community benefit purposes.

2 PURPOSE OF POLICY

This policy has been written to allow for the variety of circumstances which may lead to GYBC acquiring properties. ~~It also incorporates the council's Disposal Policy which was approved by Policy and Resources Committee in June 2016 and is part 2 of this document~~ It does not cover the buy back of property previously subject to the Right to Buy.

3 3 POLICY AIMS

This policy ~~is written to encompass social housing, market sale housing, market rent housing, covers acquisitions of residential and commercial properties~~ property and land. Regardless of tenure ~~there are~~ this policy aims to set out general principles of due diligence which need to be applied ~~and the~~ The process ~~included in~~ established by this policy creates a gateway system which allows officers freedom to act with agility in the marketplace and ~~gives~~ while providing reassurance to members ~~the comfort~~ that actions are well thought out, proportionate and ~~controllable~~ subject to appropriate checks and controls.

Each potential acquisition will be assessed on a case-by-case basis and in line with the ~~acquisition~~ criteria set out in this policy; considering the financial implications of the acquisition and the relative merits in value for money terms.

A proposed acquisition will only be progressed if the criteria are met and the relative financial benefits can be demonstrated ~~based on, having regard to the following~~ principles: set out in this policy.

4 RELEVANT LEGISLATION

Section 111 of the Local Government Act 1972 gave local authorities the power to do anything "which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions".

When using this power, a local authority would need to identify which of their functions an activity was 'incidental' to.

This situation was relaxed in the Local Government Act 2003, which permitted local authorities to pursue certain forms of commercial activity through a company structure. This was subject to statutory guidance for the use of trading powers.

The General Power of Competence, introduced by the Localism Act 2011, permits a local authority exercising the general power: to do it in any way whatever, including— (a) power to do it anywhere in the United Kingdom or elsewhere, (b) power to do it for a commercial purpose or otherwise for a charge, or without charge, and (c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area. This would mean that a local authority would have to set up a company to manage property purely for financial gain. But as mentioned, most authorities hold and manage commercial property as an adjunct to other functions

5 PROCESS

~~A Gateway procedure is proposed. This is an industry document sets out a 'Gateway' procedure for acquisitions. This is a~~ standard methodology for controlling expenditure at member level at timely and proportionate intervals whilst allowing officers to progress ~~work with levels of permitted transactions under~~ delegated ~~freedom authority~~. Please see ~~appendix 1 for a the related~~ flowchart of ~~how this might work the process at Appendix 3~~. Points below describe the actions on the flowchart as per the numbering. ~~In some cases, dependent the specifics of the acquisition and the wording of the committee approval, not all actions in the Gateway procedure will need to be completed.~~

Actions 1a & 1b: Dependent upon the ~~proposed programme nature~~ of ~~works the project~~, the relevant committee shall approve the acquisition/objectives of the acquisition programme, the financial parameters and any other pertinent criteria (such as partnering arrangements, timescales etc). ~~In the normal way, an officer paper making recommendations shall be presented for review and On committee approval. Once parameters are approved, then of a project~~ delegated authority shall be passed to the Strategic appropriate Heads of Service or Directors in consultation with the S151 Officer to make acquisitions within the parameters and meeting the other criteria of that project.

Actions 2, 3 & 4: Following approval, officers will run a financial appraisal based on best estimates and desktop research. For example ~~Agreed agreed~~ financial parameters are set within the appraisal model, ~~using data from GYN, Housing and Finance.~~ Values and market rent information are taken from existing comparable data. ~~Affordable rents are set at Local Housing Allowances.~~ Build costs (where applicable) and professional fees are set at generic, generous, broad-brush levels at this early stage. The asking price is used as guidance for a purchase price.

At this early 'no cost' stage, it will be quickly apparent whether ~~the scheme an acquisition (including any build)~~ merits further investigation or should be stopped before incurring abortive costs. Should the acquisition (and any building scheme) merit further investigation, the officer will discuss with the Head of Property and Assets ~~/, consulting the~~ Housing Director ~~or another responsible officer appointed by them, who decides where necessary and a decision will be made on~~ whether to take the scheme ~~forwards~~ forward.

Action 5: This is Gateway 1. The relevant officer ~~and presents~~ the ~~Head of Property and Assets~~ ~~present the acquisition (including any building scheme)~~ to the appropriate ~~Strategic~~ Director. They should have a file of evidence of the data used ~~and to~~ enable ~~the group to make~~ an informed decision ~~to be made on whether to proceed~~. This gateway will release a small amount of abortive budget to refine the business case with professional input. Suggested fees are up to £10,000 to cover the costs of architects, planning consultants, cost consultants, lawyers as required for high level input. ~~It is hoped that the Property Team can undertake the majority of this in-house.~~

Actions 6 & 7: ~~At this point the scheme hands off to the Property Team to undertake the due~~Due diligence ~~required is~~ undertaken based on the additional information obtained at action 5 to refine the appraisal. ~~This~~The refined appraisal ~~would be~~is reported ~~back~~ to the relevant ~~Strategies~~ Director and permission sought to make a conditional offer, Subject to Contract. This ~~would be~~is Gateway 2.

Action 8: Once those conditions (for example a full survey or report on title) ~~had~~have been met, the Head of Property and Assets/~~Housing~~appropriate Director, if comfortable, would be in a position to authorise purchase. This is Gateway 3.

Action 9: ~~Only now is the full~~Full budget ~~is~~ released. Contracts can be exchanged ~~and completed~~ on the property and any works packages can be authorised. At this point, the chairperson of the relevant committee should be informed by email of the successful purchase.

At each Gateway, an appraisal signature should be sought from Housing, ~~or~~ Assets ~~as applicable~~ and Finance to show consultation across the relevant affected departments and independent checking of the financial appraisal.

Should ~~a scheme~~an acquisition not fit within the parameters but still meets strategic objectives, it is recommended that after Gateway 1, it is taken to the relevant committee for a decision as to new parameters.

6. USE OF RETAINED RIGHT TO BUY RECEIPTS

In relation to all acquisitions acquired by the Council to be held in the Housing Revenue Account or General Fund and funded through the use of Retained Right to Buy Receipts, decision making and delegated authority is set out in the Use of Retained Right to Buy Policy.

7. USE OF COMPULSORY PURCHASE ORDERS

The Council's approach to the use of Compulsory Purchase Orders (CPOs) will be set out in a separate policy. CPOs may be considered when the Council needs to acquire a property from a freeholder or leaseholder, or the tenant(s) of a freeholder or leaseholder, for the purpose of carrying out of development, redevelopment or improvement on or in relation to the land. Such acquisitions will be carried out in accordance with the requirements of CPO requirements and the CPO Policy.

8. RISKS

Risks to be considered and mitigated in any proposal include:

- Acquisition Risk – there is always the potential for a downturn in the property market at some point in the future, ~~but there may be signs of increased competitive activity from smaller property companies. This could result in the Council being one of several bidders for any good quality assets available in the~~

~~Borough, which could impact on sales receipts if and when an acquisition is disposed of. It is likely that the Council will be an unsuccessful bidder on a number of occasions. The Council, both Members and officers need to be aware of this possible outcome. This 'competition' could be a measure of success however as one of the key drivers of this policy is to rejuvenate the housing market in the town.~~

- Due to the nature of the property market, decisions may need to be taken quickly in order to put offers forward. ~~Of course, offers can~~Offers, where appropriate will be subject to conditions and will be subject to due diligence being undertaken before proceeding to acquire. Agility will need to be built into any request for authority to proceed.
- Cost Risk – abortive costs, including legal costs, survey fees, and officer time all may be incurred in abortive transactions including costs for initial feasibility investigations ~~but~~. These costs are inevitable ~~if~~as acquisitions are ~~considered important for part of~~ the ongoing strategy for the Council. The proposed process reduces these costs to the minimum for the longest possible period. However, in a rising market or market with increased competitive activity from smaller property companies, the Council could be one of several bidders for any good quality assets available in the Borough. It is likely that the Council will be an unsuccessful bidder on a number of occasions. The Council need to be aware of this possible outcome. This 'competition' could be a measure of success in relation to some policy objectives for acquisitions.
- Lack of suitable sites - The local property market is restricted and is dominated by assets that may not be good quality. There may therefore be a shortage of suitable stock in the Borough, ~~although this may lead to improvement/regeneration of certain areas. It is estimated that the new landlord licensing rules and recent tax changes for landlords will bring forward an initial glut of properties.~~
- Property Market risk - property is an inherently riskier asset than other asset classes because of its physical characteristics, which need to be managed and maintained. This is ideally compensated by increased returns. However, the property market is not a certain market and the Council may not achieve target returns if market conditions significantly worsen.
- Void Risk - close management of the asset portfolio is critical to the success in delivering additional income to the Council. The existing arrangements will be extended to cover these assets and marketing of the assets in a timely and efficient manner is crucial. Long term voids will have an impact on the overall revenue budget with no income to offset the costs of owning a property. It is therefore important to monitor the level of voids over the entire portfolio, with an allowance being made for this within the financial plan.
- Refinancing Risk - the Council exposure to increasing debt will need to be considered as part of its Treasury Management function and will be reviewed annually. Therefore

when assessing investment opportunities we will use ~~the PWLB 30 year interest rate and payback period as per the Capita HRA model (NB Capita are considering moving to a 40 year model and should they do so, then this model will follow suit)~~ appropriate timescales for repayment.

- Liquidity Risk – property is an inherently illiquid asset that yields higher returns on long-term investment. This means that funds are not easily accessible once committed.
- Many investment transactions happen prior to even coming to the market. Information is vital and getting to know about properties for sale is important. This can be done through contacting property owners and agents in the Borough proactively.

A thorough legal, financial and practical due diligence process will help to mitigate these and other property specific, risks. The Council ~~must~~will robustly evaluate risks of acquisitions on each occasion in order to act in the best interests of its Council taxpayers.

79. FINANCIAL CONSIDERATIONS

Factors to be considered with any investment at an early stage are: Available budget, available cash flow, ability to cover capital costs of investment and revenue costs of interest payable and the ownership costs of the property.

~~The HRA modelling period is, currently, over a 30 year span and consequently any investment would be appraised to payback over a similar timeframe.~~

~~Discounted cash flows are an important appraisal tool that considers the time value of money where a pound today is worth more than a pound in the future due to inflation. Net present value (NPV) is the sum of all the outward and inward cash flows of a project adjusted for inflation to calculate the value today. We should expect to see a positive net present value.~~

Internal rate of return (IRR) is the interest or inflation rate that yields a zero ~~NPV. Therefore we need to see~~ Net Present Value. The Council ~~will in accessing the viability of an acquisition for the asset seek to deliver~~ an internal interest rate that as a minimum meets ~~our~~the cost of borrowing, whilst factoring in any additional risk which should be reflected in the IRR. In some cases, an acquisition will not meet this criteria, but the reason for ~~example PWLB 30 year rate of 3%.this~~ will be justified in relation to the achievement of other Council objectives and explicitly referenced in the Committee request for approval of the project.

Therefore, a low risk investment ~~such social housing~~ would only be required to repay the borrowed capital and the interest, so an IRR of 3% would be sufficient. For higher risk investments such as build for sale housing development ~~we need to achieve our, the IRR should be higher~~ reflecting borrowing costs plus the price of the additional risk, such as values dropping, slow sales,

competitor schemes, cost inflation etc. This is known as Risk Premium. ~~It is up to each organisation to assign a risk premium above their cost of capital. A private property developer would generally look for a risk premium of 12 – 15%, so as an example, would require an IRR of 15 – 18% with our costs of capital (c.3%). In some cases, reflecting the particulars of the asset and which service will own it, there is no requirement for an acquisition to repay debt but only to service interest costs.~~

~~As a Local Authority with wider objectives, we may accept a reduced or nil risk premium to achieve strategic goals. This must be explicitly stated in any report to committee.~~

~~A sensible proposition in a robust housing market could be based on tenure type. For instance Social Rent at 3% IRR; Market Rent at 7.5% IRR and Build for Sale at 15%% IRR. Commercial IRR at 8%.~~

Tenure	NPV (+/-)	Payback (yrs)	IRR (%)
Social	+	30	3
Market Rent	+	30	7.5
Build for Sale	+	Build period	15
Commercial	+	30	8

It will be for officers to recommend an IRR in the initial report and for members to approve or revise at Stages 1a & b (see appended process). ~~The above table gives a useful comparator for assessing schemes.~~

~~It is recommended at the final approval that sensitivity analysis is undertaken. This will determine the impact of key variables on the financial return. For example, what would be the impact of different rates of inflation or how much would house prices have to fall for GYBC to not recover its investment?~~

8. _____

10. DELEGATED DECISIONS

~~Powers~~Under this policy the power to approve a programme of acquisitions ~~currently,~~
~~dependent upon the level of capital outlay, will~~ sit with the appropriate committee, ~~most~~
~~commonly~~ however the expenditure limit for the project must be agreed by Policy and Resources
Committee up to £950,000 and by Council above that figure.

~~In order for this policy to be effective, once~~Once a specific programme of acquisitions ~~is and~~
~~the related expenditure limit are~~ approved by members ~~(1a & 1b),~~ delegated authority is given to
key officers within the Council to authorise expenditure: ~~At Stage 1, Delegated authority~~
~~should be given to Strategic Directors in consultation with the Section 151 Officer to~~
~~approve property purchases from the open market within programme parameters~~
~~within the limits~~ set by ~~member~~the programme.

9. 11. MONITORING AND REVIEW OF THE POLICY

The policy will be monitored and be subject to review every two years unless there is a fundamental
change of legislation.

~~Following commencement of the scheme a 6 month review will be undertaken.~~

PART 2 – DISPOSALS POLICY

Part 2	Disposals Policy
1	Aims of this Policy
2	The Surplus Test
3	The Under-Used Test
4	Meaning of Disposal
5	Meaning of Best Consideration
6	Means of identifying surplus or under-used land/property
7	Disposal Criteria
8	Marketing Strategy
9	Valuation
10	Decision Making
11	Means of Disposal
12	Timings of Disposals and Due Diligence
13	Other Steps to Facilitate the Disposals Process
14	References

THE DISPOSAL OF PROPERTY OWNED BY GREAT YARMOUTH BOROUGH COUNCIL

1. AIMS OF THIS POLICY

1.1. It is government policy that local authorities should dispose of surplus and under-used land and property wherever possible. Under the Local Government Act 1972 local authorities have powers to dispose of property in any manner they wish, subject to certain constraints which may include a requirement to obtain the consent of the Secretary of State.

Legislation. Under Section 123 of the Local Government Act 1972 (see Appendix 1) principal councils have a duty not to sell land for a consideration less than the best consideration reasonably obtainable unless the Secretary of State's consent has been obtained.

However, the Local Government Act 1972: General Disposal Consent (England) 2003 gives a general consent provided that any undervalue of the interest 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. There are other forms of consent or exception set out in legislation.

These powers provide the backdrop against which decisions to dispose of property in the Council's ownership must be made.

~~property in the Council's ownership must be made.~~

1.2. The way the Council manages its property assets can have a significant impact both on the quality of services delivered to the public and the local environment. Effective asset management is essential in bringing 'agility' to land and property assets so that the delivery of the Council's goals and objectives are realised in a sustainable manner, at the right time and on budget.

1.3. The Council will consider the business case for disposing of any assets that:-

- (a) are no longer of ~~any~~ use to it and unlikely to be in the future or
- (b) which provide limited benefit which is disproportionate to the opportunity cost of the capital tied up in the asset- or the costs of required improvements
- (c) ~~are~~ are held as investment (residential or commercial) assets for the purpose of generating rental income and/or capital appreciation to be released through sale.

1.4. Each asset disposal is treated on its own merits and nothing in this Policy will bind the Council to a particular course of action in respect of a disposal. Alternative methods of disposal not specifically mentioned in this Policy may be used where appropriate, subject to obtaining the necessary **authority committee approval**.

1.5. This Policy:

- sets out the procedure to be adopted in connection with the disposal of surplus and under-used assets and ensures that requests to purchase Council owned assets are dealt with in a fair and consistent manner and that any person who may have an interest in making an offer to purchase, has the opportunity to do so in circumstances no less favourable than anybody else;
- distinguishes requests for small areas of land that may be considered for sale by private treaty and larger areas with development potential that should be sold on the open market.

1.6. ~~Although this Policy will normally be followed, there~~ There will be occasions where the procedure may need to be changed, particularly for larger, more complex land/property sales. Properties acquired through Compulsory Purchase Orders (CPO) shall be disposed of in accordance with the principles of this Policy and the CPO Policy but are not required to meet the 'Surplus' or 'Under-Used' tests set out in this Policy.

2. THE 'SURPLUS' TEST

Land/property will be deemed surplus to the Council's requirements where:

- (a) it makes no contribution to the delivery of the Council's services, strategic or corporate objectives;
- (b) an alternative site has been identified which would be more cost effective in delivering the Council's services, strategic or corporate objectives;
- (c) it has no potential for strategic or regeneration/redevelopment purposes in the near future;
- (d) it will not contribute to the provision of a sustainable pattern of development;
- (e) it makes no contribution to protecting and enhancing the natural, built and historic environment, including making no contribution to helping to improve biodiversity.

3.- THE 'UNDER-USED' TEST

Land/property will be deemed to be under-used if:

- (a) part of the site is vacant and is likely to remain vacant for the foreseeable future;
- (b) the income being generated from the site is consistently below that which could be achieved from:
 - (i) disposing of the site and investing the income;
 - (ii) an alternative use;

(iii) intensifying the existing use;

(c) only part of the site is used for service delivery and this could be delivered from an alternative site;

(d) it makes no contribution to protecting and enhancing the natural, built and historic environment, including making no contribution to helping to improve biodiversity.

In the case of open spaces, amenity areas and similar sites, the under-used test should also consider the 'community value' of the asset, which would include visual amenity and not be limited solely to income generation or whether the site is vacant etc.

4. _____ MEANING OF DISPOSAL

For the purposes of this Policy, a disposal means any freehold disposal, by sale or exchange, of Council owned land/property (including buildings) and any disposal by the granting of a lease or licence for a period greater than 7 years.

Leases of 7 years or less or assignment of a term which has not more than ~~7 years~~ 7 years to run are not covered by this Policy, as they are exempt from the statutory requirement to obtain best consideration. It also excludes any disposals by the Council through the Right to Buy.

5. _____ MEANING OF BEST CONSIDERATION

'Best consideration' means achieving maximum 'value' from the disposal, not

~~just~~ maximum price. Disposal at less than market value must contribute to the— 'promotion or improvement of the economic, social or environmental wellbeing of the area' [see section 1.2 of Appendix 1].

6. _____ MEANS OF IDENTIFYING SURPLUS OR UNDER-USED LAND/PROPERTY

Surplus or under-used land/property may be considered for disposal:

(a) ~~(a)~~ following an asset management review;

(b) ~~(b)~~ following a review of operational costs and income of an asset;

(c) following the identification of development opportunities;

(d) through a corporate property portfolio review;

(e) through the declaration of specific sites as being surplus to requirements;¹

(f) through Local Plan designation;

¹ Where an under-used asset is generating an income, a cost/benefit analysis must be carried out to establish whether it is in the Council's best interests to dispose of the site.

(fg) following a direct approach from an interested party;

(gh) where the disposal helps to deliver other Council objectives e.g. the provision of housing in the Borough;

(hi) where management of the land/property is considered suitable for community ownership or has been determined as an 'asset of community value'.

~~*Where an under-used asset is generating an income, a cost/benefit analysis must be carried out to establish whether it is in the Council's best interests to dispose of the site.~~

7. _____ DISPOSAL CRITERIA

7.1 Open space (including, parks, playing fields & informal open spaces (excluding amenity land on Council housing estates) of 'public value' whether or not there is public access to it – assets in this category are considered to be valuable community resources, to be enjoyed by the wider community. Open space also enhances the quality of urban life, the character of residential areas, the environment etc. There will be a general presumption against declaring these assets as surplus/under-used unless:

1. alternative provision of equivalent community benefit is made in the locality; or
2. the area in question no longer provides a valued opportunity for sport, recreation or leisure; or
3. there is an excess of provision taking into account the long term recreation and amenity value of such provision; or
4. sport, recreation and leisure facilities can be retained and enhanced through the redevelopment of a small part of the site; or
5. there is over provision in the area; or
6. the asset is required for the regeneration of the area.

(a) The Council is required by law to advertise the disposal of land designated as 'public open space' in a local newspaper for two consecutive weeks and to consider any objections received. No final decision about the disposal will be made until any objections have been considered, as the response may be material to the decision. Public response may also be an important factor in any determination by the Secretary of State of an application by the Council for specific consent to the disposal.

(b) There will be a general presumption against disposal of land designated as 'Local Green Space' either through the Local Plan or a Neighbourhood Plan.

7.2 Amenity land - certain rights, environmental or economic conditions may preclude the sale of amenity land for example:

- (a) the land is subject to rights of way over it;
- (b) the land is a landscaping feature of the local environment, or designated public open space;

(c) sale of the land would incur additional costs for the Council (for example, the re-siting of lamp posts or telephone cables) unless ~~the applicant~~ a purchaser is willing to finance the additional costs (payable in advance);

(d) the land has been identified for future regeneration or development by the Council;

(e) following a request to purchase amenity land, a review identifies future regeneration or development opportunities for the Council;

(f) the sale of the land may prejudice future development by the Council;

(g) there are management or other issues that would cause inconvenience to the Council if the land was to be sold.

Approaches from private individuals to buy Council owned amenity land (e.g. green space land on council housing estates) to benefit their existing residential property will be considered where:

- there is a broader community benefit to the disposal e.g. a rationalisation of small parcels of ‘backland’ open space, either rarely used or often misused; or
- there are management/financial issues for the Council e.g. the land is costly to maintain; or
- the applicant has extenuating circumstances e.g. there are health grounds in relation to the applicant and/or their family and the sale of the land would improve their quality of life and would not adversely affect the quality of life of others in the neighbourhood – (the applicant will need to provide evidence to support and justify the application to purchase).

Where the Council considers that amenity land has development potential and agrees to dispose of the land, the valuation will reflect this. An overage clause may be applied and/or restrictive covenants placed on any future development.

Disposals of amenity land will normally be by private treaty. However, where the Council considers that the amenity land may be of interest to persons other than the applicant, the Council may dispose of the land on the open market.

7.3 Commercial Properties

There will be a general presumption against declaring the following categories of assets as surplus/under-used:

1. units designed to meet the needs of new and developing small businesses where there is anticipated to be demand for such units from different occupiers in future;
2. offices/rooms within business centres that have communal reception areas, facilities and services;

3. shop units where there is a community need for continued retail occupation, or where the integrity of a building or parade of shops might be adversely affected by the sale of individual units;
4. sites in industrial estates and sensitive locations where management control by the Council is required to ensure that amenity is maintained;
5. land or property which provides revenue income for the Council where disposal would adversely impact on the Council's revenue budget.

7.4 Community Asset Transfer and Assets of Community Value

Every town, village or neighbourhood is home to buildings or amenities that play a vital role in local life. They might include community centres, libraries, swimming pools, village shops, markets or pubs. Local life would not be the same without them, and if they are closed or sold into private use, it can be a real loss to the community. Community Asset Transfer is a transfer of land, buildings or structures (assets) owned by a public body to community/voluntary groups or social enterprises.

~~An 'asset of community value' is an asset, which in the opinion of the Council furthers the social well-being or social interests of the local community (or has done in the recent past). 'Social Interests' can include cultural, recreational and sporting interests.~~

~~The Council maintains a list (on its website) of land and buildings which may from time to time be nominated by the local community as an 'asset of community value'. A list of 'Assets of Community Value' (ACVs) as defined by the Localism Act 2011 which have successfully passed through a nomination and listing process is held on the Council's website. ACVs may be in private or Council ownership.~~

In reviewing the future of any ~~asset~~listed ACV within its ownership, the Council will assess all the options, ~~to be sure that it obtains best value. Options include using the asset in a different way, disposing of it on the open market or~~ including Community Asset Transfer (transferring it to a voluntary or community organisation at less than best consideration to achieve wider social benefits), use of the asset in a different way, or disposing of it on the open market.

Community organisations operate on a business model, often using volunteer effort, ~~and have~~ community intelligence about local needs and sources of funding not available to local authorities. They are in a position to run a community asset as a social enterprise. The business plan for the community asset transfer ~~should~~to a community organisation must demonstrate financial viability.

The Council may either advertise all community asset transfer opportunities or consider transfer requests from organisations which currently manage a property, without seeking other bids.

A community asset transfer should contribute to the Council's policies and targets. Where there are competing interests, the Council will consider which of the proposals put forward are viable and sustainable in the long term. The Council will deal with competition for a specific asset by identifying its key objectives in that area, using, for example, deprivation indices, local priorities and the current mix of buildings and services in the area and assess which bid best meets those objectives.

7.5. Disposal of ~~investment~~property assets (residential or commercial) ~~for capital gain.~~

In disposing of property or land which the Council owns which may have been specifically purchased as an investment or to facilitate development or redevelopment of the land or property or for some other purpose, when disposing of that land or property it is normal Council policy to achieve 'best consideration' as *Section 123 - Local Government Act 1972* (see appendix 1.2.).

They may be times when the Council may wish to dispose of the property/land at an 'undervalue'. For the benefit of any doubt, any such disposal still needs to comply with 'normal and prudential commercial practices, including evidence of obtaining the view of a professionally qualified ~~valuer~~valuer'. This is in line with *The General Consent 2003* as outlined in appendix 1.2. In those cases where disposal at an under value will promote or improve the economic, social or environmental wellbeing of the area this will be recorded and will be permitted so long as the relevant limit on such disposals is not exceeded.

7.6 For all of the above criteria and for information only, the relevant ward Councillors should be made aware that the site is being considered for disposal at the earliest opportunity and any comments or feedback taken into consideration before a decision is made.

8. MARKETING STRATEGY

Where applicable, the ~~Group Manager~~Head of Property & Construction and Asset Management, in consultation with the relevant Director, will determine the marketing strategy for the disposal of surplus or under-used land or property. The marketing strategy may be conducted in-house or through an external agent. Costs should be recovered from the eventual purchaser where appropriate or practical or will be recovered from the sales proceeds.

9. VALUATIONS

9.1 Although there is no particular prescribed route to achieve the best price reasonably obtainable, there may be circumstances in which an actual sale to the market is the only way to achieve it as opposed to one particular sale at a price according to an independent valuation.

9.2 Before disposing of any interest in land for a price which may be less than the best consideration reasonably obtainable, ~~the Group Manager will ensure that~~ a realistic valuation of that interest ~~is~~will be obtained. This will apply even for disposals by means of formal tender, sealed bids or auction, and irrespective of whether the Council considers it necessary to make an application to seek the Secretary of State's specific consent. By following this procedure, the Council will be able to demonstrate that it has adopted a consistent approach to decisions about land disposals by carrying out the same step by step valuation process on each occasion. Supporting documents will provide evidence, should the need arise, that the Council has acted reasonably and with due regard to its fiduciary duty.

9.3 The return from any disposal is to be maximised unless there are over-riding factors identified in the Corporate Plan or otherwise agreed by the Chief Executive or relevant Committee, that take precedence over the receipt of capital e.g. preferred use or preferential purchaser.

10. DECISION MAKING

10.1 ~~In accordance with~~ This policy sets out delegated powers in relation to disposals of the Constitution/Scheme of Delegations to Officers, the Group Manager Council's assets.

10.2 The Head of Property & Construction and Asset Management has delegated authority to deal with:

- (i) sales of sites for electricity sub-stations and gas governors;
- (ii) the grant, surrender and renewal of licences, wayleaves, and easements;
- (iii) grants of grazing licences;
- (iv) grant, surrender and renewal of leases where the Property concerned has been previously let;
- ~~(v) sales of land/property.~~
- (vi) rent reviews

~~The Group Manager Property & Construction must check the Scheme of Delegations for any limitations placed on the exercise of his/her delegated authority.~~

~~10.2~~ 10.3 Appendix 2 to this policy sets out further delegated powers for asset disposals.

10.4 Except with the consent of the Secretary of State, the Council cannot dispose of land otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.

Disposals of land/property by way of a short tenancy, for a consideration less than the best that can reasonably be obtained, will only proceed on the specific authority of the relevant Director on a report of the Group Manager Head of Property & Construction and Asset Management justifying the reasons for disposal at less than the best that can reasonably be obtained.

10.3 The Council is required by law to advertise the disposal of land designated as 'public open space' in a local newspaper for two consecutive weeks and to consider any objections received. No final decision about the disposal will be made until any objections to the disposal have been considered.

11. MEANS OF DISPOSAL

The most commonly used method of disposal shall be:

1. **Private Treaty** – a sale of land/property negotiated with one or a small number of interested parties either through a direct approach from an individual(s) or through a marketing exercise.

A private sale without marketing the land may be justified where for example:

- (a) the land to be disposed of is relatively small in size and an adjoining or closely located landowner is the only potential or likely purchaser;
- (b) the Council's corporate objectives and best consideration can best be achieved by a sale to a particular purchaser;
- (c) the purchaser has a particular interest in purchasing the land or a particular association with the land;
- (d) the nature of the Council's land ownership and that of the surrounding landownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained;
- (e) the Council's land is part of a larger area of land that is proposed for development, redevelopment or regeneration and the nature and complexity of the proposed development of the overall site is such that the Council's corporate objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area.

2. **Public Auction** – a sale of land/property by open auction available to anyone. The sale will be publicly advertised in advance. ~~A binding legal agreement is created upon the acceptance of a bid by the auctioneer.~~ Reasons justifying sale by this method and how the reserve price is determined must be recorded in writing.

3. **Formal Tender** – a sale of land/property by a process of public advert and tenders submitted by a given date. This is a suitable mechanism where there are identified development proposals. A fair and transparent tender process will need to be adopted.

4. **Exchange of Land** – a transaction involving the exchange of Council owned land with another land owner. The land acquired by the Council will meet at least one of its corporate objectives and will be 'equal' in ~~commercial~~financial worth to the land exchanged whether from the value of the land itself or where a payment is made in addition to the land exchanged.

5. **Informal Negotiated Tender** – a transaction involving 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 who submitted the most advantageous bid or bids.

In some cases a property will be sold via an estate or other agent.

12. TIMING OF DISPOSALS & DUE DILIGENCE

The timing of any marketing/disposals will need to be considered against the background of the current market conditions, potential for the site value to increase in the future, whether there is a need to raise capital receipts and current planning policies.

In order to properly assess the likelihood of and business case for disposal, the ~~asset holding department in consultation with Legal Services and/or the Group Manager Property & Construction will carry out early due diligence on land/property identified as surplus or~~

~~under-used. In particular, the asset holding department will consider the~~ following issues which have the potential to prohibit disposal or influence the sale price will be reviewed:

~~12.1 Reviewing the title - Once surplus land/property has been identified and a prima facie business case made for its disposal, 12.1 -~~ the title is reviewed to identify whether there are any title issues which may impact upon the disposal process or the value which could be achieved from disposal.

12.2 Unregistered land - If the land ~~and~~ /property identified for disposal is unregistered, then it is important that the title deeds are located as soon as possible and checked for evidence of the Council's title. This can be achieved through a voluntary application to the Land Registry to register the land/property before it is put on the market.

12.3 Restrictive covenants - The land/property may be subject to restrictive covenants which limit or restrict its use or the extent to which development can be carried out on it. Whether these are a concern will depend upon the likely use of the land/property following disposal, particularly where surplus land/property is being sold for re-development. A restrictive covenant against a certain type of development may have a significant adverse effect on the land value.

~~It is possible to apply to the Lands Tribunal under section 84 of the Law of Property Act 1925 for the release or modification of restrictive covenants in some circumstances. This can be a time consuming process and it is usually better undertaken before the land/property is placed on the open market.~~

~~Alternatively, it is often possible to obtain restrictive covenant indemnity insurance against future losses for breach of a restrictive covenant and a policy with an adequate limit of indemnity cover will satisfy most purchasers.~~

~~It is very important that no negotiations are carried out with any adjoining or nearby owners who may have or claim to have the benefit of the relevant covenant, prior to receiving legal advice. If negotiations do take place, then it could materially prejudice the Council's ability to obtain insurance cover against breach of the covenant.~~

12.4 Ransom strip - It will generally be sensible to resolve ransom strip issues prior to offering the property to the open market. ~~It; it~~ is crucial if the property is to achieve full value on the open market that it has adequate access rights. If development is anticipated, then access may need to be by a different route than that used historically, either because of a physical aspect of or defect with the existing access or for planning purposes or as a consequence of intensification of use. By whichever route access is obtained, a title review should be carried out to establish whether any ransom strips are present. A ransom strip is an area of land which is owned by someone other than the Council. If access is only possible via a ransom strip, then the person with title to that strip will hold the key to unlocking the development potential of the land and that may involve payment to the ransom strip owner, either in return for a formal right of way or transfer of ownership of the strip. ~~The conventional approach to valuing ransom strips has been to offer the ransom owner one third of the uplift in value of the land/property released by unlocking it for~~

~~development~~In some cases, the Council may want to retain some land to provide access to land remaining in its ownership.

~~However, any agreement will ultimately depend on market conditions and the specifics of the land/property and its locality.~~

12.5 Rights of way and other easements - It is important to establish the nature of any easements benefitting the land/property, so that any that are missing can be addressed, if possible. As well as access rights, the property may benefit from rights to run services over adjoining land, rights to light, rights of support or other property specific rights. ~~It is also useful~~Also to check whether the land/property is subject to any rights which might adversely affect the proposed disposal and subsequent development, for example, public or private rights of way or rights of support.

12.6 Retaining rights over adjoining land - It may be the case where surplus land/property is being disposed of, that the Council will be retaining adjoining land. In that case, the Council will consider whether it needs to reserve any rights over the land/property being disposed of for the benefit of that adjoining land, most commonly, access to the public highway or mains utilities.

12.7 Outline planning consent - Assessing whether an application for a change of planning use might have the potential to increase the value of the surplus land/property. If the change of use is obtained by the Council, it removes an element of risk and uncertainty for potential buyers, which may lead to an increase in the purchase price that they are willing to pay.

12.8 Development agreements - The Council as landowner may, through a development agreement, engage a developer to carry out the development of the site on its behalf. Arrangements may comprise a grant of a lease of the whole site with the developer receiving a fee based partly upon the development value. In circumstances where there is a development agreement or the grant of a lease associated with the disposal, this may trigger the need for an EU tendering exercise

13. OTHER STEPS TO FACILITATE THE DISPOSAL PROCESS

When due diligence in accordance with section ~~14~~12 of this Policy has been completed, ~~there are a number of other steps that can be taken by the Group Manager Property & Construction to facilitate the disposal process and maximise the value received for the surplus or under-used land/property. The~~ following will be considered, although not all may be required depending on the type of disposal or basis of the original acquisition:

1. ~~Having regard to legislation~~Legislation and Secretary of State guidance governing the disposal process;

2. ~~Having regard to general~~General guidelines which are applicable, for example, the Crichton Down rules². The Crichton Down Rules are rules that guide how public authorities should dispose of land previously acquired by compulsory acquisition, or land acquired under the threat of compulsory purchase. They are to be applied by any public body disposing of land that was acquired for a purpose for which the authority had compulsory purchase powers at the time of acquisition, whether or not those powers were relied on to acquire the land.

~~The Crichel Down Rules considered in this case were those set out in the Office of the Deputy Prime Minister Circular 06/2004. Those rules have since been updated twice in the Department for Communities and Local Government's 'Guidance on compulsory purchase process and the Crichel Down Rules' published in October 2015, and more recently in the 2018 publication of the Ministry of Housing, Communities and Local Government with the same title.~~

3. Carrying out a site inspection to establish what specific issues there are on the ground, for example, drainage, boundary problems or illegal occupiers. It will also assist when instructing legal advisers or other professionals, who may only have seen the property on plans or in photographs. For some disposals, it may be appropriate for the various professionals to undertake a site ~~visit~~visit.

4. Producing a sales pack to circulate to interested parties, including title information and replies to standard pre-contract enquiries. ~~The documents referred to in pre-contract enquiries such as copy planning consents, any asbestos surveys etc. should also be enclosed. In the case of large disposals, consider including a full set of standard property searches;~~

5. Considering the most appropriate pricing structure. In some cases, it may be appropriate to use an overage arrangement whereby the Council receives future payments representing any uplift in value of the land/property once it has been developed or once it has been developed and sold on. A calculation of the overage that the Council is likely to receive and the likelihood of that sum being correct given changing market conditions will be important pieces of information in assessing the business case for disposal of surplus/under-used land/property.

6. Considering whether the transaction is caught by the public procurement rules.

7. Considering whether the transaction is caught by the State Aid rules.

14. REFERENCES

(a) A bank reference will be obtained in every case where a lease, tenancy or licence is being granted at a rent or fee in excess of any financial limit as may be defined in Financial Regulations and/or Scheme of Delegations to Officers, unless the relevant Director has agreed to dispense with this requirement.

(b) In every case where a lease, tenancy or licence is to be granted to a limited company at a rent or fee in excess of any financial limit as may be defined in Financial Regulations and/or the Scheme of Delegations to Officers, a guarantor will be required, unless the relevant Director has agreed to dispense with this requirement.



APPENDIX 1

1. LEGAL POWERS

Section 123 - Local Government Act 1972

1.1 In general, the Council is required to achieve the **‘best consideration reasonably obtainable’** when it is disposing of land. Section 123 imposes a duty on the Council to achieve a particular outcome (namely the best price reasonably obtainable): it is not a duty to conduct a particular process (e.g. to have regard to particular factors).

If the disposal is under the 1972 Act, there is neither express power to include covenants on a disposal, nor a prohibition. Where the disposal is a lease, that lease will contain terms and similarly, on the conveyance/transfer of freehold property or on the assignment of a lease, covenants may likewise be included by virtue of section 111 of the 1972 Act.

Under Section 123(2A), the Council must follow certain statutory requirements to advertise the disposal of land that consists of or forms part of an open space.

General Consent

1.2 If the Council seeks to dispose of land or buildings at less than the market value, then it has to obtain the consent of the Secretary of State Communities and Local Government. However, the Secretary of State has issued a number of ‘general consents’ i.e. a set of conditions which, if they apply to a particular transfer, means that the Council does not need to obtain specific permission to transfer at an ‘undervalue’. However, the undervalue itself still needs to comply with ‘normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer’.

The most important of these consents is the General Disposal Consent 2003 (‘the General Consent’) which permits the Council to dispose of land at less than its market value, without the need to seek specific permission from the Secretary of State, provided that:

- the purpose for which the land is to be transferred is likely to contribute to the ‘promotion or improvement’ of the economic, social, or environmental well-being of the area; and
- the difference between the market value of the land and the actual price paid for the disposal (if any), is not more than £2,000,000.

The General Consent has been issued to provide local authorities autonomy to carry out their statutory duties and functions and to fulfil such other objectives as they consider to be necessary or desirable. The General Consent does not require the Council to undertake a tendering process i.e. to market test a disposal. However, when disposing of land at an undervalue, the Council remains aware of the need to fulfil its fiduciary duty in a way which is accountable to local people. The Council will not divest itself of valuable public assets, unless it is satisfied that the circumstances warrant such action.

In justifying a disposal of land/property at undervalue, the Council will have regard to the following:

- what community benefits will be realised by the disposal;

- how the interests of local people will be better served by the disposal;
- the financial viability of the Council's plans for the land;
- the State Aid implications of the disposal;
- the Council's future plans for the land;
- the market value of the land and the difference between that and the proposed disposal value.

Housing Act 1985 (as amended)

1.5 Under s32 the local authority has the power to dispose of land and dwellings held for housing purposes. Secretary of State consent will be required unless the disposal is covered by one of the General Consents relating to the disposal of:

- vacant dwellings for owner occupation;
- occupied dwelling houses to secure tenants;
- dwellings to tenants who have the right to buy acquiring with others;
- dwellings on shared ownership terms;
- housing authority land; and
- reversionary interest in houses and flats.

Disposals are to be at market value, but discounts may be applicable to qualifying applicants. For details of criteria for disposing of individual council properties (other than through the right to buy) please refer to the Housing Asset Strategy.

Local Government Act 1988 – Section 25

1.6 The Council may provide a Registered Social Landlord with any financial assistance or gratuitous benefit of land for development as housing accommodation. This includes:

- land for development or access, easements and rights;
- dwelling houses for refurbishment;
- financial assistance for prevention of homelessness; and
- loans to RSLs.

The aggregate value of financial assistance or gratuitous benefit provided by the disposal or grant must not exceed £10 million.

Town and Country Planning Act 1990 – Section 233

1.7 The disposal of land held for planning purposes, follow principles similar to those of s123 of the Local Government Act 1972 and its requirement to obtain best consideration reasonably obtainable.

However, it must be noted that the General Consent does not apply and a specific consent from the Secretary of State will be required if the Council is considering disposal at an undervalue.

Under s233(2), the Council must obtain the consent of the Secretary of State

to dispose of common land, which may involve the requirement to provide land in exchange.

State Aid

1.8 All land/property disposals need to comply with the European Commission's State Aid rules¹¹. When disposing of land 'at less than best consideration', depending on the nature of the transaction, the Council may be 'subsidising' the purchaser. Where this occurs, the Council must ensure that the nature and amount of subsidy complies with the State Aid rules, particularly if there is no element of competition in the disposal process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit, with interest, being recovered by the Member State (the UK) from the recipient.

Public Procurement

1.9 A straightforward disposal of land/property for a market value price will not be caught by the Public Contracts Regulations 2006 ~~rules~~. However, when disposing of land the Council is involved in determining the scope of the future development of its land and its intention is to impose on the purchaser certain obligations as to the nature of the development and also perhaps the standards to which the works must be constructed (usually through a development agreement or grant of a lease associated with the disposal), then where the values involved ~~trigger~~exceed the ~~EU~~relevant threshold, it is likely that such an arrangement may be construed as a public works contract triggering the need for an EU tendering compliance with the processes set out in Regulations, as well as compliance with the authority's own contract and procurement procedures.

The applicability or otherwise of the public procurement rules will depend on the particular nature of the transaction, how it is structured and its detailed provisions. As a general rule, the risk will be higher the more the Council specifies its requirements for any full development and conversely will be lower the more the Council is willing to take a 'hands off' approach. The Council must therefore give due consideration to the possibility of public procurement rules applying to any particular disposal of land and obtain case specific legal advice before entering into any agreement.



APPENDIX 2 Delegation Scheme for Property ~~Matters~~ Disposals

Policy & Resources Committee	<p>New leases and licences where the premium or annual rental payment is over £50<u>£150</u>,000.</p> <p>Where the lease or licence or transaction is subject to an existing legal agreement the Head of Property and Asset Management in consultation with the Director of Finance (Section 151 Officer) <u>and a Strategic Director</u> may approve the transaction.</p> <p>*see exception for Beacon Park and Energy Park</p>
Policy & Resources Committee	<p>Transfers of freehold or leasehold land <u>or property</u> where the consideration is over £100<u>£200</u>,000.</p> <p>Where the<u>a</u> lease or licence or transaction is subject to an existing legal agreement the Head of Property and Asset Management in consultation with the Director of Finance (Section 151 Officer) <u>and a Strategic Director</u> may approve the transaction.</p> <p>*see exception for Beacon Park and Energy Park</p>
Head of Property and Asset Management in Consultation with Chairman/vice Chairman and Group Leaders of Policy and Resources Committee —, a Strategic Director and the Director of Finance (Section 151 Officer)	<p>Beacon park<u>Park</u> and Energy Park South Denes.</p> <p>New leases and licences where the premium or annual rental payment is over £50,000</p>
Head of Property and Asset Management in Consultation with Chairman/vice Chairman and Group Leaders of Policy and Resources Committee <u>a Strategic Director</u> and the Director of Finance (Section 151 Officer)	<p>Beacon Park and Energy Park South Denes.</p> <p>Transfers of freehold or leasehold land where the consideration is over £50,000</p>
Head of Property and Asset Management in consultation with the Director of Finance (Section 151 Officer) <u>and a Strategic Director</u>	<p>New leases and licenses were<u>where</u> the premium or annual rental payment is above<u>between</u> £10,000 <u>and</u> £150,000</p>
Head of Property and Asset Management in consultation with the Director of Finance (Section 151 Officer) <u>and a Strategic Director</u>	<p>Transfers of freehold or leasehold land <u>or property</u> where the consideration is above<u>between</u> £10,000 and below <u>£100</u>£200,000.</p>

Disposals below the minimum thresholds in this table (£50,000 for Beacon Park and Energy Park South Denes and £10,000 elsewhere) may be agreed by the relevant Head of Service, save for disposals of the assets listed in 10.2 which are reserved to the Head of Property & Asset Management.