

THE FRAMEWORK FOR THE DISPOSAL OF PROPERTY

Report of the Service Director (Property) – Corporate Property Officer Resources, Access and Diversity Department

1. Purpose of Report

The purpose of this report is to establish a framework which will enable consistent and equitable responses to be given to requests for the disposal of property which are received from individuals, groups, organisations and companies in respect of property owned by the City Council.

2. Summary

The City Council is a major property owner in the City with land and buildings held for operational and non-operational purposes. The report addresses the methodology to determine whether the disposal of a particular property is appropriate, the Council's legal requirements, the current policy of open market disposals and the proposed policy which identifies specific exceptions to open marketing. These exceptions are examined in some detail including whether freehold or leasehold disposals are appropriate and also identifying within these "exceptions" circumstances which may result, in some cases, in a departure from the general assumption of disposals not being at less than the best consideration reasonably obtainable. The details relating to the above are set out within the Supporting Information to this report.

3. Recommendation

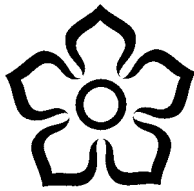
Cabinet is recommended to revoke all previous policies relating to the disposal of property and adopt the framework and proposed policy as set out in the Supporting Information to this report.

4. Financial Implications

Property disposals result in revenue and capital receipts for the City Council and are an integral part of the Council's budgeting process. This framework establishes a transparent basis for property disposals to generate these receipts.

5. Legal Implications

- 5.1 The umbrella under which all local authorities operate in relation to the transfer/disposal of their assets is the Local Government Act 1972. In addition, there is a general fiduciary duty placed on local authorities to act reasonably and in the interest of the tax payers, and consistent with the effective, economic and efficient discharge of the authorities functions. In other words, the Council should not divest itself of a valuable asset at an undervalue unless it is satisfied that circumstances justify such action.
- 5.2 The detailed legal requirements are addressed throughout the Supporting Information to this report.



Leicester
City Council

**WARDS AFFECTED:
CITY WIDE**

CABINET

21 JULY 2003

THE FRAMEWORK FOR THE DISPOSAL OF PROPERTY

**Report of the Service Director (Property) – Corporate Property Officer
Resources, Access and Diversity Department**

SUPPORTING INFORMATION

1. Introduction

- 1.1 The City Council is a major property owner in the City with land and buildings held for operational and non-operational purposes. The operational property includes administrative buildings, schools, libraries, museums, leisure centres, residential centres of various types, council housing stock, theatres and parks. The non-operational property is principally freehold and let by way of ground leases, leases, tenancies and licences. It includes a wide range of retail, commercial and industrial property held for economic development, regeneration and other strategic purposes.
- 1.2 With this large property holding, inevitably the City Council receives requests from a wide variety of individuals and organisations seeking to acquire particular properties. This disposals framework is intended to guide Members in relation to the legal position, the Council's current policy and to ensure that, as far as possible, consistent and equitable responses are given to these requests.

2. Methodology to determine whether disposal is appropriate

- 2.1 When considering the disposal of any property asset it is first necessary to determine:-
- a) whether the Council still requires the property in order to deliver the function for which it is currently held and, if so, whether by
 - i) direct service provision by the City Council
 - ii) or indirectly through 3rd parties (by way of for example, lease, partnership, management agreement).
 - b) whether it is still required to fulfil another function of the authority

- c) whether it should be disposed of to facilitate the exercise of any function of the authority (e.g. housing land for the provision of housing accommodation).
- d) whether, if it is identified as surplus, to dispose of the property to obtain the capital receipt or revenue equivalent.

3. The Council's Legal Requirements

- 3.1 The umbrella under which all local authorities operate in relation to the transfer/disposal of their assets is the Local Government Act 1972. In addition, there is a general fiduciary duty placed on local authorities to act reasonably and in the interest of the tax payers, and consistent with the effective, economic and efficient discharge of the authorities functions. In other words, the Council should not divest itself of a valuable asset at an undervalue unless it is satisfied that circumstances justify such action.
- 3.2 It is Section 123 of the Local Government Act 1972 that requires local authorities to dispose of land for the best price reasonably obtainable, unless either consent is obtained from the Secretary of State to the disposal or the disposal is a short-term one, (less than 7 years). Price can either be a sum of money or something that has a commercial or monetary value that is capable of being assessed. Further, local authorities must be able to evidence that best consideration has been obtained. In some cases, particularly development land, this requires a marketing exercise to be undertaken. Established good practice and a previous public interest report produced by the District Auditor's Office indicates that third party valuations are not adequate evidence of best consideration. The Council therefore needs to ensure an open competitive marketing of property takes place in all but a few circumstances.
- 3.3 Reference was made above to the consent of the Secretary of State. Under the Local Government Act 1972 General Disposal Consents 1998 the Secretary of State has, in a limited number of specific circumstances, consented to authorities transferring assets for less than best consideration. These dispensations generally relate to the functions of the authority and cover areas such as the provision of recreation facilities. The exercise of these general consents must, however, be undertaken having regard to the Council's general fiduciary duty referred to above. It must act responsibly.
- 3.4 Last December, the Office of the Deputy Prime Minister (ODPM) issued a draft circular for comment (by 17 March 2003) setting out proposed revisions to the 1998 consents. It is proposed that the new consent will enable authorities to dispose of any interest in land held under the terms of the Local Government Act 1972 which they consider will contribute to the promotion or improvement of the economic, social or environmental well being of the area for less than the best consideration reasonably obtainable, providing the undervalue does not exceed £2m. These new consents are not yet operative but it indicates the likely future framework.

4. Existing Policy

The General Assumption re Property Disposals

- 4.1 The general assumption is that the City Council's property is marketed on the open market in accordance with the established good practice procedures to obtain best consideration and therefore not requiring the Secretary of State's consent (or use of the General Consents).
- 4.2 In addition however a few specific exemptions have been agreed to address particular circumstance, such as the disposal of land to facilitate the building of the National Space Science Centre.
- 4.3 In recognition of this and in order to seek to address the changing priorities and pressures. It has been decide to review the policy and seek approval to the inclusion of some specific exceptions, rather than dealing with cases on a one off basis.

5. The Framework and Proposed Policy

5.1 The General Assumption re Property Disposals

The general assumption is that the City Council's property is marketed on the open market in accordance with the established good practice procedures to obtain best consideration and therefore not requiring the Secretary of State's consent (or use of the General Consents).

5.2 The Exceptions to Open Marketing

A number of exceptions have been identified where requests to purchase property from the City Council, negotiated on a 'one-to-one' basis, and to the exclusion of other potential purchasers, would be appropriate. Disposals on this basis are likely to require the consent of the Secretary of State (unless either covered by the General Disposals Consent or where there is adequate comparable evidence to support the valuation of the property). These exceptions are as follows:-

- a) Regeneration
- b) Service Delivery
- c) Major Projects of Regional or National Significance
- d) Special Purchasers
- e) De minimus

Considering each in turn:-

a) Regeneration

The disposal to any person or body where the terms of the disposal are to facilitate regeneration within the area of the Leicester Regeneration Company (LRC) where the City Council and the LRC are in agreement

that, for reasons of either site assembly, preferred developer status, or preferred scheme, it is necessary to treat with that person or body to the exclusion of others, but nonetheless on reasonably commercial terms. Such a disposal may involve a Development Alliance, or involve a disposal of property to enable the relocation of displaced occupiers from sites.

A Development Alliance is an agreement for the disposal of land for the purposes of development or redevelopment where any consideration is, in whole or in part, deferred and is calculable in whole or in part by reference to the profit or value of the development or redevelopment to be undertaken. The financial policy set out in the appendix shall apply to these Development Alliances.

Relocation property would only be made available exclusively to a displaced occupier where it was agreed between the City Council and the LRC that it was appropriate in the circumstances.

b) Service Delivery

A disposal to a person or body where the terms of the disposal are to facilitate the exercise of the Council's functions, subject to the Council's Community Plan and Budget and Policy Framework and where there are:-

- 1) significant returns or benefits to the Council commensurate with the level of service or function that would otherwise have been provided by the Council or
- 2) where the services are of a high priority but the Council is not delivering the service direct.

However, in both cases, where there is a market for similar service provision this category shall not apply.

c) Major Projects of Regional or National Significance

Disposals to a Charity, Community Association or similar where the terms of the disposal require the use of the land for a major project of regional or national importance and where major social, economic or environmental benefits and levered in funding are anticipated to the local community or Leicester as a whole.

In such cases in order to maintain transparency, appropriate criteria are required to provide an "audit trail" of the decision as to why one interested party was selected without undertaking a marketing exercise. It is suggested that the following are considered:-

- 1) Other Potential Purchasers
 - Likelihood of alternative uses;
 - Likelihood of alternative bodies able to deliver the project outputs;

2) Location

- The proposal has synergy with an adjoining facility;
- The site is situated within a ward ranking in the 10% of the most deprived wards nationally;
- The geographic location of the property is effectively limited by the nature of the constitution of the purchasing organisation.

3) Strategy

- The proposed use and outputs relate to a key action(s) within the Leicester Neighbourhood Renewal Strategy and is a Priority within the Community Plan;
- Is community-based and “not for profit”;
- The disposal is on a leasehold basis only.

4) Funding

- The prospective lessee has secured sufficient external funding to enable acquisition of the property at open the market value. (An Agreement to Lease is likely to be required by the prospective lessee to enable a period of time for funding to be applied for and secured [together with securing any other consents] and also to evidence to funders the availability of the property to the applicants).
- An appropriately approved Business Plan and Project Appraisal are in place.

d) Special Purchaser

It is recognised that consent may not be required in the case of special purchasers where the valuation advice is that the method of disposal, even if that is to deal with a particular party without seeking to ascertain what others may be willing to pay (i.e. on a one to one basis), will secure, and does secure, the best consideration reasonably obtainable. These circumstances will be limited; examples are ransom strips and ‘the tenants bid’.

e) De minimus

Disposals to a person or body for the purposes of, and on the terms that, they become responsible for keeping the land and buildings erected, or to be erected, e.g. garages or garden sheds, in good condition and repair where any marketing exercise would merely involve abortive expense and where the land has a capital value of less than £1,500, or where it would be to the mutual advantage of the Council and an adjoining owner to make minor adjustments in boundaries by undertaking an exchange of lands.

6. The Terms of these “Exceptional Disposals”

6.1 Freehold or leasehold

6.2 Whether the disposal is on a freehold or leasehold basis will depend on the particular circumstances in each case. Freehold disposals maximise the capital receipt but result in a loss of future control of the property (restrictive covenants could be imposed but enforcement can be problematic).

6.3 Leasehold disposals allow greater control and are appropriate where disposals are seeking particular outputs (e.g. service delivery) on an annual basis.

6.4 Best Consideration

6.5 The general assumption with regard to these ‘Exceptional Disposals’ is that the property will be disposed of at ‘the best consideration reasonably obtainable’. The exceptions to this assumption will be either:-

- The Council has agreed to a disposal at less than best consideration,
or
- The consideration payable under the disposal cannot be evidenced as best consideration (see 3.2 above).

(Note: Development Alliances will always require ‘best consideration’, (see Annex).

6.6 In both these exceptions the disposal will be subject to the consent of the Secretary of State (unless covered by the General Disposals Consent 1998) and also having regard to the City Council’s general fiduciary duty (see 3.1 above).

6.7 In those cases where ‘best consideration’ is not required then, before arriving at this decision, it is suggested that the following factors are considered:-

- the ability of the purchaser/lessee to pay the full value.
- the value of non-monetary benefits.
- the value any other conditions imposed by the City Council.
- the planning position.
- the Council’s general fiduciary duty.
- the possibility of the disposal setting a precedent.
- additional wider community benefit that would not otherwise be realised.
- levers in external funding.

6.8 In those cases where the consideration cannot be evidenced then, in order to seek the Secretary of States consent, it will be necessary to identify at least a modest undervalue in order to obtain the consent and protect the City Council from challenge. The circumstances must nonetheless justify such action and the sort of factors mentioned in 6.7 are again relevant.

7. Revocation of Previous Policies

- 7.1 This 'Framework for Disposals' revokes all previous policies relating to disposal of property directly to individuals, companies, organisations and any other bodies without undertaking a full marketing exercise.

FINANCIAL, LEGAL AND OTHER IMPLICATIONS

1. Financial Implications

Property disposals result in revenue and capital receipts for the City Council and are an integral part of the Council's budgeting process. This framework establishes a transparent basis for property disposals to generate these receipts.

2. Legal Implications

2.1 The umbrella under which all local authorities operate in relation to the transfer/disposal of their assets is the Local Government Act 1972. In addition, there is a general fiduciary duty placed on local authorities to act reasonably and in the interest of the tax payers, and consistent with the effective, economic and efficient discharge of the authorities functions. In other words, the Council should not divest itself of a valuable asset at an undervalue unless it is satisfied that circumstances justify such action.

2.2 The detailed legal requirements are addressed throughout the report.

3. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	YES	} Throughout	
Policy	YES		
Sustainable and Environmental	NO	} Not directly but property disposals can have implications in respect of these areas depending upon the nature of the property, the purchaser/lessee and the proposed use.	
Crime and Disorder	NO		
Human Rights Act	NO		
Elderly/People on Low Income	NO		

4. Background Papers – Local Government Act 1972

None.

5. Consultations

Assistant Head of Legal Services (Commercial and Property)
Financial Strategy.

6. Officer to contact:

S C Ingham
Head of Asset Strategy and Development - Extn. 5002

Lynn Cave
Service Director (Property)

ANNEX

Financial Policy to be adopted for Development Alliances

1. The following principles shall always apply:
 - a) Obtaining value for money in all transactions
 - b) That all functions are discharged economically, effectively and efficiently. All valuations shall be fair and current and to relevant and appropriate professional standards.
2. Processes shall be transparent and consistent and all financial dealings and commitments shall be subject to proper bookkeeping and capable of disclosing an adequate audit trail.
3. Land disposals shall be compliant with Section 123 of the Local Government Act 1972 (or any equivalent provision) and also provide a reasonable return to the Council. There shall be sufficient evidence to ensure and demonstrate compliance with this principle.
4. Due consideration shall be given to the VAT position and the efficiency of opting to tax to ensure the best return from the project, subject always to the protection of the Council's VAT shelter.
5. Arrangements and transactions shall be above board and provision shall be set out in particular to deal with situations of actual or apparent conflict of interest and the prevention of the making of improper inducements.
6. Any special purpose vehicle shall avoid being subject to regulation, regulated, controlled or influenced under Part V of the Local Government & Housing Act 1989 (or any equivalent provision).
7. Provision shall be made so that any borrowing/charging shall be prudent and that there are no adverse capital or revenue implications to the Council under Part IV of the Local Government and Housing Act 1989 and regulations thereunder (or any equivalent provision).
8. Proper provision shall be made to cover insurance and risk management.
9. Provision shall be made for the proper treatment of income and expenditure in relation to project property during the project.
10. Any financial plan shall be of a robust standard, in particular having regard to proper practices of audit and account and prudent forecasting.
11. There should be no commitment to the resources of the Council above that which has been specifically agreed by the Council.