

City of Bradford Metropolitan District Council

Property Disposal Policy 2019

1. Dealings with land and property

1.1 Land and property owned and held by the Council is a corporate resource and must be managed corporately to ensure that it is used efficiently and effectively.

Accordingly all land and property transactions must be carried out by appropriately qualified and experienced Chartered Surveyors within Estates and Property to ensure;

1. That Financial Regulations and Council Standing Orders and statutory duties are met;
2. Where the acquisition of property is proposed that the feasibility of accommodating the requirement within the existing estate is considered first, and;
3. That the most advantageous and appropriate terms for the Council are achieved.

1.2 This policy applies to all proposals to sell Council owned land and property without exception. The implementation and compliance with the policy is overseen by the Operational Estates and Acquisition and Disposals' Managers reporting to the Assistant Director, Estates and Property.

2. What is meant by Disposal

2.1 Disposal means the sale, transfer or grant of any legal interest in or right over land and property regardless of whether consideration is received. It includes but is not limited to;

- Freehold sales or transfers
- The grant of leases
- The grant of licences
- Option agreements
- Joint venture agreements relating to land and property
- Development agreements
- Asset swaps
- Service Level Agreements that require the use of council owned land and property.
- The grant of easements and wayleaves.

3. Local Government Act 1972 S123

3.1 Section 123 of the Local Government Act 1972 places a statutory duty on Local Authorities to not dispose of land and property at less than the best price (Best Consideration) reasonably obtainable without the consent of the Secretary of State.

3.2 The Local Government Act 1972: General Disposal Consent (England) 2003 permits Councils to dispose of land and property at 'less than Best Consideration' without the requirement to obtain the Secretary of State's consent where

- a) 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 following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
 - 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; and
- b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).

3.3 To ensure that the requirements of S.123 and the General Disposal Consent are complied with all land and property disposals will be carried out or commissioned by qualified Chartered Surveyors within the Estates and Property Team whether the disposal is conducted by an 'open marketing' exercise or by a '1:1' negotiation.

3.4 For all methods of disposal, the Council must be able to demonstrate the achievement of 'Best Consideration' and to this end: -

- Land and property disposals will be carried out or commissioned by the Council's qualified valuers, whether the disposals are by open marketing or by negotiation.
- Selected negotiated disposal terms may be subject to independent valuation.
- Selected development opportunities will be market tested to establish up to date valuation benchmarks.
- The assessment of 'Best Consideration' may take into account any additional benefits to the Council to which a monetary value can properly

be attributed, and which is capable of being assessed by a qualified valuer.

- 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. For the avoidance of doubt 'Open Book' basis means that relevant cost assumptions, prices, marginal indexation and other financial assumptions are made available to the council for appraisal and agreement.

4. Disposal Procedures

4.1 The following procedures will be followed in all proposals for disposals of land and property : -

- The Assistant Director, Estates and Property is responsible for declaring a property surplus to requirements having taken into account the principles of good asset management and taking such actions necessary to protect the development potential of land and property.
- Properties declared surplus are brought to the attention of other Council departments prior to disposal. Any Department wishing to take occupation of such a property must have the approval of the Assistant Director of Estates and Property, who will need to be satisfied that the proposed use constitutes efficient use of assets and other alternatives including co-location have been fully explored.
- A proposal to dispose of a freehold or leasehold interest in property is referred to Estate Management's Property Officer Advisory Group which makes recommendations about proposals affecting council land and property. In the case of proposed disposals the Group makes recommendations to senior officers as to whether a sale should be progressed taking into account potential operational requirements for the property and the principles of good estate management. The Property Officer Advisory Group recommendations are referred for approval to the Assistant Director Estates and Property or Operational Estate Manager or Acquisition and Disposal manager, who will maintain independence from the group.
- Officers are required at the earliest opportunity to declare any interest that they may have in a property to be disposed of or connection to a third party that they are aware is interested in purchasing a property.
- To ensure transparency in the case of leasehold disposals and that prospective tenants understand the responsibilities that they are taking on the RICS Code of Leasing Practice will be followed where appropriate

when letting business premises. The use of the RICS Small Business Retail Lease will be considered.

- The suitability of the property for Community Asset Transfer will be considered.
- Ward Councillors are given the opportunity to comment on proposals to dispose of property within their ward.
- Contentious or sensitive issues are resolved either under delegated powers in consultation with the relevant Portfolio Holder or by reference to the Executive, taking into account the outcome of consultation with Ward Councillors.
- A legal check on Title is undertaken at the outset.
- Sales, disposals and transfers are referred to the Council's Accountant (Capital & Taxation) particularly in relation to joint ventures and special purpose vehicles and the consideration of 'opt to tax' is made at the earliest opportunity.
- All sales, disposals and transfers are referred at each stage of the process to the Council's Legal Team.
- Checks are carried out to ascertain whether the property is subject to a special status such as being listed as an Asset of Community Value, consecrated land, classed as public open space or held on charitable trust.
- Planning potential for changes of use/development is fully established prior to disposal. In appropriate cases where development potential exists planning permission will be obtained prior to disposal.
- A detailed valuation is prepared and approved prior to disposal.
- Detailed terms and conditions for the disposal are prepared in advance of sale and drawn to the attention of prospective purchasers including any restrictions on use, disposal and overage provisions.
- Adequate security measures are maintained during the disposal process to ensure probity and integrity.
- Financial procedures for the receipt and opening of tenders/offers are followed in all cases.
- Instructions to Legal Services must include confirmation that the requirements of Section 123 Local Government Act 1972 have been met and be signed in accordance with the council's constitution in the name of the Strategic Director of Corporate Services, delegated to the Assistant

Director Estates and Property, and if appropriate, Operational Estate or Acquisition and Disposals Managers.

- The case officer is responsible for notifying affected services of sales, disposals and transfers for example with regard to the removal of IT equipment, utilities and insurance.
- In determining whether to dispose, whether to seek best consideration, whom to dispose to and considering the impacts of disposal the relevant decision maker will have due regard to the need to achieve the objectives set out under s149 of the Equality Act 2010 to:
 - a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5. Consultation

- 5.1 Ward Councillors are notified of all proposed land and property disposals in their Wards. If no comments are received the disposal will proceed.

Where objections to the proposal are received from Ward Councillors, the objections will be referred to the relevant Portfolio Holder who will make a decision in accordance with the decision making powers set out in the Constitution.

Ward Councillors will be consulted prior to the referral of objections to the Portfolio Holder and be given the opportunity to explain the reason for the objection. Where the disposal is a critical part of an approved corporate strategy the general presumption is that disposals will proceed unless there is very good reason not to.

- 5.2 Ward members will be consulted and/or advised of the progress of the sale at the following milestones;

- Members will be advised at the outset when a property is being considered for sale.
- Members will be advised when Estate Management or its agents submit or resubmit a planning application.
- Members will be advised when and how property is to be marketed.
- Members will be advised of the completion of sales within their wards.

- 5.3. In addition to the property specific member consultation outlined above senior Estate Management officers will offer to regularly meet ward members to discuss issues and proposals relating to land and property within their wards.
- 5.4 Parish Council's will be informed of proposals to dispose of land and property within their area.
- 5.5 Tenant's will be advised of the council's intention to sell property that they occupy once a decision has been made to proceed with the sale.

6. Disposal Of A Revenue Earning Asset

- 6.1 Where it is proposed to dispose of a revenue earning asset the Strategic Director Corporate Services and relevant service Assistant Director must be consulted to assess the revenue implications and any action necessary to offset these before a disposal is progressed.

7. Method of Sale - General Principles

- 7.1 In addition to the statutory duty imposed on the Council by S123 there is a general expectation that as a public body the council should be seen to act fairly when disposing of land and property. There is also a need to fully consider the Council's VAT position and State Aid implications of each disposal.
- 7.2 To ensure that disposals are fair and transparent and that the Council receives the best consideration that can be reasonably obtained, land and property will normally use the following methods to market land and property:
- For sale or to let;
 - Formal Tendering;
 - Informal Tendering;
 - Private Treaty and
 - Auction
- 7.3.1 Whilst the council conducts the majority of its freehold disposals via auction, proposals to sell land and property are considered on a case by case basis with the most appropriate method of sale being selected having regard to the nature of the property and market conditions.

Leasehold disposals will usually be conducted on the basis of informal tender or private treaty/offers invited but again the method of sale to be employed is considered on a case by case basis.

The method of marketing will be determined by the Operational Estate Manager or Acquisitions and Disposal Manager.

- 7.4 A limited marketing exercise may be used where land or property has already been subject to open market testing or following short listing after an initial expressions of interest exercise.
- 7.5 Where appropriate, sales may be conducted by private treaty where a marketing exercise has failed to secure a buyer.
- 7.6 Offers received in advance of auction will only be considered when the offer has been submitted via the council's auctioneer. An offer will only be accepted prior to auction where the offer is, in the professional opinion of the Acquisitions and Disposal Manager or Operational Estate Manager, significantly higher than the price that could reasonably be expected to be achieved at auction. Where an offer is accepted, purchasers will be required to enter into the auction sale contract.
- 7.7 If a property fails to sell at auction the council may consider post auction bids submitted to the council's auctioneers. Where an offer is accepted, purchasers will be required to enter into the auction sale contract.

8. Exceptions to the General Principles

- 8.1 For certain types of property open market advertising may not achieve best consideration for example sales of land where there is a 'special purchaser' for whom the land has a higher value than for anyone else such as "ransom strips" under the Stokes v Cambridge principle or small areas of land where realistically the adjoining land owner is the only potential purchaser or tenant.

In circumstances where the Assistant Director of Estates and Property determines that there is a special purchaser a sale may be negotiated direct with the special purchaser without open market advertising taking place. All exceptions will be recorded and retained as Key officer decisions.

- 8.2 Occasions arise where the Council wishes to support or encourage a specific use or development. In these instances sales will be negotiated to particular purchasers. Examples are:
- Sales to Registered Social Landlords (RSLs)
 - Sales to developers or companies for industrial/commercial development to create new employment opportunities or protect existing jobs.
 - Sales to religious/community/voluntary groups to meet a local need.
 - Sales to selected partners in specific areas. All such sales will be in accordance with the procedure outlined in the Partnership agreement. In such cases disposal may be a direct negotiated private treaty sale,

authorised by delegated powers under Article 14.20 of the Constitution or in sensitive or potentially contentious cases, by the Executive.

8.3 For direct negotiations with a particular developer, the developer will need to satisfy the Council on the following issues:

- Any wider/longer term regeneration benefits that may be derived from the proposal. For example, employment or training opportunities during construction or from the proposed end user.
- Provision of any other off site benefits or facilities.
- Potential for attraction of shoppers/visitors/users to the district's facilities.
- Capacity of the proposal for bringing other sites forward or opening up other development potential.
- Potential for the leverage of private/other public funds and grants.
- Capacity of the proposal to remove or reduce other Council financial liabilities.
- Contribution to the Council's regeneration priorities in the Sustainable Community Strategy and Economic Development Strategy.
- Developer's track record with similar developments.
- Any partnership record with other local authorities.
- The provision of detailed information and plans of the proposed development.
- The timescale for completion of the development.
- Detailed funding arrangements and confirmation that these are in place.
- Evidence of end user commitment and the opportunity for the Council to discuss that commitment directly with the end users.
- Details of the developer's financial offer for the property.
- Full details of any proposed joint venture opportunity.
- Details of any conditions precedent to which the proposal is subject.

8.4 The above information will be assessed against standard criteria: -

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

8.5 Developers will be required to enter into legally binding agreements to ensure that the development proposed and associated regeneration benefits are delivered, including where necessary restrictions on use occupation or disposal.

9. Masterplans / Area based Regeneration

9.1 The Council recognises the importance of ownership, use and occupation of assets in delivering regeneration objectives whether as part of an area regeneration programme or individual projects.

9.2 In area based regeneration initiatives and Masterplan areas where the Council wishes to work with a partner or partners to secure a common agreed goal, sales to those partners or transfers into the partnership within the area may be directly negotiated to further the aims and objectives of the Partnership or Joint Venture Agreement. The land and buildings intended to be made available in the partnership arrangement will be identified at the outset and approved by the Executive. However, the partnership document must be capable of amending this, by agreement, to account for changing circumstances identified by the detailed evolution of the delivery plans, new funding regimes and new opportunities which may arise.

9.3 Once a partner is selected, the following points need to be considered:

- The statutory basis under which the land is held by the Council must be identified.
- All proposals to acquire or dispose of land and buildings will be dealt with by Estates and Property in accordance with section 4 of this document.
- Likewise, the relevant powers under which the land is to be disposed need to be identified.
- If the land is public open space, the appropriate statutory advertising procedures need to be complied with.
- In all cases the open market value of the land or property should be established via Estates and Property. An independent valuation may be required depending upon the circumstances of each case.
- If the sale is to be at a less than 'Best Consideration', the provisions of S123 of the Local Government Act 1972 must be complied with.

10. Restrictions on use

10.1 There are times when the council wishes to restrict the use of land and property that it is selling or letting. This could be to further regeneration and economic objectives or in the interests of good estate management and community benefit.

10.2 In the case of lettings this will be dealt with by restricting the permitted use within the lease whilst restrictions on the use of freehold disposal properties will be dealt with by restrictive covenants where these are capable of being enforced or via disposal on a long leasehold basis.

11. Offers to buy from public or tenants

11.1 Where the council receives a request from a member of the public or an existing tenant of council owned property (non-residential) the Operational Estate Manager will determine whether it is in the interests of the council to dispose of the property. The decision will be made having regard to the

implications of losing rental income, the effect of the disposal on the council's retained land and property, potential operational requirement for the property. Regard will also be had to whether a greater capital receipt is likely to be obtained from sale on the open market.

12. Disposal of education land and property

12.1 The provisions of S63 of the Education Act 2012 and S77 of the School Standards and Framework Act 1998 and any subsequent amendments must be taken into account when the sale of former school buildings and land is considered.

13. Costs

13.1 The Council will normally require purchasers to contribute towards its surveyors and legal costs.

13.2 Where a sale is initiated at the request of a third party the purchaser will be required to pay the costs incurred by the council in obtaining consents or complying with statutory procedures required to facilitate the sale for example, the advertisement of public open space, obtaining approval from the Charity Commission, Highways stopping up orders, diversion of utilities.