

JOINT Policy Template

(Joint Disposal & Acquisitions Policy)

(July 2014)

CONTROL SHEET FOR [Disposals and Acquisitions Policy]

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JOINT DISPOSALS & ACQUISITIONS POLICY

METHOD OF DISPOSAL OF SURPLUS/UNDER-USED COUNCIL OWNED PROPERTY

Introduction

- 1.1 Government advice recommends that local authorities have a document describing their strategy, policy and guidance for disposing of land.
- 1.2 This document is in accordance with Government advice and details Bolsover District Council and North East Derbyshire District Council's policies and internal guidance relating to disposals of land and property. For the purpose of this document, a disposal of land means any freehold disposal, by sale or exchange, of Council owned land or buildings and any disposal by the granting of a lease for a period greater than 7 years. Leases of 7 years or less are not covered by this document.
- 1.3 The purpose of this document is to make the Council's strategy, policies, guidance and procedures transparent and public. It is intended for use by Council officers and to inform developers and members of the public.
- 1.4 It is important that each land disposal is treated on its own merits and nothing in this document will bind the Council to a particular course of action in respect of a land disposal. Alternative methods of disposal, not specifically mentioned in this document, may be used where appropriate, subject to obtaining proper authority. The Council's actions in disposing of land are subject to statutory provisions, in particular, to the overriding duty on the Council, under section 123 of the Local Government Act 1972, to obtain the best consideration that can be reasonably obtained for the disposal of land. This duty is subject to certain exceptions that are set out in the 'Local Government Act 1972: General Disposal Consent (England) 2003'
- 1.5 This document sets out, in sequence, the procedure to be adopted in connection with the disposal of surplus/under-used property.
- 1.6 To ensure policy is correctly implemented, the Council's Asset Management Group (AMG), directed and facilitated by Property and Estates will consider and make recommendations on all Council owned property transactions prior to disposal. This may be either by making recommendations to Council Committees or recommending delivery through existing delegated powers. The group is made up of key departmental heads and appropriate Portfolio Holders.

Definition of Surplus/Under-used property

- 2.1 A site (or part of the site) is deemed to be surplus to the Council's requirements if:
- (a) it makes no contribution to the delivery of the Council's services nor generates any income, and
 - (b) it has potential for future regeneration/redevelopment purposes and/or surplus to the Councils operational requirements or an alternative site can be identified.
 - (c) an alternative site has been identified which would achieve more cost effective service delivery.
 - (d) It is not required for the development of Council Housing
- 2.2 A general fund site (or part of the site) is deemed to be under-used if either:
- (a) the income being generated from the site is below that which could be achieved from:
 - (i) an alternative use
 - (ii) disposing of the site and investing the income
 - (iii) intensifying the exiting use, or
 - (b) part of the site is vacant and is likely to remain vacant for the foreseeable future.

A HRA site (or part of the site) is deemed to be under-used if either

- (a) the income and social value being generated from the site is below that which could be achieved from:
 - (i) an alternative use
 - (ii) disposing of the site and investing the income
 - (iii) intensifying the exiting use, or
- (b) part of the site is vacant and is likely to remain vacant for the foreseeable future.

Site Identification

- 3.1 Sites for possible disposal may be identified in the following ways:
- (a) Through Local Development Framework designation
 - (b) Through Service Departments declaring specific sites as being surplus to requirements or uneconomical*
 - (c) Through continually reviewing Council owned assets to ensure the asset is facilitating service delivery or generating an appropriate income.
 - (d) Through approaches by third parties

(*where an **under-used** asset is generating an income, a Cost/Benefit analysis should be carried out, in consultation with SAMT, to establish whether it is in the Councils best interests to dispose of the site)

Site investigations

- 4.1 Once a potential site has been identified, the lead party will consult with AMG, Legal Services, and Planning Services to establish whether there are any development constraints on the site or restrictions to disposal such as designation as Public Open Space.
- 4.2 Ground investigation works, and desk studies into previous land use history, will also be carried out where appropriate.

Valuations

- 5.1 In normal circumstances, the valuation of sites will be undertaken by the Council's Senior Valuer. Where a disposal is in respect of a major or complex site, additional independent valuation advice may also be sought, from, e.g. the District Valuer or from another suitably qualified surveyor.

Method of Disposal

- 6.1 The Commercial Property and Developments Manager will recommend to AMG the most appropriate method of disposal e.g. Auction, Private Treaty etc.
- 6.2 Unless a "special purchaser" has been identified i.e. one who is prepared to pay a premium for the site (over and above market value), all potential purchasers are to be given an opportunity to tender/submit an offer, according to the method of disposal recommended.
- 6.3 Where the disposal is to be by way of a long lease, the Assistant Director of Finance & Revenues and Benefits will be consulted to assess the implications regarding VAT, Capital Controls and Treasury Management.
- 6.4 The Council will usually use one of seven means to dispose of land. Further guidance upon when it will be appropriate to use any particular means of disposal is contained in Annex 1. The means of disposal are:-
 - **Private Sale** - a sale of land negotiated with one or a small number of purchasers. The land may or may not have been marketed as available for sale. A binding legal agreement is created on 'exchange of contracts' between the Council and the purchaser.
 - **Public Auction** - a sale of land by open auction available to anyone. The sale will be publicly advertised in advance. The auctioneer creates a binding legal agreement upon the acceptance of a bid.

- **Formal Tender** - a sale of land by a process of public advertisement and submission of tenders by a given date in accordance with a strict procedure. The Council creates a binding legal agreement upon the acceptance of a tender.
- **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' to the land exchanged.
- **Informal Negotiated Tender** - a sale of land after a public advertisement that requests informal offers or bids that meet a given specification of set of objectives. The Council may then negotiate further or more detailed terms with one or more individuals submitting the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts between the authority and the chosen bidder.
- **Development Partner/Agreement** - a private sector partner who have been procured through appropriate means to jointly deliver and benefit from redevelopment/regeneration schemes.
- **Transfer to RP Partner** - where deemed appropriate HRA land at NEDDC can be transferred to its RP partner by general consent.

Marketing Strategy

- 7.1 The Commercial Property and Developments Manager will recommend a marketing strategy to AMG. All staff costs, legal costs, marketing costs, consultants costs etc. associated with any potential disposal of an asset (even where such costs do not lead to an actual disposal) will be re-charged to the cost centre where the Capital Receipt is, or would be, placed.

Timing

- 8.1 The timing of any marketing/disposals will be considered against the background of the Council's budgetary requirements, together with the current state of the property market. Before recommending that a disposal is to proceed, the following factors are to be taken into consideration:
 - Has Senior Management Team advised of an immediate need to raise capital receipts?
 - Current property market conditions
 - Potential for the site value to increase in the future
 - Regional Planning Guidance and the Local Development Framework process (or other such Planning Policy documents) - this will influence decisions on the disposal (and acquisition) of land, as well as the future use of individual sites.

Executive Approval

- 9.1 The Executive Director of Operations (in conjunction with any other relevant Assistant Director) and following presentation and consideration at AMG, will prepare a report for the next Executive unless the disposal can be dealt with under delegated authority. The report will recommend the most appropriate method for marketing and disposing of the property. If the disposal falls within existing delegations, and it is deemed appropriate **not** to refer the matter to the Executive, the relevant consultations will be carried out, as set out in the delegations.
- 9.2 Prior to the disposal of Open Space the intention needs to be advertised as appropriate to enable comments received to be considered before a decision is made.

Negotiations

- 10.1 The capital receipt from any disposal is to be maximised unless there are over-riding factors identified in the Corporate Plan or Housing Business Plan that take precedence over the receipt of capital.
- 10.2 Where Strategic Alliance Management Team consider that a site should be disposed of at a price below open market value, the matter is to be reported to the Executive (BDC) Cabinet (NEDDC) for approval, prior to the disposal. A disposal 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.
- 10.3.1 If possible a timescale for the development of any land will be agreed with the prospective purchaser. If the land is not developed in this timescale then the Council will have the opportunity to repurchase the land at the original sale price or the current market value whichever is the lower. This is to prevent purchasers 'land banking' and benefiting from any future increases in land values. This may not be possible on large regeneration schemes where significant upfront investment from the buyer is required to enable development (e.g. Planning consent, Archaeology, etc).

Instructions

- 11.1 Once a potential purchaser has been identified and all the terms of the disposal have been agreed (or earlier if appropriate), Legal Services will be instructed to prepare the relevant legal documentation.

Completion

- 12.1 Once the disposal has been completed, Legal Services will advise the Joint Exec Director of Operations, Building and Contracts Manager, Head of Housing (Bolsover HRA land only), Rykneld Homes MD (NEDDC HRA land only) relevant Members and such others as are appropriate.

METHOD OF ACQUISITION OF LAND AND PROPERTY

Introduction

- 13.1 This part of the strategy sets out, in sequence, the procedure to be adopted in connection with the acquisition of land and property.

Reasons for the acquisition of Land or Property

- 14.1 Unless there are exceptional circumstances, the Council will only acquire land or property for the following reasons:

- its contribution towards the provision of the Council's services
- economic development
- revenue income generation
- strategic acquisition for regeneration or redevelopment purposes
- To enable the building of new council housing
- For use as Council Housing

Market Research

- 15.1 Once a need to acquire property has been identified, market research will be carried out by the relevant Assistant Director, in consultation with the Building and Contracts Manager, to establish whether suitable land or property is available on the market to fulfil this need.
- 15.2 Where a number of potentially suitable properties exist in the marketplace, robust comparisons will be made to establish which is the most suitable for the Council's needs. Criteria against which such decisions will be made include: -
- price
 - condition of property
 - availability (in terms of timing)
 - nature of tenure being offered (freehold or leasehold)

- locational advantages (where a strategic acquisition is under consideration)
- return on investment (where a revenue generating asset is being considered)

Financial Appraisal

16.1 When a suitable property has been identified, a financial appraisal will be carried out to establish the financial/budgetary implications of acquiring the property at the quoted asking price. The advice of the Assistant Director of Finance & Revenues and Benefits will be sought regarding current rates of interest on capital invested, to enable the opportunity cost of the acquisition to be fully assessed. The financial appraisal will take into account the following matters:

- the capital cost of acquisition
- any revenue, or potential revenue, generated from the property, both short and long term
- availability of external funding sources
- possibility of joint ventures
- the cost, in Asset Management terms, of owning the property, including:-
 - immediate maintenance/refurbishment requirements
 - demolition costs, if appropriate
 - ongoing maintenance/life cycle costings
 - national non-domestic rates
 - insurance
- the overall effect of the expenditure on the Council's budgetary position.
- State Aid and Best Value considerations should also be addressed.

Independent Valuation

17.1 Valuation advice will be provided by the Council's Valuer, or in cases of a complex nature either from the District Valuer or another suitably qualified surveyor. Where such advice suggests that the true Market Value of the property is below the asking price, (or where the amount of expenditure is likely to exceed that set aside in the Medium Term Financial Plan for strategic land acquisition), and there are overriding factors which justify the purchase, a report shall be prepared for the Executive by the relevant Assistant Director, in consultation with the Executive Director of Operations, seeking approval to continue with the proposed acquisition.

17.2 Where the acquisition is to be by way of a long lease, the Assistant Director of Finance & Revenues and will be specifically consulted to assess the implications regarding VAT, Capital Controls and Treasury Management.

Negotiation

- 18.1 Once the principle of an acquisition has been agreed, negotiations will be commenced with the vendor by the Council's Valuer in consultation with the relevant Assistant Director. Where the sale is by auction or tender, bids will be formulated as appropriate

Executive/Cabinet Approval

- 19.1 Any offer to the vendor will be made "*subject to contract, Executive/Cabinet approval and, where appropriate, survey*" and a report will be prepared for the next Executive/Cabinet, by the relevant Assistant Director in consultation with the Executive Director of Operations, recommending acceptance of the acquisition.
- 19.2 Where circumstances dictate that an urgent decision is required (and where resources have not been set aside and the principle of the acquisition has not already been agreed) the Leader of the Council and the Joint Chief Executive will be consulted as to whether the use of the Chief Executive's delegated powers is possible/appropriate after taking advice on the financial and any legal implications arising. Any decisions made in accordance with this condition will be 'Key Decisions' and must be reported in accordance with the relevant procedures.

Instructions

- 20.1 Once Executive/Cabinet approval has been received, and any surveys satisfactorily carried out (or earlier if appropriate), Legal Services will be instructed to complete the documentation associated with the acquisition.

Completion

- 21.1 Once the disposal has been completed, Legal Services will advise the instructing officer who will in turn advise the Executive Director of Operations, Building and Contracts Manager, Assistant Director of Finance & Revenues and, relevant Members and such others as are appropriate.

DESCRIPTION OF LAND DISPOSALS

DISPOSAL BY PRIVATE SALE

- 1.1 A disposal by Private Sale may take place after a period during which the land is put on the market including advertising and generally making known that it is available for sale. In this case, the Council will be able to consider the highest bid as representing the best consideration that can be reasonably obtained.
- 1.2 If land is to be sold by Private Sale without being marketed, then the reasons justifying a private sale must be recorded in writing. In some circumstances the Council may seek an additional independent valuation to verify that 'best consideration' is being obtained.

A private sale without the land being marketed may be justified where:

- (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 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.
 - (c) the Council's land is part of a larger area of land that is proposed for development, redevelopment or regeneration where 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.
- 1.3 A legally binding agreement will not be reached until either contracts for the lease or sale of land are exchanged or a development agreement is signed.

DISPOSAL BY PUBLIC AUCTION

- 2.1 Sale by public auction may be appropriate where there is no obvious potential purchaser and where speed and the best price can be obtained by auction.
- 2.2 The authority from the Council's Executive must record in writing
 - (a) the reasons justifying a sale by public auction;
 - (b) delegated powers to agree the reserve price, if any, for the auction;
 - (c) the authority for a Council officer to attend the auction and to act on behalf of the Council on the sale.
- 2.3 The contract for sale or lease must be ready for exchange at the auction.

- 2.4 A binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed on behalf of the Council and exchanged with the purchaser.

DISPOSAL BY FORMAL TENDER

NB: Disposal by this method is not straightforward and careful consideration as to why it is necessary to use this method should be recorded. This should only be considered if no other disposal options are available.

- 3.1 A sale of land by formal tender may be appropriate where the land ownership is not complex and the Council is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance. For example; the disposal of land to a developer with an obligation to build industrial units for lease, or the conservation of a listed building. In such instances, a process of formal tender may be appropriate in gaining best consideration.
- 3.2 Formal tenders will not be appropriate where the land ownership position is complex or the development proposals for the land are insufficiently identified or otherwise incapable of detailed specification at the pre-tender stage.
- 3.3 The reasons justifying a sale by formal tender must be recorded in the Executive report. The Council's rules for tender offers contained in the Contract Procedure Rules will be followed.
- 3.4 The nature of the formal tender process is that a legally binding relationship is formed when the Council accepts a tender in writing by exchanging contracts. It is essential therefore, that every aspect of the disposal is specified in the tender documents. The tender documents should include a contract for sale or lease which should be completed with the tenderer's details, the tender price and be signed by the tenderer. It will be released unconditionally to the Council on submission of the tender. If the tender is acceptable the Council will complete and sign contract its contract, date both parts and send its signed contract to the buyer, at which point a binding contract will be created
- 3.5 Sale of land by formal tender will require a detailed specification to be drawn up. This will specify the land to be sold, any requirements to be met by the tenderer and any obligations that must be met.
- 3.6 The Council will place a public advertisement seeking expressions of interest and publicise the selection criteria by which it will assess tenders. Those individuals selected will then be invited to submit their tender bids.
- 3.7 Legal Services will always be consulted before tender the Council seeks to dispose of land by formal tender

DISPOSAL BY EXCHANGE OF LAND

- 4.1 Disposal by exchange of land will be appropriate when it is advantageous to the Council and other parties to exchange land in their ownerships and will achieve best consideration for the Authority.

- 4.2 A binding legal agreement will be created when a contract is exchanged for the exchange.
- 4.3 The exchange will usually be equal in value. However, an inequality in land value may be compensated for by other means where appropriate. For example, where the Council in exchange for a larger piece of land receives a smaller piece of land but the recipient of the larger plot agrees to build industrial units or houses on the Council's smaller area to equalise the consideration. In such circumstances the Council may seek an independent valuation to verify that 'best consideration' will be obtained.

DISPOSAL BY INFORMAL/NEGOTIATED TENDER

- 5.1 A disposal by informal/negotiated tender differs from a formal tender in that neither the Council nor the successful bidder is legal obliged to enter into a contract for the disposal of the land. The informal/negotiated tender process allows the Council to identify one preferred bidder with whom it may then negotiate further detailed terms or proposals for the development of the land concerned.
- 5.2 The Council uses a public advertisement to request informal development proposals for land that meet a given specification. This process is particularly useful for large or complex development or regeneration sites requiring development and where the proposals may need to be developed in co-operation with the preferred bidder to meet the Council's corporate objectives and to achieve the best consideration that can be reasonably obtained.
- 5.3 The Council's rules for tender offers contained in the Contract Procedure Rules will be followed in respect of the receipt of tenders. Any exceptions to that process must be authorised and recorded in accordance with these Rules.
- 5.4 A binding legal agreement is not created until the exchange of contracts for sale or lease or the signing of a development agreement.

Development Partner/Agreement

A private sector partner who have been procured through appropriate means to jointly deliver and benefit from redevelopment/regeneration schemes. Examples of such Public/Private partnerships can be found in the RICS/Local Partnerships Paper 'Local Asset Backed Vehicles - A success story or unproven concept?' which can be found on the link below:

<http://www.localpartnerships.org.uk/images/PDFs/2012/LocalAssetBackedVehicles.pdf>

EXCEPTIONS

- 6.1 Other methods of disposal may be used where circumstances warrant them.

LATE BIDS AND OTHER CONSIDERATIONS

- 7.1 Guidance from the Local Government Ombudsman recognises the problem caused to local authorities by 'late bids'. The Guidance states that difficulties are less

likely if Councils ensure that exchange of contracts take place as quickly as possible after the decision to sell (or lease) is made. It suggests that local authorities should be allowed to sell at an agreed price within a reasonable period of reaching a 'subject to contract' agreement.

7.2 In the context of the methods of land disposal dealt with in this document, a late bid may occur:-

- (a) in the case of a private sale, after a sale or lease has been agreed, but before exchange of contracts
- (b) in the case of a public auction, after the auction has been closed, but the reserved price not having been met.
- (c) in the case of a formal tender, after the closing date for tenders, but before selection of the successful tender.
- (d) in the case of an informal or negotiated tender, after receipt of bids, but before exchange of contracts or signing of a development agreement.
- (e) in the case of disposal by exchange after, a sale or lease has been agreed, but before exchange of contracts.

7.3 Each 'late bid' 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 obtain (subject to any exceptions in the General Disposal Consent). The Council's approach to late bids is as follows:

- (a) The Council discourages the submission of late bids in all cases when it is disposing of land. It will attempt to minimise problems by aiming for early exchange of contracts.
- (b) Late bids cannot be considered where land is being disposed of by public auction after a successful bid has been accepted.
- (c) Except as provided herein, until the Council has entered a legally binding contract or agreement with another person it will consider late bids unless there are good commercial reasons for not doing so. This should be explained to any purchaser when a disposal of land by private sale or negotiated/informal tender is agreed.
- (d) Consideration of a late bid does not mean that it will necessarily be accepted even if it is the 'highest' bid. The Council will take into account the likelihood of the late bid proceeding to completion in a timely manner and the possibility of late bids used as a spoiling or delaying tactic.
- (e) Subject to the above, the Council may, in appropriate circumstances, as both the late bidder and the person to whom the land was previously to have been sold, invite both parties to submit their last and final bids in a sealed envelope by a set deadline.

- (f) A decision on whether to accept a late bid for a private sale, informal tender or by exchange are to be made either by the Executive or delegated powers.
- 7.4 A last minute bid may be rejected for sound commercial reasons. For example, if there is no real certainty of it leading speedily to a contract or is suspected as a spoiling bid.
- 7.5 The Council cannot be concerned with the issue of “gazumping” - the overriding duty, with certain exceptions as mentioned in the General Disposal Consent, is to obtain best consideration.
- 7.6 In considering what amounts to ‘monetary value’ in terms of best consideration to be obtained, the creation of jobs or desirable social outcomes, will be considered by the Council as part of its general powers of wellbeing under the Local Government Act 2000

GENERAL DISPOSAL CONSENT

- 8.1 The General Disposal Consent makes provision for the Council to dispose of land at less than full market value, known as an ‘under-value’. Specified circumstances must apply as follows:-
 - (a) The Council considers that the purpose for which the land is to be disposed of is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the whole or part of its area, or any person resident or present in its area.
 - (b) The difference between the unrestricted or market value of the land to be disposed of and the consideration for the disposal does not exceed £2 million.

For example; land may be sold at an under-value for only affordable housing rather than all residential types, as long as the difference between the consideration obtained for development for affordable housing and the land’s unrestricted value for all residential types, is less than £2 million.

- 8.2 The Council must still comply with its duty to obtain best consideration for the restricted value. So, using the above example, the Council must ensure that it achieves the best consideration that may be reasonably obtained for land restricted to development for only affordable housing.
- 8.3 The Council must also comply with normal and prudent commercial practices including obtaining the view of a professionally qualified valuer as to the likely amount of any under-value.

Land Disposal Approach - One to One Sales e.g garden land.

1. Approach from interested party.
2. Send holding reply.
3. Carry out consultation exercise with other departments.
4. Respond to applicant.
5. If sale possible send heads of terms on without prejudice and subject to contract basis. Applicant to confirm acceptance of terms in writing.
6. Consult local members to ensure they have no objections
7. Report to Executive for approval outlining terms provisionally agreed or if below £10,000 report to SAMT under delegated powers.
8. Notify applicant of Executive decision and request details of Solicitor.
9. Instruct Legal.
10. Prior to completion peg out site if necessary.
11. Complete sale and notify the Finance Department and other Departments within the Council and amend the Terrier records.

Land Disposal Approach - Open Market Sales e.g Building Plots

1. Site for disposal identified either internally or from enquiry from member of public.
2. If from member of public advised that the Council cannot deal in isolation and the site will have to be marketed.
3. Through AMG and other relevant parties carry out consultation to see if the site can be sold.
4. If yes value site and prepare for sale details. AMG should consider the benefits of raising the value through obtaining outline planning permission, demolition, etc.
5. Advertise in appropriate manner.
6. Receive offers.
7. Advise successful bidder.
8. Consult local members to ensure they have no objections to the sale.
9. Report to Executive.
10. Advise bidder of outcome of Executive meeting and get details of Solicitors if appropriate. Bidder to be advised at this stage that Council has a duty to consider any other offers it receives prior to exchange of contract.
11. Instruct Legal.
12. Prior to completion set out site if necessary.
13. Complete sale and notify the Finance Department and other Departments within the Council and amend the Terrier records.