

Acquisitions & Disposals Policy E91

ACQUISITIONS AND DISPOSALS POLICY

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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 The purpose of this Acquisitions and Disposal Policy ("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). This 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.~~

~~1.1.~~

~~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).~~

~~1.2. This Policy covers property assets held by both the General Fund Account ("GF") and the Housing Revenue Account ("HRA") and the appropriation from the HRA to GF. The HRA is a ring-fenced account and as such stands separate from the GF. Before any disposal is progressed under this Policy the land/property responsibility must be established and the appropriate Estates Team identified.~~

1.3. This ~~p~~P~~o~~l~~i~~c~~y~~ 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 ~~p~~P~~o~~l~~i~~c~~y~~ 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 ~~r~~R~~u~~l~~e~~s of the Council.

1.4. The ~~p~~P~~o~~l~~i~~c~~y~~ focuses on the principal processes of acquisitions and disposals, ~~authority routes and~~ roles/responsibilities within the Council and appropriate delegations for decision making.

~~1.5. Any reference to the 'Estate Team' will mean either on behalf of the 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. In most circumstances this will be the Corporate Property Business Unit for GF assets and the Housing Business Units for HRA assets.~~

~~1.5. 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 ~~p~~P~~o~~l~~i~~c~~y~~ should be set out in the report to the relevant decision maker so that they have all the information needed to make a robust decision, including any cross reference to the Financial

Regulations. These reports should include Legal and Financial Implications, provided by the relevant Business Unit.

1.7. In this Policy where there is reference to either land or property, these can be used interchangeably.

1.8. A wide range of legislation and case law applies to local authority land transactions. For that reason, legal advice should always be sought at the earliest opportunity to ensure that all implications can be identified.

1.9. Any disposal or acquisition transaction under this Policy may be subject to fees that need to be recovered including legal fees.

2. **Disposals**SPOSALS

2.1. For the purposes of this Policy Disposals are considered to include but are not limited to:

- A sale of a freehold interest
- Grant of a lease
- Assignment of any expired term of a lease
- The grant of an easement

2.2. Properties disposed of under the Right to Buy are excluded from this Policy as their disposal is prescribed under the Housing Act 1985 (as amended).

2.3. Surplus Property

2.3.1. Where is it identified that property could be surplus then the following test should be applied.~~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 little to no income or / produces a loss and has limited regeneration potential.
- (c) An alternative site has been identified which would achieve a more ~~cost~~ efficient 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.

2.3.2. Any property can be identified as surplus by either a Business Manager for a particular service in consultation with the Estates Team Business Manager, 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.

2.4. Review of disposal constraints

- 2.4.1. 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. This could include 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) and should be in consultation with the relevant Business Units. 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.

2.5. Initiation period.

- 2.5.1. Where appropriate Business Units 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 Business Unit 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 Business Unit at the point of handover. All holding costs and additional compliance/ remedial works to the property will be covered by the departing Service Department Business Unit's budget. The Service Department Business Unit must leave the property in a clean and tidy condition to the satisfaction of the Estates team.

- 2.5.2. Once a property ~~is declared~~ has been identified as surplus ~~by a Service Department where appropriate~~ the Estates Team ~~will~~ instigate a process of engagement with other ~~departments Business Units~~ 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.

- 2.5.2.2.5.3. Where it is decided to negotiate a disposal to a single party (identified by paragraph 2.5.2) rather than offer it on the open market then this needs to be referred to in any decision. When negotiations take place with the interested party in order to reach an agreed sale price and the provisions of paragraph 2.7.1 still apply.

2.6 Public Open Space Engagement Requirements

- 2.6.1. Public open space is defined as any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground¹. Disposals of open space pursuant to 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 at least 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. Where there are a significant number of objections to a disposal of open space then it should be referred to Cabinet for 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 and Marketing.

- 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, a~~An independent valuation should be carried out by a suitably trained member of the Royal Institution of Chartered Surveyors, where possible, a minimum of two valuations should be obtained for review and agreement by the Estates Business Manager. ~~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-agreed 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, mechanisms which protect the Council's future interests as advised by Legal Services. ~~an asset lock, claw back or uplift clause, restrictive covenants, ransom strip retention, user rights or right of pre-empti~~
- 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 before considering other methods of disposal.

2.8. Method of Disposal.

¹ s.336 of the Town and Country Planning Act 1990 (as amended)

2.8.1. The most appropriate method of disposal should be adopted from the following, taking into account the advice on marketing strategy from a 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 by a minimum of two RICS Surveyors.
- (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. A reserve price will be set except in exceptional circumstances and where approved by the decision maker.
- (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.

2.9. De minimis Disposals.

- 2.9.1. In circumstances where a low value disposal is identified but for the avoidance of doubt, under £10,000, (at less than £15,000) such as garden land within the HRA estate, boundary rectification or infrastructure adoptions these de minimis transactions are recommended to be dealt with in house by the Estates Team; to be approved by the Corporate Property/ Housing Business Manager for the relevant Estates' Team 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 by the Estates Team 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 managing the property served by the infrastructure, depending on which property is served by the infrastructure in question (i.e. General Fund or Housing Revenue Account).

2.10. Disposal at Less Than Best Consideration.

2.10.1. The Council has a general power to dispose of land in any manner they wish subject to further provisions under s123 of the Local Government Act 1972 (the "1972 Act"). ~~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 that can~~ reasonably ~~be obtained²~~ ~~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, a legal mechanism to secure the Council's interest or benefit. Also, a disposal at less than best consideration could be providing the purchaser with a subsidy under UK subsidy control and the implications of this need to be considered. ~~a asset lock, claw back or uplift clause, restrictive covenants, ransom strip retention, user rights or right of pre-emption.~~

2.10.2. 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.

2.10.3. It is for the Council to decide whether any proposed disposal requires specific consent under the 1972 Act and legal advice should be sought on this point and any application to the Secretary of State.

2.11. Exceptions to the Obligation on Achieving Best Value:

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

2.11.2. **The disposal meets a specific wellbeing purpose.** The Local Government Act 1972 General Disposal Consent 2003 ("the Consent")

² s123(2) Local Government Act 1972 (as amended)

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

- 2.11.3. 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.
- 2.11.4. 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.

[Previous table to be replaced by flowchart for ease of reference]

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 the Council at the request of a Business Unit 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 Business Unit and Estates Team 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 Market appraisal and valuation

3.2.1 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. The level of appraisal of a potential acquisition should be reflective of the proposed value and advice should be sought from the Estates Team.

3.2.2 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. The promotion or improvement of economic wellbeing, social wellbeing or environmental wellbeing 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/report for decision.

3.3 Due Diligence must be carried out prior to acquisition: 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-co-ordinated by the acquiring Estates Team and will be in consultation with the relevant Business Units, such as Legal, Finance and Planning and will may where required involve appointment of external 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.~~

3.53.4 De minimis acquisitions In circumstances where a low value acquisition is identified (at less than £10,000 ~~£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.

~~3.63.5 The Council has the power to acquire land compulsorily, known as a Compulsory Purchase Order ("CPO") but this requires approval by the relevant confirming authority. The Council should use compulsory purchase powers where it is expedient to do so and where there is a compelling case in the public interest to make a compulsory purchase order. The process for CPO is laid out in legislation. 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.~~

~~3.73.6 Management Responsibility.~~ Where appropriate, the Estates Team 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.

~~3.83.7 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.

3.93.8 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.

~~3.103.9~~ Following the completion of an acquisition the relevant Business Units must be notified so that the acquisition can be correctly dealt with for the purposes such as the asset register, insurance, Legal post-completion and potentially business rates

[Previous table to be replaced by flowchart for ease of reference]

4. Roles in Acquisitions/Disposals

4.1 The roles in acquisitions and disposals under this Policy will usually be determined by the whether the asset is held (or to be held in the case of an acquisition) by the GF or HRA accounts.

- 4.2 Where appropriate the Corporate Property Estate Team will assist transactions relating to the HRA account.
- 4.3 Support will be provided and often required in transactions under this Policy by Planning, Legal Services and Finance.

5. Delegations and Approvals

- 5.1 These delegations apply to acquisitions and disposals under this Policy subject to any acquisition forming part of the Capital Programme.
- 5.2 The Capital Programme is set by Full Council through the Budget following the process outlined in the Financial Regulations. All expenditure must comply with the Financial Regulations and additional advice can be sought from Financial Services.
- 5.2

| <u>Value of Acquisition or Disposal</u> | <u>Delegated Authority</u> |
|--|--|
| Wayleaves, easements and licences at less than £1 value <u>of £1 or less</u> | Business Manager for Corporate Property on General Fund or Business Manager of Housing for HRA |
| De minimus level at sub £15,000 <u>£10,000 or less (de minimis)</u> | Recommendation by Business Manager for Corporate Property/ Housing of the relevant Estates Team, and approved by the <u>S151 eOfficer.</u> |
| <u>More than £10,000 and up to £50,000</u> | <u>Relevant Director to be approved by the S151 Officer</u> |
| Any disposal/acquisition more than De minimis and less than £100,000 value | Relevant Director |
| Any disposal/acquisition m More than £100,000 <u>£50,000</u> and less than £300,000 value | Relevant director(s) or Portfolio Holder(s) as applicable in consultation with <u>relevant Director and S151 Officer. SLT.</u> |
| Anything at £300,000 or more value <u>£300,000 or above</u> | Relevant Portfolio Holder or Cabinet in accordance with Key Decision requirements. |

6. Appropriation

- 6.1 There are separate rules for the HRA and GF accounts to ensure that neither subsidises the purposes of the other. Transfer of assets known as appropriation is the transfer of land or buildings from the HRA to the GF or vice versa. Appropriation does not involve a sale or purchase as no transfer of title takes place, the property simply moves from one council account to another.

6.16.2 There is a general power to appropriate land³ but this is subject to certain provisions.

6.26.3 If assets are appropriated from the HRA into the General Fund, they are bound by the same legal rules as if they had been disposed of to an outside party. Local authorities are required to seek consent from the Secretary of State to appropriate land which has housing on it and advice should be sought from the Council's Legal Services.

6.36.4 Appropriation will be considered on a site by site basis and will be subject to the follow approvals: ~~regardless of the value~~

| <u>Value of Appropriation</u> | <u>Delegated Authority</u> |
|--|---|
| <u>£10,000 or less</u> | <u>Relevant Director to be approved by S151 Officer</u> |
| <u>More than £10,000 and up to £50,000</u> | <u>Portfolio Holder(s) as applicable in consultation with relevant Director and S151 Officer.</u> |
| <u>Above £50,000</u> | <u>Cabinet decision</u> |

³ S122(1) of the Local Government Act 1972