

ASSET DISPOSAL STRATEGY FOR SURPLUS/UNDER-USED COUNCIL OWNED PROPERTY

Introduction

This statement sets out the strategy and procedures to be adopted for the disposal of surplus and/or under-used property. A sale or a lease of more than seven years is regarded as a disposal.

The Contract Procurement Rules (Land Transactions) states that “no property or land owned or leased by the Council shall be disposed of to a third party until it has been established that no other directorates of the Council have a need for the property or land, and that the current service area confirms no other requirement for the site.”

Where appropriate, it should be considered in conjunction with the Community Asset Transfer Policy.

1. Definition of Surplus/Under-used property

A site/asset shall be deemed to be surplus to the Council's requirements if one **or more** of the following apply:

- (a) It makes no contribution to the delivery of the Council's services,
- (b) It has no potential with regard to the Council's Priorities.
- (c) An alternative and more cost effective service delivery site has been identified.
- (d) The Council's aspirations for the site defined in its strategic objectives can be met more effectively in the ownership of an alternative body
- (e) A Community Asset Transfer request is received, accepted and disposal via that means is approved by Cabinet. (see Community Asset Transfer Policy)

A site is deemed to be under-used if:

- (a) The income it generates is below that which could be achieved from one **or more** of:
 - (i) An alternative use
 - (ii) Disposing of the site and investing the income
 - (iii) Intensifying the existing use, mindful of cost versus benefit of doing so
- (b) A significant part of the site is vacant and is likely to remain so for the foreseeable future and has no potential with regard to the delivery of the Council's Priorities.

2. Site - initial Identification

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

- (a) Through Local Plan designation
- (b) Through review work undertaken by the Asset Management Group (AMG).
- (c) Through service departments declaring sites as being surplus to requirements
- (d) By Area Committees or local Members
- (e) Through identifying previously unidentified surplus land from the Land Terriers
- (f) Via Land Registry searches
- (g) Asset transfer requests from third parties (including Community Asset Transfer)
- (h) Through a combination of the above.

The service department currently utilising the site/asset and declaring it surplus to their need, must return the keys (if appropriate) to Property Services and ensure that Accountancy

transfer the relevant budgets (e.g. appropriate repairs & maintenance, rates, utilities in respect of the site) to Property Services. The handover of the site is not complete until this has been carried out.

3. Site investigations

Once a potential site has been identified, Property Services will consult with statutory services - Highways, Legal Services, Planning and other service departments to establish if there are any constraints on the site. Ground investigation works, and desk studies into previous land use history, will also be undertaken where appropriate.

4. Internal Considerations

Unless a site is already designated for a specific use in the Local Plan, the above consultations will indicate the preferred type of development for the site. This will be (in no particular order):

- (a) Housing – Social Landlord
- (b) Housing - Private Developer
- (c) Industrial/Commercial
- (d) Leisure/Community

If a site is identified for (a or b) above, then it will be referred to the Council's Housing Development Group (HDG) for further consideration (see also Note 1) and HDG recommendation subsequently passed to Asset Management Group (AMG). If a site is identified for (c) or (d), then further consultations should be undertaken with the AMG. For any use identified, the possibility of development by the Council is to be considered first by AMG and Planning input sought on this option. If development by the Council is not required for investment purposes or social provision, then the site may be brought forward for disposal.

At this point consideration will be given to determine whether the site should be disposed of at less than market value (see note 2 regarding best consideration). The Council is required to act within the constraints of the Local Government Act 1972 and General Disposal Consent 2003. The default position will be disposal on the open market. The terms of the Consent mean that specific Government consent is not required for the disposal of any interest which the Council considers will help it to secure the promotion of the economic, social or environmental well being in its area, subject to the condition that the undervalue does not exceed £2 million, otherwise Government consent is required.

Consideration of disposal at less than market value must take into account whether any undervalue assists the Council in meeting its strategic objectives (see note 1 & 2).

At this point the Portfolio Holder for Finance & IT and local Ward Member(s) will be consulted and, if appropriate, a report prepared for Cabinet.

If initial Cabinet approval is obtained, a report regarding the officers' recommendations (and wider consultation if undertaken) will then be presented to the appropriate Area Committee for their views and, provided there are no substantive objections, the site will be taken forward for disposal. In the event that there are substantive objections, this will be referred back to Cabinet.

Final approval, following receipt of offers, will be sought from the relevant delegated Member/Officer or Committee.

5. Method of Disposal

The Estates Surveyor will determine the method of disposal e.g. Auction, Private Treaty etc., in accordance with the Council's Contract Procurement Rules and Financial Regulations.

Assessments of Market valuation may be carried out by NHDC Estates Surveyor, by external agents acting for NHDC, or by considering offers received following marketing of an asset.

Unless a "special purchaser" has been identified e.g. one who is prepared to pay a premium for the site (over and above market value) or receive a discount (less than best consideration), all potential purchasers are to be given an opportunity to tender/submit an offer. Any group who has successfully registered an asset/site onto the list of 'Assets of community value' held by the authority, which subsequently comes up for disposal, will be informed of the decision to dispose and given the opportunity to express an interest and consider raising the funds to make a bid to acquire. (*See separate Community Asset Transfer Policy and Framework*).

If a disposal is at less than market value, normal and prudent commercial practices must still apply and the amount of the undervalue calculated by the Estates Surveyor (see also note 3: State Aid).

The Community Asset Transfer Policy outlines the approach for disposals at less than market value to community based organisations, approval to progress disposal in this manner **having first** been sought and obtained from the Council's Cabinet.

If a disposal at less than market value to an RSL is proposed by the Housing Development Group and supported by AMG, the reasons for this decision must be clearly documented as each site is unique and needs to be considered on a "case by case" basis (see also note 3: State Aid).

Consideration must also be given as to whether the Council has previously opted to tax the asset. The Council may have had good reasons to do so in the past and once this option has been taken it will remain applicable to the asset until it is disposed (see note 4: Opt to Tax).

6. Marketing Strategy

The Estates Surveyor will recommend a marketing strategy, either in-house or through the Council's retained agents, for acceptance by the AMG.

7. Timing

The timing of any marketing/disposals will need to be considered against the background of the Council's budgetary requirements, together with the current state of the market. Before recommending that a disposal is to proceed, the following factors are to be taken into consideration:

- Is there an immediate need to raise capital receipts?
- Is there seen to be an increased opportunity for disposal now rather than in the future, i.e. development or sale of adjoining sites not in NHDC ownership?
- Impact on revenue regarding loss of income from rent and/or expenditure savings
- Current market conditions
- Potential for the site value to increase in the future
- Community Asset transfer potential
- Local Planning Guidance - this will influence decisions on the disposal (and acquisition) of land, as well as the future use of individual sites.

8. Asset Management Group (AMG)

The AMG should be made aware of potential disposal sites at the earliest opportunity and their views sought. An update on the disposal of any sites is then to be provided to the AMG for recommendation prior to an onward report to Cabinet or request for delegated approval. These actions may be achieved via an AMG meeting or by direct contact.

9. Committee approval

If the AMG agrees a disposal, the Senior Estates Surveyor and/or other relevant Service Manager will prepare a report for the next Committee cycle unless the disposal can be dealt with under delegated authority. If the disposal falls within the delegations, and it is deemed appropriate not to refer the matter to Committee, the relevant consultations will be carried out, as set out in the delegations.

10. Marketing

If no objections are received, the marketing strategy is to be commenced, with a view to identifying a purchaser.

11. Negotiations

The Council and other party or parties to a disposal need to work in a confidential and commercially sensitive manner until such time as the contract is completed. To this end, a confidentiality agreement may be required although any such agreement will take into account the Council's obligations under the Freedom of Information Act.2000.

The return from any disposal is to be maximised unless there are over-riding factors identified in the 'Priorities for the District' which take precedence over the receipt of capital. See also comments regarding disposals at less than market value elsewhere in this strategy document.

Where the AMG recommends that a site is sold at a price below open market value, or transferred under the terms of the Community Asset Transfer Policy, that recommendation is to be reported to the Cabinet for approval, prior to the disposal.

12. Instructions

Once a purchaser has been identified and all the terms of the disposal have been agreed, the Corporate Legal Manager will be instructed.

13. Completion

Once the disposal has been completed an Information Item is to be prepared for the members information service (MIS).

Note 1:

Section 25 of the Local Government Act 1988 gives consent for the disposal of land to registered social landlords at less than market value for the development of housing, other than housing for outright sale.

A sale to a private developer will be subject to compliance with current NHDC Planning policy.

Note 2:

In relation to Section 123(2) of the Local Government Act 1972 the Secretary of State has issued a general consent for disposals at less than best consideration that can reasonably be obtained.

A disposal at less than best consideration is subject to the condition that the undervalue does not exceed £2,000,000. It is also subject to the requirement that it is likely to achieve (in the whole or part of NHDC's area) any one or more of the following benefits:

- (i) The promotion or improvement of economic well-being;
- (ii) The promotion or improvement of social well-being;
- (iii) The promotion or improvement of environmental well-being.

The benefit from any (or all) of (i), (ii) or (iii) must justify the discount from best consideration. This is in line the powers of well being in Section 2 of the Local Government Act 2000.

Any disposal at less than market value may be subject to a restrictive covenant to protect the council's interest in case of an onward sale at market value or non-delivery of the proposed benefits.

Note 3:

State Aid

Where a public body provides financial support to an undertaking, it is necessary to consider whether such support constitutes state aid and advice must be sought from Legal Services.

Financial support granted to undertakings must also meet **all** the following conditions set out in the European Community (EC) Treaty for it to be considered as state aid:

1. Is the support granted by the state or through state resources?
2. Does the support confer a selective advantage to an undertaking?
3. Does the support distort or have the potential to distort competition?
4. Does the support affect trade between Member States?

Granting State Aid legally

There are however exceptions to the rule that the provision of state aid is illegal.

Treaty exemptions enable Member States to legally give certain kinds of aid that will help achieve Community market or equity objectives, in circumstances where the market fails to properly provide.

Small amounts of financial support (less than €200,000 to any undertaking over any rolling three year period) are considered to be de minimis amounts. This aid may be given without the need for notification or approval.

Note 4:

Option to Tax

The Council may have had reasons to have applied to "opt to tax" an asset at any time in the life of the asset. This option will remain applicable to the asset until it is disposed and it will require the Council to charge VAT on the disposal transaction.

Supplies of land and buildings, such as freehold sales, leasing or renting, are normally exempt from VAT. This means that no VAT is payable, but the owner cannot normally recover any of the VAT incurred on their own expenses.

Once the option has been taken all expenses will normally be standard-rated, however VAT is recoverable on them.