

LAND DISPOSAL POLICY

1. AIM OF POLICY

Government policy encourages the disposal of surplus and under-used assets by local authorities.

The Council has discretion as to how it chooses to dispose of such assets although disposals are subject to statutory provisions. Notably the duty imposed by s123 Local Government Act 1972 to obtain the best consideration that can reasonably be obtained for the disposal.

This policy will set out standard procedures which Council officers will observe when dealing with disposals in order to ensure they are dealt with in a consistent and transparent manner.

There will be occasions when officers will need to depart from the procedures set out in the policy depending upon the specific facts of any particular disposal. After consultation with Members Officers may, in those circumstances, utilise alternative procedures but only when necessary and always subject to compliance with statutory provisions.

This policy is intended as guidance to Council officers. The policy should be considered in conjunction with the Council's Constitution and Scheme of Delegations.

A disposal, in the context of this policy, means the sale of a freehold interest, an assignment or grant of a lease for more than seven years, and the granting of easements and options.

Leases of less than 7 years or an assignment of a term with less than 7 years to run which are exempt from the statutory requirement to obtain best consideration, are outside of this policy, although in such cases there will be a general presumption that Officers will follow the policy's principles.

The policy is not intended to apply to leases where a tenant has a statutory right of renewal, or easements granted to utility companies unless there is clear public interest in which case Councillors will be consulted.

2. STATUTORY PROVISIONS

A Local Authority may dispose of land held by them as they wish but subject to compliance with certain statutory provisions.

- i) S.123 Local Government Act 1972 ('s123') imposes the overriding duty to obtain the best consideration that can reasonably be obtained for relevant disposals of land.

For the purposes of Section 123 a disposal includes the sale of a freehold, granting a lease, assigning any unexpired term of a lease and the grant of an easement. It may also extend to the grant of an option to purchase a freehold or to take a lease. Section 123

does not apply to the grant of a short term tenancy of less than 7 years or an assignment of an existing term with no more than 7 years to run.

The Local Government Act 1972 general disposal consent (England) 2003 allows local authorities to depart from the overriding duty imposed by Section 123 which enables a local authority to achieve necessary or desirable objectives. Any such departure from the duty imposed by Section 123 is known as a disposal at an undervalue.

The general consent permits a disposal at an under-value where the authority considers that such disposal will help to secure the promotion or improvement of the economic, social or environmental well-being of its area.

The general consent is subject to a condition that the under-value does not exceed £2 million. The under-value is calculated by assessing the difference between the market value of the land/property (known as the unrestricted value) and the actual consideration received.

If the under-value exceeds £2 million or the authority considers for any other reason that the general consent cannot be applied to the disposal then specific consent from the Secretary of State must be obtained for the disposal to proceed.

Further guidance as to the application of the general consent and in particular advice on valuation issues is provided in Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained.

The Council has also set out its own guidance to assess the community benefit when selling its property assets at less than best consideration. This looks at some of the key considerations which should be taken into account as part of the decision making process. A hyperlink to this guidance is provided here: [Community Benefit Guidance](#)

3. COUNCIL PROCEDURES

At the initial stage, it will need to be established whether there is a business case for disposing of any property asset. This will specifically include those property assets that are no longer needed by the Council and are unlikely to be required for any future use, or alternatively might comprise assets which provide a benefit that is disproportionate to the opportunity cost of capital tied up in the asset.

When the council makes a decision which affects the services that are provided it must do so in accordance with the law.

Land will be deemed surplus to the Council's requirement where it does not contribute to the Council's services or its strategic and corporate objectives, or a cost effective alternative site has been identified, and it has no strategic or regeneration potential in the near future. Under-used land will be where the whole or part of a site is vacant and likely to remain so for the foreseeable future, or the income available from the site is uneconomic, or the site is only partially used and such use could be accommodated elsewhere.

Consultation

i) Council officers

Internal consultation with the relevant services /officers will be carried out at an initial stage to consider the merits of a disposal along with any potential operational service issues or problems that might need dealing with in advance of bringing a property to market or that might make a disposal inadvisable. In addition, early consultation with the Development Management and Legal Services will be encouraged.

Any proposed disposals involving Housing Revenue Account land and property will be referred to both Commissioned Services and East Kent Housing Services.

Proposals will also be considered by an internal senior officer group [Strategic Development Group or Management Team or both] to consider the potential disposal in the context of the Council's wider strategy and objectives. The officer working groups will make suggestions and either promote or alternatively not support the disposal proposed.

ii) Consultation with Councillors

Having secured an internal officer recommendation to progress a disposal to the next stage, consultation will be held with the relevant Ward Councillors. This consultation will outline the initial proposals and invite comments and suggestions. Where matters are necessarily expressed to be confidential, Councillors will be under a duty to respect that status. Where a disposal falls within the Scheme of Delegation to Officers under of the Constitution [B34], the Director of Resources and Head of Property, shall determine if any particular matter will be referred to the Committee in the light of the Ward Councillor consultation prior to that delegated authority being exercised.

iii) Consultation with the Area Member Panels and/or Community Committee

Where a proposed disposal has a direct impact on service provision by the Council, the relevant Area Member Panel and/or the Community Committee shall be consulted and will be given an opportunity to report any views to the Regeneration and Property Committee with the Chairman or an agreed spokesperson being given the opportunity to speak at the Committee.

iv) Consultation with the public

Officers must consider whether the specific facts of a proposed transaction give rise to public consultation and must adhere to the principles set out in the Council's Corporate Plan 2016-2020.

Disposals may be subject to a statutory duty to consult for example the proposed sale of public open space, which requires the advertising of the proposal in the Local newspaper for two consecutive weeks and any objections received must be considered

by the appropriate Committee before any decision upon the disposal is made S.123(2A) LGA 1972.

The duty to consult on proposed disposals of open space also applies to Leases of less than 7 years duration.

v) Consultation with tenants:

Where property is subject to a lease, the Head of Property to consider the most appropriate method of consultation when meeting s123 best consideration obligations.

When delegated powers could otherwise be used, any adverse comments arising from any consultation will prompt the matter being referred to Strategic Development Group (SDG) who in turn will decide if committee authority is considered.

Planning

Land shall be offered for disposal with the benefit of a supplementary planning guidance or a planning committee decision resolution to grant permission for the most profitable use unless the Head of Property or other competent professional adviser acting for the council certifies that that obtaining the same will not increase the value above the value being obtained.

Where land is being disposed for development on a conditional basis, the presumption is that planning permission should be secured prior to entering into agreements, and if not, the council to be given the opportunity in any conditional sale contract to challenge the planning permission secured. Moreover, any such agreements should set out in sufficient detail agreed objectives for the scheme, noting that the Council has powers by virtue of the Local Government Act 2000 to provide for the social, economic and environmental well-being of its area and the carrying out of the Development is authorised by these powers.

Equalities

The public sector Equality Duty (PSED) requires the council to have “due regard” to the need to eliminate discriminating, advance equality opportunity and foster good relations between different people when carrying out their activities.

Delegated powers

In certain circumstances disposals can be dealt with under powers delegated to officers under s101 of the Local Government Act 1972 (as amended). The powers delegated to the Director of Resources are set out in Appendix 1 although the full constitution can be viewed at [Link to website]

Committee Structure

Those disposals not capable of being dealt with under delegated powers will be referred to Regeneration and Property Committee or the Policy and Resources Committee. Relevant extracts of the Terms of Reference for the committees are set out in Appendix 2

4. METHODS OF DISPOSAL

Once the appropriate authority to dispose of an asset has been secured, the Head of Property will determine the appropriate method of disposal taking into account the nature of the proposed transaction.

The methods of sale generally adopted are set out below but these are not exclusive, and alternative methods which are not listed below may be used to deal with unusual disposals but only with the proper authority.

4.1. **Private Treaty** – a sale of land/property negotiated with one or a small number of interested parties either through a direct approach from an individual(s) or through a marketing exercise.

A private sale without marketing the land may be justified where for example:

- (a) the land to be disposed of is relatively small in size and an adjoining or closely located landowner is the only potential or likely purchaser;
- (b) the Council's corporate objectives and best consideration can best be achieved by a sale to a particular purchaser;
- (c) the purchaser has a particular interest in purchasing the land or a particular association with the land and sale to that purchaser would therefore be at a higher value than could be obtained otherwise;
- (d) the nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained;
- (e) the Council's land is part of a larger area of land that is proposed for development, redevelopment or regeneration and the nature and complexity of the proposed development of the overall site is such that the Council's corporate objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area.

The reasons justifying a private sale without marketing, other than for minor disposals (see 6 below) must be set out and approved by the Regeneration and Property Committee. In exercising his statutory s123 function, the Head of Property shall, and in consultation with the Chairman of the Regeneration and Property Committee, obtain no less than one independent valuation in accordance with the Royal Institution of Chartered Surveyors (RICS) Valuation - Professional Standards 2014 UK Edition (or later).

4.2. **Public Auction** – a sale of land/property by open auction available to anyone. The sale will be publicly advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer. Reasons justifying sale by this method and how the reserve price is determined must be recorded in writing. A binding contract is made on the acceptance of the highest bid providing that the reserve price is reached, and contracts for the sale or lease will immediately be signed and exchanged.

- 4.3. **Formal Tender** – a sale of property by a process of public advertisement and tenders submitted by a given date. This is a suitable mechanism where there are identified development proposals. This would not be appropriate where ownership is complex or the development proposals for the land are incapable of detailed specification at the pre-tender stage. A formal tender is legally binding when the Council accepts the tender in writing. A fair and transparent tender process will need to be adopted.
- 4.4. **Exchange of Land** – a transaction involving the exchange of Council owned land with another land owner. The land acquired by the Council will meet at least one of its corporate objectives and will be 'equal' in commercial worth to the land exchanged whether from the value of the land itself or where a balancing payment is made by either party to the other in addition to the land exchanged.
- 4.5. **Informal Negotiated Tender** – a transaction involving a public advert that requests informal offers or bids that meet a given specification or set of objectives. The Council may then negotiate further or more detailed terms with one or more individuals who submitted the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts for the sale or lease takes place.
- 4.6. **Compulsory Purchase Order** – Another Statutory Body with the benefit of Compulsory Purchase Powers either exercises or threatens to exercise those powers over land owned by this Council.

Marketing strategy

The Head of Property will determine the appropriate marketing strategy for the disposal. A marketing brief may be prepared in-house or via external agents dependent upon the nature of the disposal. Where appropriate, marketing briefs shall be approved by the Regeneration and Property Committee or recommendation of the Chairman of the Committee.

Late Bids

Any late bids or revised offers must be considered in the context of the individual circumstances at the time. The Council's approach to "late bids" will vary depending upon the method of land disposal used. In each case its overriding duty will be to obtain best consideration that it can reasonably achieve (subject to the General Disposal Consent exceptions) and will be at Officers' discretion in the individual circumstances.

5. VALUATIONS

Best consideration is not necessarily the highest financial offer available, it can also reflect the also the substance and strength of any supporting information submitted with an offer including the financial security of a bidder and the commitment of the bidder to a proposed scheme (except in the case of an auction).

The Council should comply with normal and prudent commercial practices including obtaining the view of a professionally qualified valuer as to the likely financial consideration

that can be expected for any disposal and the most appropriate method of disposal to encourage bidders to offer the best consideration. The Council must test whether an offer is the best that can reasonably be obtained having regards to any restrictions or the effect on value of any conditions placed on the use of the land, including whether the offer under consideration is reliable, advice on possible changes to the price that may flow from changes to the planning position etc.

The Valuer should also consider the most appropriate pricing structure. It may be appropriate to use an overage arrangement whereby the Council receives future payments representing any uplift in value of the land/property once it has been developed / sold on. Overage provisions negotiations can be complex, so it would be sensible to discuss the preferred structure with the legal adviser and valuer prior to agreeing terms of the disposal. A calculation of the overage that the Council is likely to receive and the likelihood of that sum being correct given changing market conditions will be essential to assessing the business case for disposal of surplus property.

When considering disposals which may be at less than the best consideration that can reasonably be obtained the valuer must follow the guidance contained in the Technical Appendix to Circular 06/2003

6. PROCEDURE FOR LOW VALUE TRANSACTIONS

The section of the policy would ordinarily refer to garden land sales or sales of low value land subject to maintaining s123 obligations but recognising that this may fall outside the requirement for Member consultation.

Under £20,000 in value

- (a) Upon receipt of an application for the purchase of a small area of garden land or low value land the development potential of the land should be investigated
- (b) After consultation with the appropriate officers, the adjoining owners (where appropriate) shall be approached to establish whether they may be interested in purchasing the land, including Council House tenants where Right to Buy provisions have been initiated.
- (c) Where more than one party is interested in purchasing the land, sealed bids shall be invited from all parties, and the highest bid (or joint bid) received will be accepted.
- (d) Where it is clear that there is only one single party interested, then terms shall be negotiated, or a sealed bid could still be requested.
- (e) Once terms are approved the Head of Legal Services shall be instructed to proceed with the sale, reserving any necessary rights in favour of the Council or adjoining owners.
- (f) There will be a presumption that the purchaser will cover the Council's reasonable Surveyor's and Solicitor's costs involved in dealing with the matter.

7. OTHER ISSUES

Procurement

In most cases disposals of land will fall outside the scope of the Public Contracts Regulations 2015. However, if as part of the disposal the Council is involved in determining the scope of future development of its land and its intention is to impose on the purchaser certain obligations as to the nature of the development, possibly including certain standards to which the works must be constructed then the result may be that the EU procurement rules will apply although subject to the relevant EU thresholds.

Property Service must consider the possibility of public procurement rules applying to any particular disposal and in all such cases must refer the matter to Legal Services, Contracts and Procurement for comment before proceeding further with the proposed disposal.

State Aid

Depending upon the nature of the transaction, it is possible that a disposal at less than market value will be considered as a form of subsidy to the purchaser. If applicable the Council must ensure that the relevant state aid rules are complied with to ensure the disposal is not regarded as unlawful but in all cases details of the particular transaction must be referred to Legal Services for comment.

The Council's Constitution's Procedures on Land Disposals:[May 2016]

The Constitution of the Council procedures relating to land disposal are as follows:

Scheme [excerpts] of delegation of council to officers:

This scheme has been adopted by Canterbury City Council and is the list of delegations to officers under section 101 of the Local Government Act 1972 (as amended) and all other powers enabling delegations to officers. It is adopted with the intention of giving a clear transparent and accountable decision-making process.

B. Powers delegated to the Director of Resources

1. To be the Chief Finance Officer and be responsible for the administration of the financial affairs of the council under Section 151 of the Local Government Act 1972 (as amended) and for the purposes of the council's Constitution and to have the power to authorise an officer to perform this role in his/her absence. The Assistant Director of Finance and Procurement is the Deputy Section 151 Officer and will act as the Chief Finance Officer in the absence of the Director.

Land and property

B33. To manage any land, property or accommodation held or used by the council in the best interest of the council and to take any step which the council is entitled to take as the person with an interest in any land in consultation with the Head of Legal Services and the Head of Service within whose remit the land, property or accommodation is held or used. This delegation does not include the power to dispose of any legal estate. In all matters relating to the management of land and property these delegated powers are subject to the duty under section 123 of the Local Government Act 1972 to obtain the best consideration for land as can reasonably be obtained (the section 123 duty) and any other disposal will require specific authority from the Policy and Resources Committee.

B34. Subject to the limitations below and with the exception of any land or building within the Harbour to which the Whitstable Harbour Board's approval should be obtained to:

- dispose of freehold, leasehold and other interests in land (including the grant of wayleaves and easements) in accordance with the law; and
- grant licences
- grant a rent-free period of up to 12 months on any lease where this is compatible with the s123 duty. Any other grant of a rent-free period must be specifically authorised

This delegation does not apply if one or more of the following criteria are present in the transaction:

- disposing of a freehold or leasehold or other interest in land (including the grant of wayleaves and easements) where the capital sum or premium paid is more than £200,000
- granting a lease of longer than 30 years (save as provided below in respect of certain leases to utilities)
- granting a lease with an initial rent of more than £75,000 per annum (This delegation is also exercisable in conjunction with the Head of Legal Services and the Assistant Director who manages the service in occupation of the land, if any).

B35. To manage any lease or licence granted by the council including agreeing rent reviews or lease renewals subject to the terms approved being comparable to the best which can be obtained in the current market conditions.

B36. To administer the sales of individual council houses held under secure tenancies including matters relating to sold council housing including

- mortgage administration
- consents under conveyancing and leasing provisions.

B37. To administer the council's Cash Incentive Scheme in conjunction with the Head of Legal Services and the Assistant Director of Commissioned Services.

Limitations

B38. To dispose of leases for up to 99 years of areas of land not exceeding 50 square metres where the proposed lessee is a public utility.

B39. To negotiate and agree terms for the modification variation, release or variation of covenants contained in conveyances and transfers.

B40. In connection with decisions to dispose, where Regulation 99 of the Local Authorities (Capital Finance) Regulations 1997 (disposal and replacement of land and buildings) applies, to decide, in consultation with the Policy and Resources Committee and in accordance with the council's capital programme, to use the capital receipt to acquire or carry out works on land used or to be used for the same purpose or a purpose within the same use category.

G. Powers delegated to the Head of Legal Services

To exercise any powers previously delegated to the Head of Legal and Democratic Services not otherwise specified in this scheme of delegation.

G2. To act as solicitor to the council.

G8. To give indemnities on behalf of the council to organisations for the use of their facilities or to persons or bodies to whose land access is required by the council to carry out any development or works.

G9. To authorise other officers to seal documents, or to sign documents which are not required to be under seal.

G11. To complete all property transactions and contractual arrangements where terms have been agreed by the Council or committee, or by the Deputy Chief Executive and Director of Resources or Heads of Service acting under the scheme of delegation

G15. To determine procedural arrangements for the issue of all consents, refusals, decisions and notices on behalf of the council under statutory power

G22. To carry out the necessary legal processes involved in

(a) the management of any land, property or accommodation held or used by the council in the best interests of the council and to take any step which the council is entitled to take as the person with an interest in any land in consultation with the Head of Property and the Head of Service within whose remit the land, property or accommodation is held or used. This delegation does not include the power to dispose of any legal estate.

(c) To appropriate land belonging to the council for purposes other than those for which it was acquired subject to the consent of the Policy and Resources Committee.

(d) To dispose of property, land or any interest in land in accordance with the law (including the grant of wayleaves and easements).

Limitations

This delegation does not apply if the council is

- disposing of its freehold; or
- granting a lease of longer than 25 years

if the freehold value of the property or land to be disposed of is more than £100,000. (This delegation is exercisable in conjunction with the Head of Property and the Head of Service to whom the land is appropriated)

G26. Where appropriate and in consultation with the Director of Resources to elect for VAT status on particular land and property