

THE EXECUTIVE

8 MARCH 2005

REPORT OF THE DIRECTOR OF REGENERATION AND ENVIRONMENT

DISPOSALS AT UNDERVALUE: CORPORATE PROCEDURE	FOR DECISION	
<p><i>This concerns the setting of a policy and the decision is reserved to the Executive by the Scheme of Delegation.</i></p> <p>Summary</p> <p>This report describes the legal framework for the disposal of assets and describes how net capital receipts are identified, sets out options for dealing with them and sets out a mechanism for accepting benefits, as opposed to a capital receipt, for the disposal of assets.</p> <p>Recommendation</p> <p>The Executive is recommended to agree:</p> <ol style="list-style-type: none">1. That the general rule is that capital receipts should be accepted on disposal of assets;2. Where there is a proposal to forego part or all of a capital receipt the sponsor shall provide the justification for adopting its course and the proposal should be subject to an appraisal challenge. This is in line with the previous approval by the Executive in support of Regeneration for Barking Town Centre and Thames View Estate. The appraisal challenge will include a financial assessment of the impact of disposing of the asset on both the existing Capital Programme and the Council's Medium Term Financial Strategy; AND3. That the decision to accept capital receipts or alternative benefits be referred to the Executive. <p>Reason</p> <p>To assist the Council in achieving its Community Priorities of <i>"Regenerating the Local Economy"</i> and <i>"Improving Health, Housing and Social Care"</i></p>		
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1. Background

- 1.1 Local Authorities were given power to dispose of property assets in any manner they wish but are required to obtain best consideration (Section.123 Local Government Act 1972). Any disposal at less than best consideration requires the approval of the Secretary of State.
- 1.2 The exception of this authority is the disposal of property on leases for less than seven years.
- 1.3 In 1998 a General Disposal Consent was introduced which enabled the disposal of assets at undervalue in certain limited circumstances e.g. disposal to a Charity.
- 1.4 Government policy is that Local Authorities should dispose of surplus land and property wherever possible. Although the legislation provides for disposal at best consideration, the Government recognises that there may be circumstances where Local Authorities consider it appropriate to dispose of land at undervalue.
- 1.5 This report only deals with Section123 consents to dispose of property assets at less than best consideration. Other specific consents / processes may be required for disposal of property assets held for particular purposes (e.g. schools, allotments, public open space, charitable land etc) or disposals at less than best consideration for particular purposes (e.g. for privately let housing accommodation).

2. Current Position

- 2.1 The General Disposal Consent (England) 2003 came into force on 1 September 2003 and permits Local Authorities to dispose of land and property assets at less than best consideration without obtaining the specific approval of the Secretary of State up to a limit of £2 million undervalue. A disposal for a peppercorn in exchange for economic, environmental and social benefits e.g. housing nomination rights, public realm works outside the scope of Section 106 (Planning Gain) etc is a disposal at undervalue, these will be subject to the appraisal process set out in paragraphs 5.1 to 5.4 below, should Executive approve this report.
- 2.2 The revised General Disposal Consent grants Local Authorities the ability to dispose of property assets at up to £2 million undervalue per transaction where the disposing Authority considers the disposal will contribute to the achievement or promotion or improvement of the economic, social or environmental well being of the whole or part of the area or all or any persons residing in the area.
- 2.3 There are two possible outcomes of disposal at undervalue:
 - a) the Council can take a reduced capital receipt of up to £2 million in order to obtain economic, social or environmental benefits;
 - or,
 - b) forego the capital receipt where the best consideration is less than £2 million.

- 2.4 In order to determine the level of undervalue, formal valuations will be required of the best consideration and the level of undervalue, taking account of the specific benefits the Council is obtaining.

Legal advice should be obtained about whether the proposal falls within the terms of the General Disposal Consent.

- 2.5 The Consent and Office of the Deputy Prime Minister (OPDM) Guidance on the well being powers state that Authorities should have regard to their Community Strategy and, whilst a proposal need not necessarily be specifically referred to in the Strategy, the Government would expect Authorities to consider the matter very carefully before using the power in a way which may be counter to the aims and objectives in its Community Strategy.
- 2.6 Authorities must be able to demonstrate that they have acted reasonably in agreeing undervalue transactions. It is unlikely that aggrieved unsuccessful or potential purchasers (or indeed local residents) will accept the decision in all cases. A fundamental issue will be authority's ability to demonstrate reasonableness having regard to applicable policies.

3. Balanced Scorecard Context

- 3.1 The receipts generated from the disposals of assets provide substantial sums (at 30 November 2004 the total Disposal Programme identifies potential capital receipts of £85 million to be obtained by 31 March 2007). The receipts will support the delivery of many of the Council's aims and objectives. The Disposal Programme, with one exception, assumes all assets are sold at market value. The exception is Digby Gardens; which is being sold at undervalue in order to retain 100% of the nomination rights. (Executive Minute 75, 3 August 2004 approved this disposal.)
- 3.2 One of the key priorities is to ensure sound financial management. A critical element of this is to obtain best value from the disposal of the Council's surplus assets in order to sustain the delivery of key services. Consequently, where any sale at undervalue is recommended it would be necessary to demonstrate that the outcome will be at least as beneficial as the opportunities forgone by agreeing a reduced receipt.
- 3.3 In LBBDD sales of land and property at undervalue have only taken place in exceptional circumstances and it is not envisaged that the change in legislation will alter this. However, it is proposed that clear guidelines are prepared which sets out the information requirement for the consideration of such requests in the future.

4. State Aid

All disposals need to comply with the European Commissions State Aid Rules. When disposing of land at less than best consideration, Authorities are providing a subsidy to the owner, developer and / or occupier of the land. Where this occurs, Authorities must ensure that the nature and amount of the subsidy complies with the State Aid Rules. Failure to do so means the Aid is unlawful.

5. Proposals

- 5.1 It is recommended that sales at less than best consideration be approved by the Executive. It is recommended that any proposals to sell at undervalue (whether or not the Secretary of State's consent may be required) should be considered initially by the Corporate Asset Management Group as an appraisal panel. The recommendations and reasons will be reported to the Executive when seeking the necessary consent for disposal of a particular property at undervalue.
- 5.2 The proposals submitted to the Corporate Asset Management Group should be supported by the following information:-
- (i) A valuation report undertaken by a valuer who is a member of the RICS setting out the restricted and unrestricted values of the property.
 - (ii) A proposal by the sponsor of the capital value of the proposal to the Council and those benefits of the proposal which are capable of monetary assessment (e.g. operational savings, income generation, leveraging in additional financial resources etc) together with an assessment with supporting evidence of the value of non- monetary benefits (crime reduction, health improvements, social benefits to the community).
 - (iii) A statement from the Sponsor showing how the disposal at Undervalue will contribute to agreed Council and Community Priorities and will not adversely affect other priorities and a clear statement showing where and how the scheme fits within service priorities (as they may be required to cover the shortfall of the receipt from their own capital funds).
 - (iv) a clear statement from the Sponsor that the benefits can not be achieved unless the scheme proceeds at undervalue and confirm that no alternative means of funding is available.
 - (v) Any views expressed by the Local Area Community Forum.
 - (vi) Confirmation from the Head of Legal Services that the proposal falls within the terms of the revised General Disposal Consent.
 - (vii) A financial assessment of the impact of disposing of the asset on both the existing Capital Programme and the Council's Medium Term Financial Strategy.
- 5.3 The Sponsor following consultation with the Corporate Asset Management Group would firstly refer the matter to the Regeneration Board and subsequently the Executive for a decision.

- 5.4 The Corporate Asset Management Group need to be aware of the implications of the Council obtaining Section 106 Agreement benefits, via terms in a contract to dispose, should the Council decide to use this option. The benefits will need to be identified and quantified, possible during the appraisal by the Corporate Asset Management Group.

6. Consultation

Lead Members:

The following have been advised of the proposals:

Leaders Portfolio (Community Plan and Vision), Councillor Fairbrass.
Deputy Leader's Portfolio (Property Services), Councillor Geddes.
Regeneration, Councillor Kallar.

The following have seen a copy of this report and have raised no objections:

Corporate Strategy

Muhammad Saleem, Solicitor to the Council and Monitoring Officer
Jennie Duffy, Head of Customer First

Regeneration and Environment

Jeremy Grint, Head of Regeneration Implementation
Jim Mack, Head of Asset Management and Development

Finance

Lee Russell, Head of Capital Finance
David Waller, Interim Head of Finance (DRE)
Laura Williams

Social Services

Andy Bere

Housing and Health

Ken Jones

DEAL

Mike Freeman

Regeneration Board, 25 January 2005.

Background Papers

- Executive Minute 75, 3 August 2004 re: Land Disposal Sites: Land Valuation for Site at Digby Gardens
- Executive Minute 53, 20 July 2004 re: Council Land and Asset Disposals - Funding New Affordable Housing and Regeneration Initiatives.