

Acquisition and Disposal Policy for Land and Property – Guidance Notes

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1.0 Introduction

- 1.1 The purpose of the Council's Acquisition and Disposal policy is to set out the principles and rules by which the Council will acquire and disposal of land to inform officers, Councillors and also other interested parties.
- 1.2 It is the over-riding presumption of the Council that land and buildings are not for sale unless there is a clear need or desire or business case to do so.
- 1.3 Care should be taken not to dispose of parcels of land that are strategically placed in order to ensure that the Council can effect a level of control over developments that are otherwise open to normal market forces.
- 1.4 Procedures for the acquisition and disposal of land and buildings should be transparent and consistent.
- 1.5 Land is a finite resource and a corporately owned asset. Land and buildings together should be managed and used wisely to achieve the Council's aims and objectives as defined in the Corporate Plan and other medium to long term strategy documents.
- 1.6 This policy document should be read in conjunction with the Council's Financial Regulations and any acquisition should comply with the requirements of the 2015 Public Contract Regulations. Contracts over a value of (currently) EUR 209,000 will also need to comply with specified EU Directives. Any proposal for an acquisition or disposal should come before the Finance Strategy & Management (FSM) committee at the earliest opportunity for approval by Full Council, or at a Special Full Council meeting if time-sensitive.
- 1.7 Legal advice should be sought for all property (land and buildings) transactions – the solicitor appointed should have an up to date Anti Money Laundering Policy and be registered with the Law Society.
- 1.8 Audit trails of all transactions will need to be maintained and accessible by Internal/External Audit to verify actions/values and how the authority made the decision. Any appointment of a third party consultant must reserve the right of access to their records in relation to the transaction. This will need to be dealt with by way of appropriate contract conditions.

2.0 Acquisition of land and property

2.1 Options for acquisition of land and property.

2.1.1 The Council can choose to acquire property in any of the following forms:

- Freehold
- Leasehold (more than 7 years)
- Short tenancy (less than 7 years)

2.1.2 The reasons for the Council to acquire land or property would be:

- Service delivery
- Investment
- Strategic acquisition for future development in line with Council priorities and objectives

2.1.3 Prior to the purchase of any site a full option appraisal, including whole life costing, should be carried out which would involve appraisal of all the options for delivery of the final objective. Consideration should be given to all other Council owned property and its suitability prior to any acquisition. A full report prepared by the Town Clerk or RFO should be brought to the FSM Committee to be ratified at Full Council prior to the acquisition being progressed any further, other than as specified at 2.1.5 below.

2.1.4 All option appraisals should take into account the on-going cost of ownership of the property over its life time and ensure that any decision to acquire land is informed by both the capital and revenue implications of ownership and the risks associated.

2.1.5 Where a purchase is time sensitive the Town Clerk or Responsible Financial Officer (RFO) may register an interest in the acquisition of specific land or buildings but further progress would require approval at FSM Committee and Full Council approval as specified at 2.1.3 above.

2.1.6 Advice on whether a leasehold or short tenancy should be included on the Balance Sheet should be sought by the Town Clerk or RFO.

2.1.7 VAT implications must be considered as part of the appraisal process prior to any decisions being made.

2.2 Acquisition of land or property for service delivery.

2.2.1 Land or property may be acquired for the purpose of service delivery subject to the following criteria:

- i. An option appraisal has been carried and reported to the FSM Committee, the result of which identifies the requirement for the land or property for service delivery.
- ii. The on-going revenue costs are contained within an approved budget which has been confirmed as appropriate by the FSM Committee.

2.2.2 The Council should take a medium to long term view when planning delivery of their services and will need to identify any requirement to acquire land and property or any opportunities to dispose of surplus assets in order that these changes can be incorporated in the Council's financial plan.

2.3 Acquisition of land or property for investment purposes.

2.3.1 Land or property may be acquired for the purpose of investment subject to the following criteria:

- i. Net return of 5%+ of the cost or market value.
- ii. Minimal tenant risk/strong covenants.
- iii. Modern properties in generally good condition on full repairing and insuring leases.
- iv. Location of property - prime location within the boundaries of Henley.
- v. Single let or multi let, but preference away from management intensive properties.
- vi. The on-going revenue costs are contained within an approved budget which has been confirmed as appropriate by the FSM Committee.

2.4 Acquisition of land for strategic acquisition for future development in line with Council priorities and objectives.

2.4.1 Land or property may be acquired for the purpose of future strategic development in line with Council priorities and objectives and taking account of the Corporate Plan subject to the following criteria:

- i. An option appraisal has been carried and reported to FSM Committee, the result of which identifies the land as suitable for current or future strategic development in line with Council priorities and objectives and the Council's Corporate Plan.
- ii. The on-going revenue costs are identified as part of the review and contained within an approved budget which has been confirmed as appropriate by the FSM Committee.

2.5 Financial and other criteria for acquisitions

2.5.1 The Council needs to take a strategic approach to land and property acquisitions. The requirement to invest in land and property for any of the purposes identified in 2.2 to 2.4 should be identified as part of the Council's procedures for developing its Corporate Plan or any other medium term financial strategy document.

3.0 Disposal of land and property

3.1 Definition of surplus asset for disposal

3.1.1 Land and property owned by the Council normally has a use or function within the Council's remit, but sometimes assets may not present an economic case for retention. Before considering whether an asset is surplus to requirements, due consideration should be given to other uses such as plots of land that are strategically placed in order to ensure that the Council can effect a level of control over developments that are otherwise open to normal market force. The Council's presumption is that land and property is not for sale unless there is a clear need or desire to do so.

3.1.2 The FSM Committee should however regularly review the Council's asset list for sufficiency, suitability, condition and cost or retention.

A site will only be determined as surplus if it meets all of the following criteria:

- i. It makes no contribution to the delivery of the Council's services and is unlikely to be required for service delivery in the future.
- ii. It is no longer appropriate for service provision.
- iii. It has no potential for future strategic or regeneration/ redevelopment purposes (including affordable housing)
- iv. The net income generated from the site is below that which could be achieved from disposing of the site and investing the capital receipt/ proceeds.
- v. The land or property is not adjacent to a larger area of land or property in the ownership of the Council.
- vi. The land or property does not have social or environmental benefits as amenity land or open/recreational space.

3.2 Options for disposal of land and property

3.2.1 Disposal under the Local Government Act 1972 deals with all types of disposal, freehold, leasehold and short tenancy agreements. The leasehold term should be appropriate for each asset as determined by Councillors on a case by case basis.

3.2.2 The disposal of the Councils land and property could therefore be progressed in a number of ways and does not necessarily have to result in a freehold sale. The following options are available:

- i. Freehold disposal - the sale of the property with or without future covenants to restrict or protect future use.
- ii. Permanent grant of rights over land – i.e. easement in fee simple.
- iii. Leasehold disposal – leasehold interest can be agreed for any time period. A leasehold interest of 7 or more years must be registered as an interest in land with the Land Registry. All leasehold disposals will be agreed outside the Landlord and Tenant Act 1954 to exclude business protection, unless the property is categorised as an investment property where terms will be agreed based on advice from an Independent Valuer to seek best consideration for the lease.
- iv. Non permanent grant of rights over land – i.e. access licence, way leave etc.
- v. Short tenancy – tenancy for a term of less than 7 years or the assignment of a term which at the date of the assignment has not more than 7 years to run. All short tenancy

disposals will be agreed outside the Landlord and Tenant Act 1954 to exclude business protection.

3.3 Determination of the method of disposal.

3.3.1 Except where certain criteria apply, open market disposal will be the preferred method of disposal. Disposals by private treaty should not normally be undertaken in the interests of openness and accountability, however it may be appropriate for small plots valued independently at under £20,000 where the plot forms part of an otherwise privately owned garden. To use a private treaty would require Full Council approval, listing the reasons.

3.3.2 The generally accepted methods of disposal are:

- i. Open Market disposal
- ii. Joint Development

3.3.3 The method for the disposal of assets will be assessed and determined on a case-by-case basis by reviewing all of the options and completing an option appraisal.

3.3.4 All issues relating to the land or property, including social, environmental and economic benefit and legal issues and agreements, will need to be taken into account when determining the method of disposal.

3.3.5 The FSM Committee should appoint a solicitor and external surveyors and valuers, where necessary, on the type and method of disposal.

3.3.6 In principle the Council will choose the method of disposal which provides best consideration. This may be more than just financial consideration and can include social, environmental and economic considerations, and will be the method which best secures the desired objectives/outcomes for the land and/or property.

3.4 Open Market Disposal

3.4.1 For freehold disposal and leasehold interests over 7 years the properties will be advertised, bids invited in the form of sealed bids by an agreed date or through open auction.

3.4.2 Whenever possible the Council will advertise for the disposal. This will be by way of an advert placed in an appropriate media and on the Councils website. Where appropriate recommendations will be sought on appropriate terms, including rent, from an independent agents/ Valuer and where necessary will be appointed to make recommendations on which they consider to be the best consideration taking into account both financial and non-financial benefits.

3.4.3 When appropriate independent agents will be appointed to manage the advertisement and the disposal of the land or property and report to the Council the value of the bids received and recommend which they consider to be the best consideration taking into account both financial and non-financial benefits.

3.4.4 Short tenancies of less than 7 years are considered by the legal group which reports to the FSM Committee each time a lease ends.

3.4.5 All proposed tenants should be subject to a financial health check carried out by Town Clerk or RFO.

3.5 Joint development

3.5.1 Where a redevelopment proposal includes Council land or property and adjoining land, the Council may choose to pursue a joint development with the adjoining landowner and/ or Developer or Registered Social Landlord (RSLs).

3.5.2 The details of a joint development arrangement are likely to differ from scheme to scheme but will broadly involve sharing the cost, risk and return from the project.

3.5.3 The benefits and risks of pursuing this method of disposal would require detailed assessment as part of the appraisal for the development. This is likely to be a viable option for large redevelopment projects only.

3.5.4 This form of development may result in EU procurement legislation becoming applicable. Any joint development proposal will require independent legal advice.

3.5.5 Joint development proposals to be approved by Full Council only.

3.6 Obtaining best consideration and disposal at an undervalue.

3.6.1 The Council should seek, for all disposals, to achieve the best financial consideration available for the type of property and the agreed terms.

3.6.2 However where appropriate the Council can consider non-financial benefits as part of the consideration for a disposal.

3.6.3 Land should not be disposed of at an undervalue unless in accordance with the guidelines set out in Circular 06/03 Local Government Act 1972: General Disposal Consent (England) 2003. To do otherwise would require consent from the Secretary of State and may constitute State Aid.

3.6.4 Valuations for the land or property should be carried out by an independent valuer appointed by the Council and the valuation must be carried out in accordance with the Local Government Act 1972: General Disposal Consent (England) 2003. This requires valuations of the restricted sale value (allowing for all the conditions which the Council has placed on the sale and including non-financial benefits) and an unrestricted sale value.

3.7 Financial criteria for disposals

3.7.1 An option appraisal should be carried out which assesses the capital and revenue implications of each option, includes the impact of the current economic conditions and the VAT implications.

3.7.2 Valuations should be obtained for all viable options, provided by an independent valuer.

3.7.3 Once sites are approved as being suitable for disposal and a programme for disposal has been agreed this should be included on a disposal plan which is then used to inform the medium term financial plan. However until exchange/completion of contracts has taken place, or the lease has been completed, there will always be a risk that the disposal will not take place in the time periods programmed.

3.8 Community Asset Transfer

3.8.1 The purpose of community asset transfer is to enable the transfer of under-used land and buildings from the public sector to community ownership and management - helping organisations to develop those assets and deliver long-term social, economic and environmental benefits which may not otherwise be achieved.

3.8.2 The Council will consider any request for an asset transfer to a Community organisation where the organisation can provide an adequate business case and where the transfer would meet the Council's priorities and objectives.

3.8.3 The Council will seek best consideration for the transfer unless social, environmental or economic benefits are provided.

3.8.4 The Council may, where appropriate, agree covenants or overage clauses to deal with additional development.

Policy recommended for approval at FSM Committee 24 January 2017.

Approved at Full Council 14 February 2017.

Reviewed by RFO 3 January 2018, reported no amendments required to FSM Committee 23 Jan 2018.

Appendix

Main Statute Law relating to Acquisitions

The Local Government Act 1972 section 124 empowers a town or parish council to acquire by agreement any land inside or outside its area for the purposes of:

- (a) Any of their functions under this or any other public general Act, or
- (b) for the benefit, improvement or development of its area.

The Act also allows Compulsory Purchase of land where it is required to carry out a function which Parliament has decided is in the public interest.

Local Government Act 2003 section 12 gives local authorities' power to invest. It provides that a local authority may invest:

- (a) for any purpose relevant to its functions under any enactment, or
- (b) for the purposes of the prudent management of its financial affairs.

Main Statute Law relating to Disposal

The Local Government Act 1972 section 126 gives the town council the power to dispose of land and property. It states that a council may appropriate land for any purpose approved by the Secretary of State.

Property Misdescriptions Act 1991 and The Property Misdescriptions (Specified Matters) Order 1992.

This Act makes it an offence for estate agents or property developers to make false or misleading statements in the course of their business about a number of property related matters (including, amongst other things: the location or address of the property; its aspect; accommodation; measurements and sizes; physical or structural characteristics; availability of services; proximity of services; etc.).

Whilst compliance with this Act will primarily be the concern of the selling agent appointed by the Council, the practical effect of this is that any information supplied by the Council must be accurate and must not be misleading. Furthermore, all reasonable steps should be taken to check the accuracy of information before it is disclosed.

Reports by the Audit Commission 1980 and the Commission for Local Administration 1995

These reports highlight the various pressures that can influence Councils, their Councillors and officers in dealing with land, and set out guidelines to encourage best practice including transparency and consistency. The provisions in the guidelines are incorporated into this policy document.