

Part 4 – Rules

Chapter 4 – Land Acquisition and Disposal Rules

(Note: These Land Acquisition and Disposal Rules are subject to a full review to be undertaken by the Chief Operating Officer in consultation with the Cabinet Member for Finance, Growth and Investment, following the Cabinet’s consideration of the Corporate Asset Management Strategy in summer 2018. In the meantime, any references to the Property Advisory Group (PAG) in this document shall also refer to any interim, alternative arrangements that the Chief Financial Officer may implement).

1. Application

1.1 The Rules apply to all relevant land acquisitions and disposals except:

- (i) where any provision is waived by the Cabinet by urgent action under paragraph 4, Chapter 16, Part 2 of the Constitution). The reason for any such waiver shall be set out in the appropriate minutes of the Cabinet; or
- (ii) when the disposal of an interest in property results from statute and the Council cannot resist the disposal, e.g. the property being acquired by Compulsory Purchase Order, by an Academy in accordance with the statutory framework in the Academies Act 2010 or a lessee operating their rights under the leasehold enfranchisement legislation.

1.2 References to land in the Rules include any property constructed on land or land itself. The terms "acquisition" and "disposal" apply to any relevant interest in land, including freehold, leasehold, tenancies, licences, restrictive covenants, wayleaves, easements, options, etc. The sale of Council owned housing stock held in the Housing Revenue Account and disposed of under the provisions of Part V of the Housing Act 1985 is excluded from these rules.

1.3 Reference to a Service Division or Section shall be to the relevant Divisional Director/Head of Service or Group Manager or to a person properly authorised to act on their behalf.

1.4 The Rules shall not apply to Be First, a limited company wholly owned by the Council but operating independently, which shall be responsible for ensuring that its own land and acquisition arrangements are robust, achieve best value and are legally compliant.

1.5 The Rules shall not apply to land or property investments, disposals and acquisition decisions to be taken to implement the Council’s Investment and Acquisitions Strategy. The Investment Panel will advise and make recommendations on individual decisions either to the Chief Operating Officer (to the extent of the delegated powers available), or the Cabinet (where the matter is the Cabinet’s responsibility). The Investment Panel will be guided by the principles and advice set out in these Rules.

2. Control by the Cabinet

2.1 All strategic decisions about the use, acquisition and disposal of land and property assets is within the remit of the Cabinet. Formulation of strategic decisions is overseen by the Property Advisory Group (PAG) and the Cabinet.

The allocation of space in corporate buildings is initially considered by the Asset Management Group and, if appropriate, referred to the appropriate Accommodation Group and then on to the Corporate Management Team (CMT). Any disposals as a result of statute and those that the Council cannot legally resist will be an exception to the procedure, in which case the Chief Financial Officer is authorised to progress the disposal.

- 2.2 The disposal of all property either long-lease (over 20 years) or by the sale of the freehold, or land swap must be approved by the Cabinet. This provision does not affect the delegation to Chief Officers to dispose of minor interests in land up to the value specified in the Financial Rules (Part 4, Chapter 2, paragraph 5.14.5 of the Constitution).
- 2.3 The decision to dispose of surplus or under utilised property must be made in accordance with the Council's Disposal Protocol. An appraisal for retention / disposal must be compiled and considered by PAG.
- 2.4 The decision to enter into leases for periods of up to 20 years for land and property assets with a capital value of less than £2m together with any tenancies, licences, restrictive covenants, wayleaves, easements, options, etc. is delegated to the Chief Financial Officer. For the avoidance of doubt, if the lease is for part of a land holding or property the capital value is the value of the whole asset and not just the area being leased.

3. Employee Responsibilities

- 3.1 In order to provide clarity and certainty, any proposals to acquire, dispose or change the use of land shall be assessed by the Chief Financial Officer on behalf of the Council as landlord. The Chief Financial Officer shall act as a clearing-house for such policies before they are finally determined and implemented.
- 3.2 Property Services are responsible for professional advice to the Council on valuation and land matters, and for supplying or procuring valuation services to implement land sales, purchases or changes of use. These services may include surveying, security, ground investigations, valuation and negotiation. No other section shall initiate these activities, nor make any contact with another party during active negotiations, in relation to a land transaction, except under procedures agreed with Property Services.
- 3.3 Where the Council's objectives for land are initiated by a service other than Property Services, the responsible employee must afford Property Services the opportunity to consider and comment on the proposal, and to contribute to any relevant report to the Cabinet. All reports which alter the Council's objectives for land and property shall be reported to the Cabinet prior to adoption.
- 3.4 All services / Corporate Directors have a duty to ensure the efficient and cost effective use of land they occupy or manage. Where Services have identified objectives involving the use of surplus or under utilised land and buildings Directors shall raise the issue with Property Services. Property Services will then be responsible for implementing the agreed action in consultation with CMT and other relevant officers and subject to Cabinet approval where relevant.

- 3.5 Where land is to be acquired to facilitate a non-Council development this will normally be to meet agreed planning policies. The acquisition or disposal shall be managed and negotiated by Property Services. All decisions as to disposal and acquisition are to be taken in accordance with the Scheme of Delegation. The provision of finance for land acquisitions is subject to the Council's Capital Programme procedures.
- 3.6 For the purposes of clarity the decision related to Compulsory Purchase Orders is reserved to the Cabinet, however, the process required for compulsory purchase order(s), shall be managed by the appropriate Service. The agreement of the level of compensation shall be negotiated by Property Services.
- 3.7 The Commission for Local Administration advises that where the Council's Valuer considers that a proposed disposal is not in the best interests of the Council having regard to the state of the market, the condition of the property and its realisable or anticipated potential, the effects of disposal on retained property, or for any other reason, this should be made clear in a report to the Cabinet giving the reasons in full.
- 3.8 Property Services will ensure that appropriate Service Divisions are kept informed of progress and consulted on all major stages of land transactions, including any proposal to report under paragraph 3.7 above.
- 3.9 Property Services are responsible for compliance with statutory requirements in land transactions, and for securing the most advantageous consideration (both in monetary and non-monetary terms) commensurate with achieving corporate objectives, in any transaction.
- 3.10 The co-ordination of advice on corporate policy for land and buildings shall be guided by PAG and, if necessary, referred to CMT to obtain approval to proceed to the Cabinet.
- 3.11 Services proposing the release of the operational land of any service as surplus to requirements, must give adequate notice to Property Services and shall identify adequate budgetary provision for the interim management of the surplus land, pending decision as to its future use. On agreement of the appropriate budget and the transfer of the budget to Property Services, Property Services will be responsible for the future management of the vacant property until it is sold or redeveloped. If the Service Division and the Group Manager with corporate property and asset responsibilities cannot agree the budgetary provision necessary to manage the property, the matter shall be referred to the Chief Financial Officer for final determination.

4. Statutory Responsibilities

- 4.1 On disposal of land, the Council may not sell at a consideration less than the best that can reasonably be obtained. The exceptions to this general principle are in relation disposal on short leasehold interest (leases for less than seven years), disposal in accordance with the General Disposal Consent (2003) or with the specific approval of the Secretary of State/ Minister for the Department of Communities and Local Government. The approved process for this is that an Appraisal at Undervalue must be completed and considered by the PAG and if supported referred to the Cabinet for consent.

- 4.2 The price payable by the Council on the acquisition of land is not so closely prescribed by statute. However, the Council is bound by its overall fiduciary duties, and would be acting unlawfully if it did not have clear and supportable reasons for purchases above market value.
- 4.3 Property Services are responsible, on advice from Legal Services where appropriate, for ensuring that the Council's statutory obligations regarding the price to be paid or received for land transactions are met, and for ensuring the validity of any valuation advice received from private sector contractors.
- 4.4 Terms for a transaction shall not be finalised unless supported by a current written recommendation from an appropriately qualified valuation surveyor. The recommendation relied upon and any relevant supporting information shall be deposited and retained in the Property Services transaction file.

5. Land Disposal Procedures

- 5.1 The method used to dispose of land shall be the most effective method to secure the best terms reasonably available, as determined by Property Services.
- 5.2 Where land is to be disposed of by:
- Auction - a current written valuation shall be obtained, and the sale shall be subject to a reserve price of not less than that valuation;
 - Public Tender - the Council's Contracts Rules relating to tenders for contracts shall apply subject to any necessary adaptation approved by the Chief Financial Officer to meet the requirements of a land disposal (tenderers shall be provided with information about any criteria to be used in evaluating the bids).
- 5.3 Land may also be disposed of by informal tender, or competition, including where specific prospective purchasers are invited to tender. In this case the application of the Contracts Rules will not be appropriate, but participants shall be informed in advance of the procedures and the criteria for assessing proposals on a like for like basis.
- 5.4 Disposal by private treaty (negotiation) may be appropriate in order to respond to development proposals from the private sector, where disposal is to a 'special purchaser' (a purchaser with an interest in an adjoining property or with an inferior or superior interest in the property) or where the end use for the land is of importance to Council policy. However, it is a disadvantage that this method is less capable than others of demonstrating fairness, and that the best price reasonably obtainable has been secured (particularly if negotiations are restricted to a single party). This method must, therefore, be used with caution, and the progress of negotiations shall be recorded in writing and retained on the disposal file in Property Services.

6. General

- 6.1 The Disposal Protocol (approved by the Cabinet, Minute 37, 17 July 2007) shall be complied with as the corporate process for disposals.

- 6.2 Any proposal to buy land for a value greater than or to sell land for a price less than Market Value will require specific authorisation in line with the corporate procedure (as agreed by Cabinet, Minute 322, 8 March 2005).
- 6.3 The procedure approved by the Cabinet for disposal at undervalue is:
- Any proposals to sell or lease at undervalue (whether or not the Secretary of State's consent may be required) should be considered initially by the PAG as an appraisal panel. The recommendations and reasons will be reported to the Cabinet when seeking the necessary consent for disposal of a particular property at undervalue if it is supported by the PAG.
 - The report for making the proposal for a disposal shall be submitted to the PAG and must include the following information:
 - (i) A valuation report undertaken by a valuer who is a member of the Royal Institution of Chartered Surveyors (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, levering 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) Confirmation from the Director of Law and Governance that the proposal falls within the terms of the revised General Disposal Consent.
 - (vi) A full and detailed financial assessment of the impact of disposing of the asset on both the existing Capital Programme and the Council's Medium Term Financial Strategy provided by the Chief Financial Officer.
- 6.4 The Sponsor, following the appraisal by PAG, would refer the matter to CMT for recommendation to the Cabinet for a decision.