

LAND AND PROPERTY DISPOSAL PROCEDURE RULES

1. INTRODUCTION

Land and Property dealings by Local Authorities attract wide public interest. Suspicions are easily aroused and are fostered when procedures used are not clearly defined or transactions are not supported by documented evidence. The Council, therefore, needs to have a clear code of practice underpinned by procedural guidelines which are adhered to by both members and officers when dealing with such matters.

2. SCOPE

- 2.1 These Procedure Rules apply to the disposal, by way of sale or lease, of interests in land and property including fixtures and fittings etc., incidental thereto which has been agreed by the relevant Portfolio Holder and the Corporate Assets Group as surplus to operational requirements. The power for the Council to sell and the conditions which attach to the sale may be governed by the legislation under which the land or property was acquired. These Procedure rules relate to Land or Property which the Council is in a position to sell or lease under Section 123 of the Local Government Act 1972.
- 2.2 All dealings with land and property will be conducted in accordance with the Property Management Procedures (PMP's) which comprise the detailed procedures to be followed by officers in every case.
- 2.3 Disposals of items of furniture, goods, vehicles, plant and equipment which are not incidental to any interest in land or property and are deemed surplus to the requirements of the Council, are exempt from this procedure as these transactions are covered by the Procedure for Disposals as approved by Council.

2.4 Where these Procedure Rules make reference to a specific Portfolio Holder, Group, Department or Officer these may change from time to time and should be taken as that which has most recently been approved by the Council for undertaking the responsibilities identified.

3. **COUNCIL POLICY/OBJECTIVES**

Whenever an interest in land or property is to be disposed of, the following shall apply:-

- (a) the disposal should maximise the benefit to the Council in accordance with Section 123(2) of the Local Government Act 1972 which states that with the exception of a disposal by way of a short tenancy (the grant or assignment of a lease of a period of seven years or less) :-

A Council shall not dispose of land for a consideration less than the best that can reasonably be obtained without the permission of the Secretary of State.

Whilst disposals by way of a short tenancy (the grant or assignment of a lease of a period of seven years or less) are excepted from the Act such disposals will be conducted as if they were not excepted from the Act. If it is proposed that any such disposals are conducted at an undervalue the reasons for this will be included in a report to be considered by Cabinet or under the Scheme of Delegation.

- (b) The General Disposal Consent (England) 2003 recognises that there may be certain specified circumstances where an authority considers it appropriate to dispose of land at an undervalue and gives local authorities autonomy to carry out their statutory duties and functions and to fulfil such other objectives as they consider to be necessary or desirable. When disposing of land at an undervalue authorities are reminded that they need to be aware of the need to fulfil their fiduciary duty in a way which is accountable to local people. The specified circumstances in the Consent are:

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).

If a disposal is to be conducted within the terms of the Consent then a report detailing the reasons and prepared in accordance with the Consent will be considered by Cabinet or under the Scheme of Delegation.

- (c) Subject to (a) above, the disposal should be in accordance with other relevant policies of the Council;
- (d) The interests of the Council and its duties to the local community should be considered at all times;
- (e) The method of disposal must be legal, fair and equitable and the records maintained to support the disposal decision should provide clear evidence of that.

4. COMPLIANCE WITH PROCEDURE RULES

- 4.1 No exception from Procedure Rules shall be made otherwise than by the direction of the Cabinet.
- 4.2 Where any person has any doubt about the interpretation or application of these Procedure Rules they should seek the advice of the Monitoring Officer.
- 4.3 Any known contravention of these Procedure Rules shall be the subject of a special report to Cabinet by the Executive Director, Place Services

5. **LEGISLATION/EXTERNAL CONTROLS.**

Disposals will be in accordance with prevailing legislation and/or Government Department directives. Wherever such legislation or directives appear to conflict with Council procedure, the requirements of the legislation or directives will be applied.

Examples of legislation which should be noted are:

Misrepresentation Act 1967

Localism Act 2011

Estate Agents Act 1979 (if the Council acts as an agent)

Property Misdescriptions Act 1991

Officers employed in a professional capacity will comply with the professional standards and regulations of their professional body and will undertake the disposal in accordance with all statutory consents that may be required in each case.

6. **METHODS OF DISPOSAL**

6.1 Unless otherwise agreed by the or under the Scheme of Delegation, disposal shall be by one of the four principal methods of selling or leasing land and property which are:-

(i) Private Treaty (to include Option Agreements)

(ii) Public Auction

(iii) Formal Tender

(iv) Invitation of (sealed) offers

6.2 Depending on the circumstances of a particular disposal, any one of the above may be suitable. It is, however, expected that (iii) and (iv) will be preferred for disposals of an estimated value which makes them subject to approval by Cabinet or by way of a Delegated Executive Decision.

6.3 The method used in each case should, however, be the most appropriate in the circumstances and the reasons for using it will be demonstrated and justified in a report to be approved under the Council's Scheme of Delegation prior to the commencement of any disposal. A detailed procedure for conducting sales by each

method is contained in the procedural document entitled Selection of Disposal Method (PMP1).

6.4 A brief description of each disposal method is given below:-

6.4.1 Private Treaty

(i) This is the most common and simplest method and is widely used for the sale of properties in the private sector where a sale value is reasonably easy to predict.

As such it is the method best known to the general public.

(ii) The major disadvantage is that the proceedings cannot always overcome suspicions or allegations of unfair practice. It should, therefore, be used with caution and consideration by the Executive Director, Place Services should be given to obtaining a valuation from an appropriately qualified independent valuer to support the financial terms of any transaction dependent upon the individual circumstances of each case.

(iii) It is not an appropriate method for the disposal of development land or property unless the particular circumstances are such that it is in the Council's financial interests to deal with a single purchaser who by virtue of their position would be a special purchaser and therefore would be prepared to pay an enhanced value e.g. ownership of land adjoining, a ransom situation etc.

(iv) Except in unusual circumstances an appropriate asking price will be specified and the sale advertised.

6.4.2 Public Auction

(i) An auction may bring about a quick conclusion to a sale where there is likely to be keen interest from a wide market of cash buyers or where the property is unusual but is likely to have a ready market. It is also a method to be considered where it is in the Council's interests to conclude an early sale for example where a building may deteriorate if left vacant for the longer period it often takes to conclude

a sale by another method. The successful bidder signs a binding contract to acquire the property at the sale with an agreed completion date and pays a deposit.

(ii) As auctions are conducted in public they may overcome potential suspicions or accusations of unfair practice. A reputable Auctioneer should be appointed (subject to the Council's Contracts Procedure Rules) with a reserve price, set by one of the Council's Valuer's and approved under the Scheme of Delegation, confirmed in writing to the Auctioneer.

(iii) Public Auction is unlikely to be appropriate for the sale of development land or property as it does not readily allow the flexibility to accept offers on a conditional basis subject to clarification of issues such as ground conditions, contamination and planning consent. Particular difficulties also exist in relation to the sale of land held on charitable trust.

6.4.3 Formal Tender

(i) Under a formal tender conditions of sale and legal documentation are prepared in advance and sealed offers are sought on the basis that acceptance by the Council will form a binding contract. In order to limit the conditionality of bids and aid comparison a comprehensive package of information is forwarded to each bidder which may include an outline planning consent, a ground condition report, a site investigation report etc. The assembly of such information is time consuming and costly and this can lead to abortive costs if little or no interest arises. It does, however, minimise the risk of, or accusations of, impropriety.

(ii) It is a method appropriate for disposals in the open market, or when using Pre-determined shortlists of potential tenderers, particularly for development land and property with restricted use, for example where sites have been cleared and planning consent for a particular use is available.

6.4.4 Invitations to submit sealed offers or Informal Tender

(i) This method is similar to formal tender in that sealed offers are invited however the acceptance of an offer does not form a binding contract. It is relatively

simple as less detailed information is required at the outset and therefore consumes less officer time and monetary outlay than formal tendering. It also allows some flexibility through post offer negotiations but needs to be kept under control by the imposition of time limits.

(ii) It is appropriate for disposals in the open market, or when inviting offers from a pre-determined shortlist of potential bidders, particularly for development land and property where several uses might be possible and negotiation would be required to achieve the best scheme from the Council's perspective.

7. DISPOSAL PARTICULARS

7.3 Details of what is to be included within the particulars for each method of disposal and the process for obtaining approval thereto are contained in the PMP Document entitled – PMP1 (Selection of a Disposal Method)

8. ADVERTISING

8.1 Unless prior approval under Procedure Rule 6.3 to deal with a special purchaser has been obtained then all disposals will be advertised.

8.2 Advertising will be of sufficient intensity and direction to effectively canvass potential buyers. An outline of advertising proposals and a cost ceiling should be established on a scale in keeping with the estimated value of the land or property for disposal.

8.3 The advertising proposals will be included within the report referred to at 6.3 and will provide for a minimum of fourteen days' notice of any specified closing date for offers with appropriately longer notice periods for more complex and higher value land or properties. The advertising media will be appropriate and cost effective in order to fully expose the property to the intended market.

8.4 Where appropriate, consideration will be given to advertising a number of similar disposals at the same time with a view to minimising costs.

9. PRE-TENDER SHORTLISTING OF APPLICANTS

- 9.1 In some circumstances (apart from auction) it may be appropriate to use a shortlist of applicants. The shortlist may be formed after advertising for expressions of interest in a particular disposal or where it is known that there are a number of special purchasers.
- 9.2 Wherever a shortlist is proposed to be used the reasons for using a shortlist and the basis for identifying and shortlisting the applicants will be specified in the report referred to at 6.3.
- 9.3 When a shortlist is used each applicant will be required to provide evidence of their financial standing, references and details of their experience of similar projects before they are accepted onto the shortlist. The shortlist must be approved under the Scheme of Delegation prior to offers being invited.

10. INVITATION/RECEIPT OF TENDERS AND SEALED OFFERS

- 10.1 In these Procedure Rules the term sealed bid applies to both Formal Tenders and Sealed Offers/Informal Tenders.
- 10.2 Letters inviting sealed bids shall indicate the last day and time for their return. The Council's standard pre-printed label addressed to the Monitoring Officer followed by the last date for return and bearing the word "TENDER....." followed by the disposal to which it refers shall be enclosed with all letters inviting sealed bids. Those submitting the bids should be advised that envelopes must not bear any other distinguishing marks.
- 10.3 Envelopes shall be returned to and remain in the safekeeping of the Monitoring Officer or that officer's authorised representative, until the appointed time for their opening. That officer will keep a record of all sealed bids returned, together with the date and time of their receipt. The receiving officer will mark each envelope with the date and time of its receipt by him/her.

11. **OPENING OF TENDERS/SEALED OFFERS**

11.1 Two members will need to be present at the opening of tenders/sealed offers, one of whom shall be from an opposition party. Also present at the opening shall be the Monitoring Officer and the Executive Director, Place Services or their authorised representatives. The Monitoring Officer will keep a record of sealed bids opened, listing the name of each bidder, the sum offered and the details of the offer. The names of the members and officers will also be recorded and each of them will sign the record.

11.2 Late receipt of sealed bids may be considered only at the discretion of the Monitoring Officer. Late bids will only be considered if all bids can be opened at the same time.

12. **ELECTRONIC TENDERING**

12.1 Tender documents may be transmitted by electronic means. Responses to an invitation to Tender may be submitted by electronic means provided that:-

(a) Evidence that the transmission was successfully completed is obtained and recorded.

(b) Electronic tenders are kept in a separate secure electronic folder under the control of the Monitoring Officer or Chief Officer which is not opened until the deadline has passed for receipt of tenders.

(c) Electronic Tenders are to be opened at the same time and by the same Members as hard copy documents.

13. **ACCEPTANCE OF TENDERS/SEALED OFFERS**

13.1 The Executive Director, Place Services may accept the best offer for those disposals which fall within his authority under the Scheme of Delegation. In such cases an Operational Decision report will be submitted which details all offers received, makes a recommendation as to which offer, if any, to accept and gives a reasoned justification for such recommendation, referring to the

Pre-marketing valuation. In circumstances where the offers received are below the level of the pre-marketing valuation consideration will be given as to whether it is in the Council's interests to accept any of the offers received. Any such consideration will be supported by a valuation justifying the decision to accept a lower offer.

- 13.2 Where the highest offer exceeds the delegated authority of the Executive Director, Place Services a delegated executive decision report will be submitted which includes the items referred to at 13.1. Once approved Executive Director, Place Services may accept the offer.
- 13.3 Once an offer has been accepted all unsuccessful bidders will be notified, in writing, that their bid has not been accepted. The notification will not provide any information about other bidders or the offers received. Such information will at all times be treated as confidential so far as the Council is able under the Freedom of Information Act 2000.

14. **NEGOTIATION/COMMUNICATION WITH BIDDERS**

- 14.1 For disposals dealt with by invitations to submit sealed offers after opening (in accordance with Procedure rule 11.1) the Executive Director, Place Services or authorised representative shall be authorised to scrutinise the documents and to communicate with bidders in order to obtain information on technical or contractual matters or to seek clarification on proposed developments. A record will be kept of all such communication whether it was written, oral, or by any other means. That record will provide the date and names of those contacted and a summary of the points discussed. All points of clarification should be confirmed in writing. A time limit for this exercise shall be agreed with the Executive Director, Place Services and progress against that limit reported to the Director.
- 14.2 The Executive Director, Place Services in conjunction with the Executive Director, Corporate Services will carry out the technical and financial vetting necessary to establish that the bidders with whom discussions are taking place are prima facie in a position to complete the transaction. Where vetting indicates that a bidder is not in a

position to complete, a report will be submitted under the Scheme of Delegation for approval that the bid is not accepted and the bidder be advised in writing that his/her bid is not acceptable and no further exploration of their proposal will take place.

- 14.3 The purpose of negotiation/discussion of bids is to seek clarification and to ensure that development proposals are suitable. There should not be any attempt to negotiate to increase the basic offers submitted nor to accept increased offers from otherwise unsuccessful bidders. It is, however acceptable to seek an increase in the offer if conditions are fulfilled which would create more value than the original offer envisaged. Such instances and the reasons why should be included in the final report seeking approval under the Scheme of Delegation.
- 14.4 Under no circumstances should details of a bidder or their offer be divulged to any other bidder or agent.
- 14.5 Meetings will only take place at the offices of the Council or at the offices of the bidder and will be conducted only during normal working hours. In complex or high value disposals or where a number of different proposals are being considered meetings with the bidder or their representative shall be attended by two officers of the Council, those officers being nominated by the Executive Director, Place Services. All meetings will be recorded and the record signed by each of the officers all points of discussion/agreement will be confirmed to the bidder in writing within three working days of the meeting.
- 14.6 Where it is appropriate, the proposals for potential developments for a particular disposal may be presented by the bidders to the Cabinet and to any other Members deemed appropriate. On occasion it may also be beneficial for Members to undertake group site visits in the presence of potential developers. Other than in these circumstances elected Members shall have no contact with any bidder or their representatives. Presentations to, or site visits by, Members shall only take place if they are approved by Cabinet and organised by the Executive Director, Place Services. Such events shall only take place in the presence of the Executive

Director, Place Services and the Chief Legal Officer or their authorised representatives. The offer submitted by that bidder, or that of any other bidder, will not be discussed. A written record of such events will be maintained.

- 14.7 Under no circumstances, other than those in 14.6 above, will Elected Members, either individually or collectively, be involved in any negotiation, dialogue, communication or contact by any other means, with actual or potential bidders, or any person representing them, in relation to any disposal of land or property.

15. **VALUATIONS**

- 15.1 For every disposal an estimate of the value will be made by one of the Council's valuers or, where necessary, by a suitably-qualified independent valuer. The valuation and the assumptions/comparisons, together with any other relevant information, used in arriving at the valuation will be recorded on a valuation sheet signed by the valuer. The valuation sheet will be countersigned by the Executive Director, Place Services or his authorised representative to confirm that the valuation has been properly arrived at and will be included with the report recommending the method of disposal in accordance with PMP1 – Selection of Method of Disposal.
- 15.2 In some circumstances, for example, for disposals which are unusual, exceptionally complex or known to be controversial, it may be desirable to obtain the opinion of the District Valuer or a specialist consultant. The Executive Director, Place Services will determine whether or not the requisite knowledge to undertake a particular valuation is available within the Council.

16. **EXCEPTIONS**

- 16.1 The only exceptions to these Procedure Rules are:-
- (i) Any disposal for which there are stated special circumstances and which has been excepted by the Cabinet or by the Executive Director, Place Services acting under delegated powers. It shall be the responsibility of the Executive Director, Place Services to ensure that the reasons for any exemption are properly stated;

(ii) Such delegations which the Council shall from time to time give to the Executive Director, Place Services and which, but for this exception would need to be exempted from these Procedure rules.

17. FORM OF CONTRACT/CLAUSES IN TENDER DOCUMENTATION, ETC.

17.1 Subject to this Procedure rule the Contract of Sale for each disposal will be as determined by the Chief Legal Officer in conjunction with the Executive Director, Place Services.

17.2 Contracts for development sites will include clauses which stipulate that:-

(i) Any building or development will be in accordance with the plans and specifications approved by the Council;

(This is to prevent the purchaser being the sole beneficiary from any subsequent change in planning permission which might increase the value of the property);

(ii) The development will commence and be completed within defined periods of time;

(iii) The buyer will not dispose of the property as an undeveloped site without first offering to resell it to the Council at the purchase price.

17.3 All bidders will be advised in writing that the Council will reject any offer and withdraw from the sale or lease at any time prior to completion and may seek to recover from that person the amount of any loss the Council may have incurred as a result, if the bidder shall have offered, or given, or agreed to give, to any person any gift or consideration, of any kind, as an inducement or reward for doing or forbearing to do, or for having done or forborne to do any action in relation to the contract; or for showing any favour or disfavour to any other person in relation to the contract or if the like acts shall have been done by any person employed by or acting on behalf of the bidder (whether with or without the knowledge of the bidder) or if the bidder or any person acting on their behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

- 17.4 All bidders will be required to assist the Council in providing any information or assistance required in respect of any complaint, claim or representation or reference to the Commission for Local Administration in England received by it in connection with the disposal.
- 17.5 Any other clause which the Executive Director, Place Services and/or the Chief Legal Officer considers appropriate.