

ACQUISITIONS AND DISPOSALS POLICY

November 2021

Date for Review: November 2023

CONTENTS

1.	Introduction	E92
2.	Disposals	E92
2.1	The test for declaring a property to be surplus.	E92
2.2	The process for identifying surplus or underperforming property	E93
2.3	Review of disposal constraints	E93
2.4	Initiation period.	E93
2.5	Method of disposal.	E94
2.6	Public engagement requirements	E95
2.7	Disposal Valuation	E95
2.8	De minimis disposals.	E95
2.9	Disposal at less than best consideration.	E96
2.10	Exceptions to the obligation on achieving best value	E96
2.11	Standard process for disposal	E97
3.	Acquisitions	E98
3.1	Reasons for acquisition.	E98
3.6	De minimus acquisitions	E99
3.11	Process for acquisition of property	E100
4.	Roles in acquisitions/disposals	E101
5.	Delegations and approvals	E101

1. Introduction

- 1.1 Acquisitions of land and property are an essential part of enabling the Council to provide a service to the residents of Newark and Sherwood and in delivering the aims and objectives set out in the Community Plan. An adopted Acquisitions and Disposals Policy is necessary, in order to ensure that acquisitions and disposals are performed with due consideration of current legislation, financial controls and best practice whilst ensuring that the aims of the Community Plan are achieved.
- 1.2 The purpose of the policy is to act as a framework to instruct Members, officers, third parties and members of the public on the Council's adopted approach on the acquisition and disposal of property (including land and built assets).
- 1.3 This policy will cover the acquisition and disposal of freehold or leasehold interests (including for the avoidance of doubt lease renewals, surrenders and assignments of leases and including easements and covenants) in property (land and buildings). The policy does not cover the acquisition of goods, services or items required to perform service delivery by the Council as this is already covered by the Contract Procedure rules of the Council.
- 1.4 The policy focuses on the principal processes of acquisitions and disposals, authority routes and roles/responsibilities within the Council.
- 1.5 Any reference to the 'Estate Team' will mean either the Estates Team of the Corporate Property Business Unit or Housing Business Units depending on the type of property or scenario of acquisition or disposal in question. A reference to Service Department shall mean any department/ Business Unit occupying or using the property being considered for acquisition or disposal.
- 1.6 All the steps taken to comply with this policy should be set out in the report to the relevant decision maker so that they have all the information needed to make a decision, including any cross reference to the Financial Regulations.

2. Disposals

- 2.1 **The test for declaring a property to be surplus.** One or more of the following key criteria should be considered to be met in order to progress a disposal of Council property:
 - (a) The property makes little or no contribution to the Council's service delivery, aims or objectives within the Community Plan and cannot be appropriated for planning purposes under section 122 Local Government Act 1972.
 - (b) The property generates no income/ produces a loss and has limited regeneration potential.
 - (c) An alternative site has been identified which would achieve a more cost efficient way of delivering this service for the Council.

- (d) Its disposal is important for the delivery of organisation aims/ objectives such as those set out in the Community Plan.
- (e) The property is deemed to be an underperforming asset with either under-utilisation of space at low capacity or that the financial cost to retain property is too significant, the income generation possibilities are too low with a greater return/ cost saving being achievable through disposal of the property.

2.1.1 Any property can be identified as surplus by either a Business Manager for a particular service, Business Manager for Corporate Property or Business Manager for Housing. The case for disposal will need to be clearly set out and must include the criteria for disposal, as set out in this Policy.

2.2 The process for identifying surplus or underperforming property will materialise in a number of the following ways:

- (a) Asset Management Plan Review.
- (b) Stock Condition Surveys identifying significant works.
- (c) Local Plan designation or development of other local planning policy.
- (d) Master planning of the site or a regeneration scheme.
- (e) Asset valuation for accounting purposes which identifies development/ alternative uses.
- (f) Third party approach such as developers or neighbours.
- (g) Statutory transfer i.e. utility or transport infrastructure.
- (h) Service Department review of property requirement.

2.3 Review of disposal constraints

2.3.1 Once a property has been identified as being potentially surplus the Estates Team will establish whether there are any constraints on the site that would limit or even prevent disposal, such as legal, planning, statutory authorities, government policy, and/or financial constraints, (such as the property having been the subject of funding in the past that necessitates the repayment of grant monies). If such constraints are found that prevent disposal, alternative options may need to be considered and pursued, as part of the options appraisal for disposal.

2.4 Initiation period.

2.4.1 Service Departments occupying a property shall give the Estates Team at least three months written notice of their intention to vacate property. In instances where properties are leased in by the Council, Estates will send a trigger notice to the occupying service and a joint decision will be taken as to whether to renew the lease. On notification of a Service Department vacating a property, the Estates team will carry out a survey of the property to inform any works or holding costs required during the disposal process. A full inventory of compliance documentation and servicing is required from the Service Department at the point of handover. All holding costs and additional compliance/ remedial works to the property will be covered by the departing

Service Department's budget. The Service Department must leave the property in a clean and tidy condition to the satisfaction of the Estates team.

- 2.4.2 Once a property is declared surplus by a Service Department the Estates Team will instigate a process of engagement with other departments for future Council use. As part of the options appraisal for disposal, an approach will also be made to the Housing Revenue Account Development Team and the Council's preferred housing developer Arkwood Developments Limited, for consideration of development options. If appropriate, then Third Sector interest, Ward Members, Public Sector partners, local Parish & Town Councils and tenants of the property will be contacted before seeking formal approval to sell on the open market. This does not apply to investment property where decisions will be made on a financial return basis and often only a short to medium term investment lease will be offered to perspective tenants.

2.5 Method of Disposal.

- 2.5.1 The most appropriate method of disposal should be adopted from the following taking into account the advice on marketing strategy from RICS surveyor :-
- (a) Private Treaty – Where there is limited interest and a narrow valuation band. Where appropriate, sales may be conducted by private treaty where a marketing exercise has already been undertaken.
 - (b) Auction – Where there is wide interest and if this method of sale is considered to be best to attract the highest price. The property is marketed as part of an external auction process. Wherever possible a reserve price will be set.
 - (c) Formal Tender – Where there is wide interest, land ownership is not complex, no uncertainties regarding the grant of planning permission, and a wide valuation band. Under this method, the Council would invite sealed bids which are opened at the same time. The Council and the purchaser then enter into a contract under which the purchaser usually pays a 10% deposit.
 - (d) Informal Tender - Where there is a need to identify a preferred bidder and enable further detailed terms to be determined. This method will be appropriate where there are uncertainties such as planning, and, large or complex redevelopment sites. The Council invites offers, which are opened together, immediately following the closing date for the bids specified in the Tendering process. If a higher unsolicited offer is subsequently received all parties may be asked to resubmit.
 - (e) Occasionally, a limited marketing exercise may be used where the land or property has already been subjected to open market testing or following short-listing after initial expressions of interest exercise or there are known to be a limited number of purchasers.
 - (f) Leasehold disposal. In certain circumstances, it may be appropriate to dispose of property on a leasehold basis. This is particularly relevant where a property may be required to fulfil a service need in the future or if the property is held for investment, community provision or economic growth purposes. Lease terms can be flexible to suit the occupational requirements but should be on a market rental value basis (unless if there

is justification for deviation from this on the grounds listed in paragraph 2.10 of this policy). Leases should also be contracted out of security of tenure provisions of the Landlord and Tenant Act 1954, where possible, to avoid creating secure tenancies.

2.6 Public Engagement Requirements

- 2.6.1 Sections 123(2A) of the Local Government Act 1972 and (where the land was acquired or appropriated for planning purposes) section 233(4) of the Town and Country Planning Act 1990 ("the 1990 Act") require a local authority wishing to dispose of open space to advertise its intentions in a local newspaper for two consecutive weeks and to consider objections. This is to be undertaken before making any final decisions about disposal as the public response to the notices may be material to any such decision. It could also be an important factor in any determination by the Secretary of State of an application for specific consent.

2.7 Disposal Valuation.

- 2.7.1 Where it is decided to negotiate a disposal to a single party (such as the Housing Revenue Account or to Arkwood Development Limited) , rather than offer on the open market, an independent valuation should be carried out by a suitably trained and knowledgeable member of the Royal Institution of Chartered Surveyors. Negotiations should then take place with the interested party in order to reach an agreed sale price. The final agreed price should be as close to the initial valuation as possible. If there are valid reasons on why the initial valuation figure was not reached then these should be recorded and if necessary the valuation report amended to reflect this. Where there is a significant difference between the final negotiated price and the independent valuation figures then, to protect the Council's interest in the event of subsequent sales, the agreement to sell should include, as appropriate, an asset lock, claw back or uplift clause, restrictive covenants, ransom strip retention, user rights or right of pre-emption.
- 2.7.2 The preferred route for any disposal is that the property is marketed for a period of time by the Estates team or by a suitably trained and knowledgeable appointed agent in order to ensure that the best possible offers are received for the property.

2.8 De minimis Disposals.

- 2.8.1 In circumstances where a low value disposal is identified (at less than £15,000) such as garden land within the HRA estate, boundary rectification or infrastructure adoptions these transactions are recommended to be dealt with in house by the Estates Team; to be approved by the Corporate Property/ Housing Business Manager and the s151 Officer. For any land disposals the Estates team can be requested to handle a disposal subject to appropriate time/ resource. A valuation will be carried out using comparable evidence of transactions previously conducted by the Council and industry

comparables in order to evidence that market value is being achieved. Infrastructure adoptions such as pump stations will be dealt with by the relevant Estates Team depending on which property is served by the infrastructure in question (i.e. General Fund or Housing Revenue Account).

2.9 Disposal at Less Than Best Consideration.

2.9.1 The Council has a general power of disposal, contained in Section 123 of the Local Government Act 1972. This provides that Local Authorities are not permitted to dispose of land, or grant leases in excess of 7 years, for a consideration which is less than the best price which is reasonably obtainable, unless they first obtain consent from the Secretary of State or the General Consent referred to below applies. Where a disposal is undertaken at less than best price, then to protect the authority's interest in the event of subsequent sales, it should include, where appropriate an asset lock, claw back or uplift clause, restrictive covenants, ransom strip retention, user rights or right of pre-emption.

2.9.2 A valuation by a suitably trained and knowledgeable member of the Royal Institution of Chartered Surveyors should be undertaken in order to quantify the amount of the undervalue (unrestricted less restricted value). In addition, an attempt needs to be made to financially quantify the economic, social and environmental benefits to the authority and community which justify a disposal at less than the valuation/best price amount. The overriding factor to be considered when disposing at below the valuation/best price is to ensure that it is within the Council's power to do so, and the reasons are well documented, transparent and justifiable.

2.10 Exceptions to the Obligation on Achieving Best Value:

2.10.1 **Short tenancies.** The obligation to obtain best value contained in sections 123 of the Local Government Act 1972 does not apply to disposals of land by way of a "short tenancy" such as by the grant of a term not exceeding seven years or the assignment of a term which has not more than seven years to run.

2.10.2 **The disposal meets a specific wellbeing purpose.** The Local Government Act 1972 General Disposal Consent 2003 ("the Consent") removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal of land where the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the promotion or improvement of:

- (a) economic wellbeing
- (b) social wellbeing
- (c) environmental wellbeing.

2.10.3 In this circumstance the undervalue (i.e. the difference between the unrestricted value of the interest to be disposed of and the consideration accepted) must be £2,000,000 or less. Where the proposed disposal does not fall within the terms of the Consent an application to the Secretary of State for a specific consent is required.

2.10.4 Following amendment by the Growth and Infrastructure Act 2013 section 233 of the Town and Country Planning Act 1990 now empowers the Secretary of State to give consent in relation to land held for planning purposes see section 233 3 A) Town and Country Planning Act 1990 Specific consents were previously required.

2.11 Standard Process for Disposal:

Stage	Process
1. Property tested for disposal.	Tools of assessment used as cited in paragraph 2.3 of this policy to conclude that a property is surplus.
2. Review of property disposal constraints.	A full review of title, lease and other relevant documentation, planning policy, statute, government/ Council policy and financial constraints undertake to ensure there is no constraint on disposal.
3. Report to obtain agreement in principle for disposal.	De-minimis, wayleave/easements/ licences at nil value, statutory disposal (e.g. Right to Buy application) and investment leases – report not required. Freehold/ long leasehold disposals where value of site is estimated at £100,000 or less – relevant Director(s) in consultation with S151 Officer. Freehold/ long leasehold disposals with estimated value at greater than £100,000 but less than £300,000 – report to Senior Leadership Team prior to Director or Portfolio Holder decision as applicable. Freehold/ long leasehold disposals with estimated value at greater than £300,000 – report to Senior Leadership Team prior to referral as Key Decision to relevant Portfolio Holder or Cabinet as applicable.
4. Initiation period.	Service department notifies the Estates Team of intention to vacate the property (minimum three months' notice is required).
5. Appropriate disposal method	Disposal through marketing/ disposal

adopted.	valuation for one party. Consideration given to HRA requirement for site/disposal directly to Arkwood Development Limited.
6. Authority requested for final disposal terms/ value.	Terms, disposal valuation figure and minimum disposal price approved by relevant authorising party as identified in table in paragraph 5.1.
7. Marketing/ negotiations and disposal	Marketing of the property and negotiations with identified purchaser (or direct negotiations if a special purchaser is identified).
8. Performance review of disposal and records updated.	Reporting of final disposal and records on property Asset Register updated.

3. Acquisitions

3.1 **Reasons for Acquisition.** There are a number of circumstances where the acquisition of land or built assets may be necessary. This includes service delivery, investment purposes and strategic development opportunities within the district. There are essential criteria which each type of acquisition must meet to be considered for approval as outlined below:

3.1.1 **Service delivery requirement.** If the Estates Team are requested to acquire any land or property on behalf of a Service Department then the requirement will first be considered across the availability of existing property held in the Councils estate. The test of suitability will be agreed between the Service Department and Estates Department but will focus on size, location and quality of space required.

3.1.2 **Strategic development purposes.** If there is a way of increasing the deliverables of housing units and/or objectives set in the Community Plan then this will be considered as a Strategic Development Acquisition and tested on the basis of final outcomes of the wider site and a full options appraisal being carried out rather than the individual piece of land or property being acquired.

3.1.3 **Investment purposes.** Land or property may be acquired for the purpose of the Council making an investment subject to the following criteria being met:

- (a) The property generates a predicted net return on investment of 6%.
- (b) The land or property proposed to be acquired has had a full inspection and survey of the condition and is in relatively good condition with full repairing and insuring leases in place for any tenanted parts.
- (c) The management of the property is able to be facilitated by either the in-house Estates Team or through the appointment of a managing agent on a temporary basis until recruitment or extra capacity can be secured.
- (d) All ongoing revenue costs are approved and identified within an existing budget.

- (e) If held as an outright investment rather than for redevelopment or place-shaping then a company should be used by the Council in line with the provisions of the Localism Act 2011.
- 3.2 All proposed acquisitions of property with a financial cost will be valued by a suitably trained and qualified professional with knowledge of the local market. This is recommended to be a Chartered Surveyor with knowledge of the specific market in question and who holds a Registered Valuer status from the Royal Institution of Chartered Surveyors.
- 3.3 All property being acquired will have proper due diligence carried out by appropriately qualified professionals prior to purchase depending on the nature of the site. This will consist of legal searches, site inspections and investigations on potential impacts of use and planning feasibility. This work will be led by the acquiring Estates Team and will involve appointment of consultants to undertake the required surveys.
- 3.4 All property being acquired will also have consideration to the carbon footprint the acquisition will have for the Council. Reduction measures should be factored into any options appraisals for the property acquisitions.
- 3.5 Acquisition at a higher than market value (i.e. acquisition at a premium) may be possible where the end deliverable result will mean a higher net return or saving for the Council. For example where a site may have an income producing lease agreed subject to the Council acquiring the land. Conversely where acquiring the land will over time produce a net saving to the Council. Economic, social and environmental savings/ profits will also be considered in any justification for acquisition at a higher than market value price. This would have to be clearly demonstrated within any business case/ authority request.
- 3.6 **De minimus acquisitions** In circumstances where a low value acquisition is identified (at less than £15,000) such as strategic site access or boundary rectification these transactions are recommended to be dealt with in house by the Estates Team; to be approved by the Corporate Property/ Housing Business Manager and the s151 Officer. For any land acquisitions the Estates team can be requested to handle an acquisition subject to appropriate time/ resource. A valuation will be carried out using comparable evidence of transactions previously conducted by the Council and industry comparables in order to evidence that the property is being purchased at the correct value.
- 3.7 The use of statutory powers for acquisition. Compulsory purchase powers are provided to enable acquiring authorities to compulsorily purchase land to carry out a function which Parliament has decided is in the public interest.
- 3.8 Management Responsibility. Where appropriate, Estates and the service representatives will carry out a pre-completion inspection of the property and if necessary seek instructions from the service regarding the interim management of the property acquired pending development or occupation.

- 3.9 Data Collection. In all cases where an acquisition occurs, arrangements will be made to ensure that details are recorded in the asset management records and Terrier records.
- 3.10 Performance Management. There will be ongoing monitoring of acquisitions between the responsible officers and the parties selling or otherwise concerned with the acquisitions. There will be appropriate reporting to Senior Leadership Team and the relevant Portfolio Holder as appropriate where performance is in question.

3.11 Process for acquisition of property:

Stage	Process
1. Identification of requirement for acquisition	Testing of requirement against key criteria in paragraphs 3.1.1-3.1.3 for either a service delivery need, strategic development or investment.
2. Property search	If a property has already been identified this is compared with other available properties within the local market to ensure it is the most suitable.
3. Valuation and due diligence	A valuation will be carried out by a suitably trained member of the Royal Institution of Chartered Surveyors and report produced on the market value/ market rental value. Due diligence on the site including site investigations, surveys, planning use, legal searches and review of all key documents/ legislation to inform the valuation and offer price. A review of options to reduce the carbon use of the property prior to purchase should be considered as part of the due diligence process.
4. Authority requested for final acquisition terms/ value	Report of viability of acquisition to meet required purpose, terms of acquisition and valuation citing known constraints. Terms of proposed acquisition, valuation and cap of offer approved by relevant authorising party as identified in table in paragraph 5.1.
5. Negotiations	Negotiations undertaken by the Estates Team or a suitably trained firm of agents depending on capacity and skills/ market knowledge required.
6. Performance review of disposal and records updated.	Reporting of final disposal and records on property Asset Register updated.

4. Roles in Acquisitions/Disposals

Disposal/ Acquisition type	Responsible Estates Team
Wayleave/ easement/ licence required for housing need	Housing Estates Team for housing specific. Corporate Property Estates Team for Corporate Property Specific
Right to Buy application/disposal	Housing Estates Team
Disposal/acquisition of Service Department Property	Corporate Property Team
Disposal/ Acquisition of regeneration or development opportunity	Housing Estates Team for housing specific. Corporate Property Estates Team for Corporate Property Specific
Investment property acquisition/ disposal	Corporate Property Team
Leasehold disposal on a short term tenancy	Housing Estates Team for housing specific. Corporate Property Estates Team for Corporate Property Specific
Disposal of de-minimis land	Corporate Property Team
Disposal of infrastructure property i.e. adoptions of roads by highway authority or drains by Severn Trent	Housing Estates Team for housing specific. Corporate Property Estates Team for Corporate Property Specific
Support provided by Planning, Legal Services and Finance.	

5. Delegations and Approvals

Value	Authority
Wayleaves, easements and licences at less than £1 value	Business Manager for Corporate Property on General Fund or Business Manager of Housing for HRA
De minimus level at sub £15,000	Recommendation by Business Manager for Corporate Property/ Housing, approved by S151 officer.
Any disposal/acquisition more than De minimis and less than £100,000 value	Relevant Director
Any disposal/acquisition more than £100,000 and less than £300,000 value	Relevant director(s) or Portfolio Holder as applicable in consultation with SLT.
Anything at £300,000 or more value	Relevant Portfolio Holder or Cabinet in accordance with Key Decision requirements.