

Appendix B

Code of practice: disposal of ~~surplus~~ property

This appendix sets out the code of practice for the disposal of ~~surplus~~ property. ~~The~~ Strategic Director of Place is required to comply with this code when ~~exercising the functions delegated in Part 3.3.5 of this constitution seeking to dispose of property (and where the Strategic Director of Place is recommending to either a Cabinet Member or Cabinet to approve the disposal of property).~~

~~This code of practice applies to freehold and leasehold disposals.~~

~~Member authority~~

~~Disposal of surplus property will be dealt with through the Cabinet or in accordance with other authorised arrangements for decisions in place at the time.~~

~~Any report requesting a decision will incorporate the views and advice of the Strategic Director of Resource and the Monitoring Officer.~~

Method of disposal

The Strategic Director of Place shall determine the method by which ~~surplus~~ property should be disposed of. This method should require the open invitation of competitive bids, unless the Cabinet has already agreed an alternative method of disposal or the Strategic Director of Place decides, in consultation with the applicable Cabinet Member that an alternative method of disposal would be appropriate. Examples of possible exceptions include:

- (a) sale to a sitting tenant
- (b) sale to adjoining owner
- (c) sale of an access which would enable a purchaser to release development value locked up in backland
- (d) sale of a part-interest in a property where amalgamation of interests could enable substantial "marriage value" to be realised
- (e) sale to a party offering other benefits to the Council, such as a housing association.

These examples are given on the basis that the Strategic Director of Place considers that negotiations with one party would produce a higher figure or other benefits than competition, and that the best interests of the Council would be served by allowing such exceptions.

1. Where land is disposed of by auction, it will be subject to a reserve price agreed between the Strategic Director of Place and the auctioneer.

Any pre-auction bid shall be accepted only upon the recommendation of the auctioneer.

2. Where land is disposed of by public tender, the Council's standing orders relating to tenders and contracts will be applied as appropriate.

- ~~3. During any negotiations being conducted in accordance with paragraph 3, any other offer received from a third party or parties before exchange of contracts shall be considered and dealt with on its merits either with a report to members or in accordance with the scheme of delegation. Any offer which, on the evidence available, is considered to be incomplete,~~

~~insubstantial or in any other way defective, mischievous or frivolous shall be rejected. Any offer which, on the evidence available, does appear to:~~

- ~~(a) offer benefits substantially in excess of those currently being negotiated, and~~
- ~~(b) be capable of substantiation in a reasonable time scale shall be the subject of further consideration in accordance with this code and the scheme of delegation. If appropriate a report of a protocol shall be made to members. The substance of the offer (which in most cases will be the monetary amount of the offer) shall then be made known to the party with whom the Council is already conducting negotiations, and that action shall be communicated to the party making the late offer.~~

Consultation with external valuer

- ~~4. At the discretion of the Strategic Director of Place, the District Valuer or other external specialist or external valuer will be consulted whenever required on important matters of principle, or valuation "practice".~~

Valuation

- 5. Terms will not be finalised without the benefit of a current valuation. Every valuation by the Strategic Director of Place shall state the date beyond which it is not to be regarded as valid without further certification by him or her.
- 6. The general presumption is that all transactions will be in accordance with section 123 of the Local Government Act 1972 and disposal will not be at the consideration less than the best that can reasonably be obtained. The General Disposal Consent 2003 provides a framework for local authorities to agree a disposal at less than best consideration in certain circumstances. This is dealt with in paragraph 7.

Negotiations

- ~~6. In concluding negotiations for a land transaction above a capital sum of £500,000, two members of staff should be present, one of whom should be the Strategic Director of Place or their representative. Within three working days of the meeting, a file note recording the discussion should be placed on the relevant file. The requirement shall not apply in respect of the ancillary terms of a proposed property transaction, where the price has already been established through competitive marketing.~~

Transactions at less than market value

- 7. Approval must be obtained from ~~or on behalf of the~~ Cabinet to all disposals ~~or lettings~~ (freehold or leasehold) which are proposed to be less than open market value, unless there is already a defined subsidy policy in place which has been agreed by ~~members~~ Full Council or Cabinet for the type of transaction proposed. When ~~members are~~ Cabinet is invited to consider the principle or details of a below market value transaction, the unrestricted value of the property shall be reported so that the level of subsidy is apparent when a decision is taken.
- 8. The council has powers derived from the Housing Act 1985 to dispose of land to Registered Social Landlords at less than open market value. Other cases would be dealt with under the terms of the ~~local~~ Local Government Act 1972: General Disposal Consent (England) 2003.

9. The General Consent 2003 allows authorities to exercise local discretion on proceeding with undervalue property disposals, providing the amount of undervalue is not more than £2 million and the local authority considers disposal is likely to contribute to the achievement of the Local Government Act 2000 objectives and will help secure the promotion or improvement of the economic, social or environmental well-being of its area. A proposed transaction at an undervalue in excess of £2 million will also require ODPM consent.

The Council must be able to substantiate that it has acted reasonably in agreeing an undervalue transaction; that there was an appropriate decision-making process and that regard has been had to general fiduciary obligations.

Decision must be robust and defensible and the monetary or benefit assessment of impacts will require detailed individual assessment in every case.

The Council's Cabinet at its meeting of 29th September 2004 agreed a decision-making process chart that should be addressed in all cases. Not all elements will be required in each case but a substantial number will feature in any assessment.

Decision-Making Process Chart for Undervalue Transactions

- Identify Strategic Policy Link — Relate to Well-Being Powers (Community Strategy/ Quality of Life Indicators/ Other Corporately adopted Plans)
- Identify Aims/ Inputs/ Outputs/ Outcomes
- Identify the benefit
- Set out the basis of assessment
- Provide sources of comparable evidence
- Can non-market benefits and impacts be evaluated? — if so, identify method of cost/ value-benefit applied
- State the monetary value arrived at or detail other assessments of worth relied upon
- Adopt assessment categories of
 - (n) Property Value
 - (o) Other Benefits capable of monetary assessment
 - (p) Benefits not capable of monetary assessment
- Where appropriate consider a comparison of benefits against the Capital Prioritisation Assessment the Council would apply to its own schemes.
- Provide Valuations — Restricted and unrestricted — (Technical Appendix requirements)
- If property has not been competitively marketed, assess financial position of organisation/ person receiving subsidy — what is financial position of purchaser,

~~is subsidy required?~~

- ~~• Is the amount of undervalue proportional to benefit anticipated?~~
 - ~~• Are outputs/ outcomes proportional to inputs?~~
 - ~~• What would be the effect of less subsidy?~~
 - ~~• Is Value for Money being achieved?~~
 - ~~• Apply the 'Do Nothing' test — What would be the effect?~~
 - ~~• How can outcomes be secured in practice to justify subsidy (Claw backs/ covenants/ grants)~~
 - ~~• Consider medium and longer term estate management considerations. Ensure the inclusion, as necessary, of additional terms that protect the Council's future property use options.~~
 - ~~• Is it possible to have a grant/ leasehold arrangement rather than an outright disposal?~~
 - ~~• Ensure Legal/ Finance review/ overview of final case data and business case~~
- ~~Obtain Member authority to transaction of~~