

**CHARNWOOD BOROUGH
COUNCIL**

**LAND AND PROPERTY
DISPOSAL AND ACQUISITION
POLICY**

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INTRODUCTION

This Land and Property Disposal & Acquisition Policy sets out the procedures and protocols to be adopted in connection with the disposal of surplus and/or under-used land and property (excluding housing Right to Buy and other HRA property disposals) owned by the Council and acquisitions by the Council. It will be used to enable and support the objectives of the Corporate Plan and it complies with the objectives of the Asset Management Strategy.

DISPOSAL POLICY AND PROTOCOLS

1. GENERAL PRINCIPLES

- 1.1 Wherever there is likely to be more than one potential purchaser then all surplus land/property disposals should be completed through a competitive tendering process by open advertisement on the market, the actual market testing option to be agreed by the Asset Management Team (AMT) and the Council's appointed agent (the District Valuer or other Estate Agent).
- 1.2 The Council is subject to certain constraints when it comes to sell land/property in its ownership, some of these are legislative; others arise because of a general expectation that the Council should be seen to act fairly when disposing of land and property. The Council will therefore seek to: -
- 1.3 Sell any surplus land/property for the best available consideration, unless determined by an exceptional circumstance that is within the law (e.g. for the benefit of the Community).
- 1.4 Implement the "Method of Disposal" described in section 2.0 below for all surplus land/property sales as a formal Protocol to ensure that disposals are fair and transparent and that the Council receives the best consideration that can reasonably be obtained.

2.0 METHOD OF DISPOSAL PROTOCOL

Definition of Surplus/Under-used property

- 2.1 The Head of Finance & Property Services (HFP) and the AMT will be responsible for declaring land or property surplus to requirements having taken into account the principles of good asset management. A site will be deemed to be surplus to the Council's requirements if either:
 - (a) It makes no contribution to the delivery of the Council's services.
 - (b) It has no potential for future strategic or regeneration/redevelopment purposes.
 - (c) An alternative site has been identified which would achieve a more cost effective service delivery.
 - (d) Its disposal would help facilitate the achievement of the Council's Corporate Plan objectives.
- 2.2 A site will be deemed to be under-used if:
 - a) The income being generated from the site is below that which could be achieved from:
 - An alternative use
 - Disposing of the site and investing the income
 - Intensifying the existing use
 - b) Part of the site is vacant and is likely to remain vacant for the foreseeable future.

- 2.3 Any Property that is declared surplus will be brought to the attention of other Council Service units and Leicestershire County Council, prior to disposal outside the Council.

Site Identification

- 2.4 Sites for possible disposal may be identified in the following ways:

- a) To meet key objectives of the Corporate Plan
- b) Through Local Plan designation
- c) Through the work undertaken by the Asset Management Team and HFP
- d) Through annual Service Delivery Plans of all Services declaring specific sites as being surplus to requirements*
- e) Through identifying previously unidentified surplus land from the Council's and other records.

(*Where an under-used asset is generating an income, a Cost/Benefit analysis should be carried out to establish whether it is in the Council's best interests to dispose of the site.)

Site investigations

- 2.5 Once a potential site has been identified, Property Services will consult with the Statutory Authorities, as well as the Senior Management Team, Legal Services, Planning Policy/Development Control, Economic Development, Leisure & Cultural Services, Housing Services and Highways & Transportation (Leicestershire County Council) to firstly, identify whether there is potential for changes of use/redevelopment and then to establish what development constraints there are on the site.

Property Services will be responsible for undertaking ground investigation works (where appropriate) and desk studies into previous land use history (sustainability, environmental and contamination issues etc.). A particular focus will be given to flooding issues where watercourses are in or adjacent to sites and also to any site contamination that may be present.

Land Use

- 2.6 Unless a site is already designated for a specific use in the Local Plan, consultations by the AMT with the appropriate Head(s) of Service will be undertaken to identify the preferred type of development for the site.

If there is no requirement for the Council to develop a site, either for investment purposes or social provision, then the site may then be brought forward for disposal. At this point the relevant Lead Cabinet Member will be advised of any proposals.

Disposal Options

- 2.7 The AMT, together with the Council's appointed agent (either the District Valuer or other appointed Estate Agent) will recommend an agreed type of disposal, which generally will be either:
- a) Formal Tendering - the Council invites 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.
 - b) Informal Tendering – 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.

- c) Auction – the property is marketed as part of an external auction process. If appropriate a reserve price will be set.
- d) 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.
- e) Where appropriate, sales may be conducted by private treaty where a marketing exercise has failed to secure a buyer, or where Section 3.0 – Exceptions to the General Principles - indicates that there is justification for dealing with a single potential purchaser.

Marketing Strategy

- 2.8 The HFP together with the Council's appointed agent (District Valuer or other Estate Agent) will recommend a marketing strategy, for acceptance by the AMT. All staff costs, legal costs, consultants' costs etc. associated with any potential disposal of an asset (even where such costs do not lead to an actual disposal) will, wherever possible be recovered from the purchaser, be deducted from the sales proceeds or recharged to the General Fund or Housing Revenue Account (HRA). All marketing costs will also be either deducted from the proceeds or charged to the General Fund or HRA.

Timing

- 2.9 The timing of any marketing of disposals will be considered against the background of the Council's budgetary requirements, together with the current state of the market. The following factors will also be taken into consideration:
- Is there a corporate need to raise capital receipts?
 - Is there potential for the site value to increase in the future?
 - Regional and Local Planning Guidance - this will influence decisions on the disposal of land, as well as the future use of individual sites.

Asset Management Team

- 2.10 The AMT will annually review surplus property and a site disposal strategy and plan will be determined. Each site identified for disposal will require a report to the AMT which will then decide whether to recommend a disposal and Finance will advise whether the receipt is to be classified as revenue or capital. This report should contain an up to date, detailed independent valuation of the property and details of the terms and conditions to apply (see Section 4.0 Disposal of a Revenue Earning Asset).

Delegations and Cabinet Approval

- 2.10 If the AMT recommends a disposal of General Fund property, the HFP will prepare a report for a forthcoming Cabinet meeting to seek its authority to dispose, if this is required. The Head of Landlord services will prepare the report if the asset is in the HRA. Under the Constitution disposals with a freehold value of £100k or less or a leasehold value of £50k or less may be disposed of by the HFP/Director of Housing, Planning & Regulatory without needing the approval of Cabinet. Where the disposal involves land or property that is a revenue-earning asset the potential loss of income will be identified; the loss will be calculated net of savings in management and running costs resulting from the disposal.

Disposals of housing assets in the HRA are governed by the processes set out in the Housing Management Strategy.

Marketing

- 2.12 Following approval to proceed with disposal the marketing strategy will be commenced with a view to identifying a purchaser. Separate procedures exist for the control of the invitation, receipt and opening of tenders. Any project involving a partnership shall follow the recommended best practice Protocol for selecting a partner (see Section 6.3a - Selecting a Partner by Open Tendering).

Best Consideration and Statutory Compliance

- 2.13 The receipt from any disposal is to be maximised (best consideration) unless there are over-riding factors identified in the Corporate Plan, which take precedence over the maximisation of the receipt and/or the disposal is in accordance with the law (see section 3.0 Exceptions to General Principles).
- 2.14 For all methods of disposal, the Council must demonstrate how it will achieve best consideration and to this end: -
- a) Selected negotiated disposal terms will be subject to independent valuation.
 - b) Selected development opportunities will be market tested to establish up to date valuation benchmarks.
 - c) The assessment of best consideration will take into account the additional benefits to the Council identified in any partnership or community benefit disposals to which monetary value can properly be attributed.
 - d) Direct negotiations with partners will be operated on an open book accounting basis to provide the necessary information and supporting evidence to enable the Council and its auditors to assess that factors taken into account in the negotiations are valid and properly quantified and that the Council's statutory obligations have been met.
- 2.15 Where the AMT has recommended that a site be sold at a price below open market value, the matter will usually be submitted to Cabinet for approval, although this may depend on the market value as that might still be low in some cases. A sale of land at a price below open market value may require the consent of the Secretary of State under the provisions of the Local Government Act 1972, although such land disposals may be exempt if they fall within the "General Consent" rules applying to any land disposed to a Housing Association, or comply with other specific regulations.
- 2.16 Before proceeding to contract the HFP shall confirm with Legal Services that any disposal meets the requirements of Section 123 of the Local Government Act 1972, unless there is an exceptional reason for doing otherwise.

Proceed to Contract

- 2.17 Once a purchaser has been identified and the terms of the disposal have been agreed under delegation or approved by Cabinet, Legal Services will be requested to arrange and complete contracts. Liaison between the HFP and Legal Services will continue throughout the contractual stages until there is satisfactory completion of the disposal.

Final Completion

- 2.18 Once the contract has been signed and completed confirmation will be included in the relevant AMT meeting minutes and the HFP will agree with the Chief Executive and Leader of the Council whether a press statement is to be released. Legal Services will issue a formal completion memo to relevant services.

Capital Receipt

- 2.19 The useable proportion of the Capital Receipt will depend upon whether it is generated from the General Fund or the Housing Revenue Account. It will be placed in the General Fund unless it has been agreed that all or part of the receipt is to be utilised on HRA schemes.

3.0 EXCEPTIONS TO THE GENERAL PRINCIPLES

- 3.1 For certain types of property open market advertising may not achieve the best consideration. Examples are: -
- a) Sales of small areas of land where there is realistically only one potential purchaser, for example, sales to adjoining owners.
 - b) Sales of land where there is a 'special purchaser' for whom the land has a higher value than for anyone else, for example, "ransom strips" (The Stokes v Cambridge principle).
- 3.2 Occasions may arise where the Council wishes to support or encourage a specific use or development, to deliver key objectives of the Corporate Plan. In these instances sales may be negotiated to particular purchasers. Examples are:
- a) Sales to Housing Associations
 - b) Sales to developers or companies for industrial and commercial development to create new employment opportunities or protect existing jobs.
 - c) Sales to religious, community, voluntary groups to meet a local need.
 - d) Sales to selected partners in specific areas. All such sales must be in accordance with the procedure outlined in the Partnership Protocol (see section 6.0 Partnership Protocol).
 - e) Sales in respect of Community Asset Transfers.

In such circumstances disposals may be secured through a direct negotiated private treaty sale, which must be authorised and approved by Cabinet.

- 3.3 Where direct negotiations are to proceed with a particular developer, the developer must satisfy the Council on the following issues: -
- a) The provision of detailed information and plans of the proposed development.
 - b) The timescale for completion of the development.
 - c) Detailed funding arrangements and confirmation that these are in place.
 - d) Evidence of end user commitment and the opportunity for Council to discuss that commitment directly with the end users in question.
 - e) Details of the developer's financial offer for the property.
 - f) Developer's track record with similar developments.
 - g) Any partnership record with other local authorities.
 - h) Full details of any proposed joint venture opportunity.
 - i) Details of any conditions precedent to which the proposal is subject.
 - j) Any wider/longer term regeneration benefits from the proposal. For example, employment or training opportunities during construction or from the proposed end user.
 - k) Provision of any other off-site benefits or facilities.
 - l) Potential for attraction of shoppers, visitors, users to the district's facilities.
 - m) Capacity of the proposal for bringing other sites forward or opening up other development potential.
 - n) Potential for leverage of private or other public funds and grants.

- o) Capacity of the proposal to remove or reduce other Council financial liabilities.
- p) Satisfaction of the Council's approved regeneration objectives in the Corporate Plan.

3.4 The information described in 3.3 will be assessed against the following criteria: -

- a) Are there other developers who could deliver the project?
- b) What other potential uses are there for the site?
- c) Is there a robust and justifiable case for direct negotiation and not market testing in accordance with the protocol?

4.0 DISPOSAL OF A REVENUE EARNING ASSET

4.1 When the HFP is notified of the disposal of a revenue-earning asset (e.g. a car park) the loss of income, net of savings in costs, will be addressed in the budgetary process and the service budget adjusted. This will normally take effect in the first full financial year following disposal. Any adjustment will recognise the overall service budget position. Account may be taken of compensating factors such as new sources of income (e.g. income from new or replacement car parking) and increased income resulting from reviews of charges.

5.0 AREA BASED INITIATIVES

5.1 In area-based initiatives where the Council wishes to work with a partner or partners to secure a common agreed goal, the procedures outlined in the Partnership Protocol (see section 6.0 Partnership Protocol) will be followed. Thereafter, sales to those partners within the area may be directly negotiated to further the aims and objectives of the Partnership Strategy. The land and buildings necessary to be made available in the partnership arrangement will be identified at the outset and a recommendation made to the Cabinet by the AMT. However, the partnership document may be later amended by agreement of the Cabinet to account for changing circumstances identified by the detailed evolution of the delivery plans, new funding regimes and new opportunities which may arise.

5.2 Once a partner is selected, the following points will be considered:

- a) Financial Procedure Rule 11.0.6 requires officers to notify the Internal Audit section, the Accountancy section and the Insurance officer of all proposals to dispose of land and buildings. The AMT and Legal Services must also be consulted about these matters.
- b) The relevant powers under which the land is held will be identified.
- c) The relevant powers under which the land is to be disposed will be identified.
- d) If land is public open space, the appropriate statutory advertising procedures will be complied with.
- e) The HFP will arrange for a valuation of the land through the District Valuer or appointed independent Valuer. The "consideration" for the land refers to the price as well as non-monetary matters provided they have a quantifiable or monetary value, which is capable of being assessed by a land valuation expert.
- f) If the sale is to be at an undervalue and requires either a general or specific consent from the Secretary of State this will be arranged to enable the transfer to proceed.
- g) The proposed transaction should be reported to the AMT who will make recommendations to the Cabinet where appropriate.

6.0 PARTNERSHIP PROTOCOL

- 6.1 This Partnership Protocol will act as a good practice guide for selecting development partners within area-based initiatives, which are led by, or influenced by, the Council. Officers and members will be expected to follow the good practice contained in this Protocol to safeguard the authority from any allegations of favouritism or anti-competitive practices.
- 6.2 This Protocol acknowledges that there are three differing sets of circumstances in which a partnership may be appropriate: -
- a) Area based partnerships where the Council is working with an established area based organisation and the partner will therefore be self-selecting. An example might be a Registered Social Landlord that owns an adjoining site.
 - b) Current area based initiatives where the existing agreement has come to an end. In such circumstances the Council will review the achievements of the existing partnership together with the future needs of the area and how these may best be achieved. The HFP, or other appropriate officer, will consider all options in conjunction with the relevant service unit(s) and make recommendations to the Cabinet on a case-by-case basis, as to the appropriate way forward.
 - c) Projects where the Council will be actively seeking a partner for a specific project, which will be open to competition from the market. An example could be a joint venture of land/buildings where the Council may contribute land and is seeking a partner to provide development funding. The partnership selection process will be open and accountable ensuring probity, equity and fairness to all prospective partners in the process.

When to Select a Partner

- 6.3 Officers will need to assess the individual circumstances of particular area based initiatives and consider whether entering into an arrangement with a partner will lead to medium to long-term benefits over and above those that could be gained by simply selling land, buildings and/or other assets as one-offs to the highest bidder as part of the initiative.
- 6.4 Medium to long-term benefits of entering into a partnership arrangement with a private partner (e.g. a private developer or housing association) could include: -
- a) A 'commitment' to the initiative by the partner that can then assist in attracting funds to the scheme.
 - b) To provide on-going professional input to the initiative.
 - d) To provide a forward programme of development within a scheme.
 - e) To provide funding guarantees for land assembly including compulsory purchases.
 - e) To 'front-fund' schemes in advance of full funding being available.
 - f) To provide additional 'community benefits' as part of the initiative.
- 6.5 Where Officers believe that entering into a partnership arrangement with a private partner within an initiative may provide medium to long-term benefits over and above straightforward market-tested land, building and/or other asset sales, the matter will be considered initially by the HFP and the AMT who will then make recommendations to the Cabinet. Only after members have considered the matter and resolved to enter in to a partnership agreement as part of an initiative will the Council commence a partnership selection process or conclude a partnership agreement.

Area Based Partnerships or Equivalent

- 6.6 The HFP must formally approve the details of the partnership feasibility work affecting Council land and property, which will comprise: -
- a) The initiating Service will request that the HFP carry out an audit and valuation of land and buildings within the area in question. The Service will liaise with other Council Services affected by the proposal.
 - b) The HFP will confirm the availability or otherwise of land and buildings to be utilised as part of the redevelopment initiative following consultation with relevant Services. Any disposal of land and buildings must satisfy the requirements of Section 123 of the Local Government Act 1972 or the approval of the Secretary of State be obtained for disposals at less than best consideration.
- 6.7 Officers involved in the partner selection process should jointly agree the criteria by which they will choose a partner. The criteria against which potential partners will be assessed will be formally written down and appropriately weighted in advance. Criteria for selection include: -
- a) Previous experience and track record of the organisation.
 - b) Financial capacity of the partner to undertake development.
 - c) Financial feasibility of the project.
 - d) Contribute to the Corporate Plan in terms of: -
 - Making residents feel safe and secure
 - Helping the Borough to grow and prosper
 - Protecting Charnwood's natural resources for future generations
 - Creating opportunities for communities to live healthy, active and fulfilling lives
 - Supporting residents to influence, contribute and take part in their communities.
- 6.8 Due to the wide range and purpose of possible partnerships the detailed evaluation and investigations should be agreed on a project-by-project basis but be based upon the above aspects.
- 6.9 Only when the following procedures have been met will authorisation be given for officers to move to the next stage in the process to seek a Cabinet resolution to enter into a partnership agreement.
- a) The boundaries of the partnership area have been agreed.
 - b) Audit of land, buildings and/or other assets to be included in the partnership agreement.
 - c) Information from the HFP that the land/building is surplus to requirements.
 - d) Detailed preliminary appraisal of potential capital and revenue financial implications.
 - e) Confirmation that the body in control of the specific initiative is in agreement with working with a development partner;
 - f) Appropriate valuations from HFP.
 - g) Advice over potential future usage from relevant Services.
 - h) Advice from the relevant Directors as to any proactive strategy that may be required to meet the partnership objectives and any implications of such actions.
 - i) The criteria for assessing prospective partners including appropriate weightings.
 - j) Identification of interaction with existing service partnerships and regeneration initiatives.

- k) Confirmation from Legal Services, or external legal advisers, that the assessment criteria or any other matters do not contravene legislation or the Council's Constitution.

6.10 Where an existing area based initiative has come to the end of its contractual period the HFP will review the options for future initiatives in the area in conjunction with the appropriate services. The recommendations will be submitted to the Cabinet.

Selecting a Partner by Open Competition for a Specific Partnership Project

6.11 In all circumstances the decision to enter into a partnership must be seen as equitable and fair, of benefit to the Council and community at large and be able to demonstrate best value. Openness and integrity in the selection process from officers and members will ensure that allegations of preferential treatment and un-competitive practices cannot be justified against the Council.

6.12 It is recommended that a Partner Selection Pack be produced for potential partners, which will provide sufficient information to allow the potential partner to submit their proposals to the local authority. The following details could be included in the pack: -

- a) The particulars of the Council land, buildings and/or other assets within the project boundaries.
- b) The details of the project including other partners; a brief background; timetable; funding etc.
- c) The contribution of the Council to the project. This may be by way of land and buildings and/or specific measures to stimulate a particular course of action.
- d) Where the disposal or land/buildings is involved the transaction must satisfy the requirements of Section 123 of the Local Government Act 1972 or the approval of the Secretary of State be obtained for disposals at less than best consideration.
- e) A brief summary of the criteria that potential partners will be assessed on.
- f) Content and timetable for returning submissions to the Council.

6.13 The Partner Selection Panel will contain representatives from:

- a) Senior Management Team
- b) Asset Services
- c) Legal Services
- d) Regeneration (if appropriate)
- e) Financial Services
- f) Any relevant Service representative as determined by the Panel.

6.14 Adverts to be placed in business journals, or other suitable media, to invite potential partners to submit their proposals to the Council for consideration.

6.15 Competition to be as wide as possible and not unduly restricted to those potential partners expressing an interest in a project. This could be regarded as being anti-competitive and against the spirit of this Partnership Protocol.

6.16 The partner selection panel, when considering submissions made to the Council from potential partners, must assess the submissions only against the criteria previously agreed prior to the selection process or subsequently communicated to all parties by way of equitable procedure. All attempts to assess submissions against revised criteria, not formerly communicated to potential partners in the Partner Selection Pack, would be deemed as unfair and inequitable.

Post Partner Selection

- 6.17 It is a requirement that a formal Partnership Agreement is entered into with the partner detailing the obligations of the parties. This Agreement will detail the development obligations on the partner; consideration to be paid for land, buildings and/or other assets; the timescale within which the developments will take place including key milestones for longer-term Agreements and the Council's expectations of the partner within the project (e.g. working with community groups and other parties). The Agreement will detail the Council's obligations including the release of land, buildings and/or other assets; match-funding if applicable; and assistance with Planning and Legal consents, where appropriate.
- 6.18 The decision to select a partner and the detail of the Partnership Agreement is to be reported to the Cabinet as soon as practicably possible.
- 6.19 The Partnership Agreement should clearly set out responsibility for the key objectives of the partnership, key milestones and evaluation and performance criteria including key performance indicators, provisions for monitoring arrangements and Council access to information.

7.0 ACQUISITIONS

- 7.1 Acquisitions of land and/or buildings will be considered where:
- It will make a contribution to the delivery of the Council's services,
 - It has potential for future strategic, regeneration or redevelopment purposes,
 - Its acquisition will help facilitate the achievement of the Council's Corporate Plan objectives,
 - It is suitable as an investment property and will provide a revenue stream and/or a capital gain for the Council,
 - It is required in order to facilitate a development or regeneration project, whether that be the council's or a third party's.
- 7.2 The process for acquiring land and/or buildings is as follows:
- a) Once a need is identified, or an opportunity arises, a proposal will be made to the AMT setting out the reasons for the acquisition, a business case and any other pertinent details.
 - b) If AMT agrees that the acquisition should proceed then a proposal will be submitted to Cabinet for purchases with a capital value of £50k, or more, or a periodic payment of £20k, or more, per annum. Acquisitions with a lower value than that may be approved by the HFP.
 - c) Valuations of property must be made by an independent third party such as the District Valuer or independent agent.
 - d) Negotiations with vendors must also be carried out by an independent third party.
 - e) Any recommendations by the third party carrying out either the valuations and/or the negotiations must be included in the reports that are made to the AMT, Cabinet and/or HFP.
- 7.3 Land acquired through S.106 agreements is not covered by this policy.
- 7.4 The HFP, after consultation with colleagues, will decide whether the land and/or building will be designated as General Fund or HRA property.

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