LAND ACQUISITIONS AND DISPOSALS RULES

1. Background

1.1 The acquisition and disposal of land by local authorities is controlled by statute, and was the subject of reports by the Audit Commission (1980) and the Commission for Local Administration (1995). These reports highlighted the various pressures that can influence Councils, their Councillors and employees, in dealing with land, and set out guidelines to encourage best practice.

1.2 The guidelines place emphasis on adopting procedures that are transparent and consistent, and therefore fair and proper. These Rules embody those guidelines and take into account the Council’s community priorities, and the recommendations of an internal audit assessment of Council’s practices completed in 1996.

1.3 Land is a valuable finite resource which is a corporately owned asset. Land must be managed and wisely utilised to achieve the Council’s many wide and varied corporate aims and objectives.

2. Application

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

(i) where any provision is waived by the Cabinet by urgent action under Rule 17 of the General Rules for Meetings (Article 1 of Part B 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 or a lessee operating their rights under the leasehold enfranchisement legislation.

2.2 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 the Housing Act (1985) Part V Is excluded from these rules.

2.3 Reference to a Service Division or Section shall be to the Head of Service or appropriate Group Manager or to a person properly authorised to deputise for the Group Manager.

3. Control by the Cabinet

3.1 All strategic decisions about the use, acquisition and disposal of land and property assets is the remit of the Cabinet. Formulation of strategic decisions is
overseen by the Property Appraisal 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 Accommodation Programme Board (APB) and if no resolution can be agreed by the APB the issue must then be referred 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 Corporate Director of Resources will progress the disposal.

3.2 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 Scheme of Delegation (Part C, Section N).

3.3 The decision to dispose of surplus or under utilised property must be made corporately. A Disposal Protocol (agreed by Cabinet on 17 July 2007) is in place to ensure comprehensive consultation with officers, residents and Councillors (see Appendix). An Appraisal for Retention / Disposal must be compiled and considered by PAG (form available from Property Services).

3.4 Once the PAG accept the need to decide on the disposal of property, Property Services should ensure that the appropriate Ward Councillors are consulted. The PAG shall then consider the results of that consultation and should the PAG (see Appendix) agree with the proposal to dispose of surplus or under utilised property the proposal shall be referred to the Cabinet for approval.

3.5 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 Corporate Director of Finance and Resources. (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 when determining if it is a Delegated Decision).

4. Employee Responsibilities

4.1 In order to provide clarity and certainty, any proposals to acquire, dispose or change the use of land shall be undertaken by the Strategic Asset Management and Capital Delivery Division (SAMCD) which acts as the Council’s landlord and a clearing-house for such policies before they are finally determined and implemented.

4.2 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.
4.3 Where the Council’s objectives for land are initiated by a service other than Property Services Division 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.

4.4 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, subject to Cabinet approval where relevant and in consultation with CMT, Legal Partners and Corporate Finance.

4.5 The above corporate procedures may be assisted by consideration of appropriate matters by the PAG.

4.6 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 the Property Services Section of the SAMCD. 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.

4.7 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.

4.8 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, the Valuer should make this clear in a report to the Cabinet giving the reasons in full.

4.9 Property Services will ensure that appropriate service managers are apprised of progress, and consulted on all major stages of land transactions, including any proposal to report under rule 4.8.

4.10 Property Services are responsible for compliance with statutory requirements in land transactions, and for securing the most advantageous consideration (both monetary and non-monetary) commensurate with achieving corporate objectives, in any transaction.

4.11 The co-ordination of advice on corporate policy for land and buildings shall be guided by, the PAG and if necessary, referred to the Corporate Group to obtain recommendation for the Cabinet.
4.12 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 Manager and the Group Manager (Property Services) cannot agree the budgetary provision necessary to manage the property, the matter shall be referred to the Chief Financial Officer for final determination.

5. Statutory Responsibilities

5.1 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.

5.2 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.

5.3 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.

5.4 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.

6. Land Disposal Procedures

6.1 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.

6.2 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 Corporate Director of Resources to meet the requirements of a land disposal
(tenderers shall be provided with information about any criteria to be used in evaluating the bids).

6.3 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.

6.4 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.

7. General

7.1 The Disposal Protocol (approved by the Cabinet on 17 July 2007) is outlined in the Appendix and Section 3 above, and shall be complied with as the corporate process for disposals.

7.2 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 (as agreed by Cabinet Minute 322 on 8 March 2005). The Authorisation will be obtained by using the procedures and format approved by the Cabinet on 8 March 2005 and set out in paragraphs 5.1 and 7.3 of these Rules.

7.3 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 form (obtainable from Property Services) 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 Divisional Director of Legal and Democratic Services 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.

7.4 The Sponsor, following the appraisal by PAG would refer the matter to the Corporate Group for recommendation to the Cabinet for a decision.

(Contact Officer: Divisional Director of Assets and Commercial Services 020 8227 3300)
Property identified as potentially surplus to requirements by service department in consultation with Property Services. This process is to include the involvement of the Lead Member.

Property Services writes to Divisional Directors, copying in CMT and Cabinet members to advise of the property surplus to requirements. Recipients are asked to inform Property Services of any possible use for the property – by the council or community and are given three weeks to respond.

Retention or Disposal Appraisal conducted

Recommendation referred to the Property Appraisal Group (chaired by the Cabinet Portfolio Holder for Resources)
  Corporate Director of Finance and Resources
  Divisional Director of Assets and Commercial Services,
  Divisional Director of Regeneration,
  Divisional Director of Adult Commissioning
  Group Manager Property Services,
  Chief Financial Officer.

Disposal: Budget and responsibility for site transferred to property services

Consultation with Ward Councillors and neighbouring Ward Councillors where a site is on or close to a Ward boundary

Investigation of any Ward Councillor’s objections, Corporate Group to resolve issues

Adjust list for disposal as appropriate

Consultation and opportunity for final comment from Property Appraisal Group

Agreed list submitted for approval with report to Cabinet