

COMMITTEE:	Cabinet
DATE:	Thursday 7 November
SUBJECT:	Policy and Authority for the disposal of land and properties owned by EBC, and for the agreement of terms on lettings, rent reviews and lease renewals.
	Establishment of policy for rent to be charged to “Not for Profit” tenant organisations.
REPORT OF:	Estate Manager
Ward(s):	All
Purpose:	To set a protocol
Contact:	Mike Reid, Estate Manager, Telephone 01323 415264 or internally on extension 5264.
Recommendations:	That this protocol be adopted now, and that it will be incorporated in the Council’s Constitution at the time of the next review.

1.0	<u>Background/Introduction</u>
1.1	The Local Government Ombudsman has published guidance for Local Authorities in connection with the way and processes in which they deal with the disposal of Land.
1.2	The guidance quotes the Chief Inspector of Audit reporting: “As a matter of financial prudence it is desirable that local authorities should consider whether their arrangements for the disposal of land are adequate to cope with the present volume of activity and are properly geared to securing the best terms.”

	<p>“But there is a further need-that of ensuring and demonstrating to the public, that the arrangements and individual transactions are above board. Land dealings by local authorities are prone to allegations of impropriety; there have been several instances of such accusations against members and officers in the past year. Inevitably, allegations are investigated and although the establishment of malpractice is rare, often there are weaknesses in local authority arrangements which leave complainants unconvinced. The fact is that land dealings by local authorities attract keen interest. Suspicions are easily aroused and are fostered when the procedures are not clearly defined.”</p>
1.3	<p>The Chief Inspector of Audit makes recommendations for the establishment of written procedures to ensure consistency and transparency in the dealings of Local Authorities.</p>
1.4	<p>While working within the framework of these recommendations Eastbourne Borough Council has not formalised its procedures for the disposals other than for “small pieces of land”. Protocols for such sales are set out in the Councils Constitution at 4.7 of the Scheme of Delegation to Officers.</p>
1.5	<p>It is the purpose of this report to bring to the attention of Councillors the proposal of the Director of Finance and Corporate Services to formalise the situation.</p>
1.6	<p>In a similar vein, the Director of Finance and Corporate Services recommends that procedures for the agreement of terms for lettings, rent reviews and lease renewals are included within the scope of this protocol. Recommendations are also made for the way in which the Council will treat the settlement of terms for “Not for Profit” tenant organisations.</p>

1.7	<p>Clause 4.7 defines “small” but makes no reference to value. It is proposed that the definition be extended to allow disposals subject to Delegated Authority at prices not to exceed £10,000.</p>
2.0	<p><u>Synopsis of Guidance</u></p>
2.1	<p>Overall the Guidance booklet extends to 20 pages and at Appendix A sets out recommendations below (in italics). While EBC works broadly to the spirit of the Guidance, the following protocols are recommended as being applicable, given the nature of the council’s property assets and the way in which they are managed:</p>
2.2	<p>1. The Authority should appoint a land management committee on which the minority parties should be represented.</p>
2.3	<p>The Guidance pre-dates the Council’s Cabinet structure. Cabinet determines inclusion of properties, other than ad-hoc land, in the Asset Disposal programme. Disposals of property which are not included in the programme can only be authorised by Cabinet on an individual basis.</p>
2.4	<p>2. No disposal should take place except on the recommendation of the committee after due consideration of reports from the authority’s valuer, solicitor and treasurer.</p>

2.5	As Cabinet will have previously approved a disposal of property on the programme subject to the approval of terms by the Director of Finance and Corporate Services and the lead Cabinet member for property, then this amounts to the same safeguard. For a property which is not on the programme then a report from the Director of Finance and Corporate Services to Cabinet will be made.
2.6	3. Disposals, above a certain figure, should normally require the invitation of competitive bids and exceptions should only be permitted on the direction of the council after consideration of a report recommending an alternative course.
2.7	The tendering process can be cumbersome, and in smaller cases prospective purchasers are often deterred, because of the amount of work needed to submit a bid. It is proposed that for sales expected to realise no more than £250,000, normal private treaty marketing can be adopted.
2.8	In the existing disposal programme there are situations where a marriage value transaction involving the tenant is without doubt going to achieve a higher price than through open marketing of the interest. In such cases it is proposed that the Estate Manager has automatic authority to negotiate with the tenant without necessarily having to have recourse to the market. The result of those negotiations to be approved by the Director of Finance and Corporate Services and the lead Cabinet Member for property if considered acceptable by the Estate Manager.
2.9	4. There should be consultation with the District Valuer.

2.10	Clearly a qualified valuer needs to be consulted, though presently Eastbourne Borough Council employs a Chartered Valuation Surveyor, who, for the majority of cases is perfectly capable of providing that advice. A term of that appointment is that the Estate Manager has to carry his own professional indemnity insurance. It is proposed that to save the council time and fees, the Estate Manager should be able to use his discretion on when the District Valuer needs to be instructed, which would usually be in connection with the valuation of specialist properties, not necessarily linked to high value transactions.
2.11	Under the current arrangements for the disposal of “small” pieces of land there is a requirement for a valuation to be provided by the Valuation Office. To simplify and speed the process it is proposed that the Estate Manager is given authority to value and negotiate in these circumstances.
2.12	5. Terms should not be finalised without the benefit of a current valuation.
	This is common sense and needs no enlargement. Given that some transactions take several months to reach exchange of contracts it is further proposed that the sale price also needs to be reviewed if a transaction does not exchange contracts within three months of the agreement of terms.

2.13	<p>6. Where land is to be disposed of by:</p> <p>A auction – it should be subject to a reserve price of not less than the valuer’s current valuation;</p> <p>B public tender – the council’s standing orders relating to tenders and contracts should be adapted to apply;</p> <p>C private treaty – use may be made of estate agents appearing on an approved list kept by the council’s secretary and the property offered for sale at the highest of their valuations or that of the council’s valuer.</p>
2.14	There is no qualification to be made in respect of this requirement.
2.15	7. Where land is to be disposed of under a building agreement and subsequent lease, developer’s proposals should be invited by public advertisement and considered by the land management committee.
2.16	It is difficult to imagine this situation unless it involved a significant development, and for that reason it is considered that Cabinet would inevitably need to consider such an approach.
2.17	8. Negotiations with prospective developers should take place at the council’s office or the developer’s office within normal office hours, two officers should be present and signed minutes kept, and the progress of negotiations regularly reported.
2.18	For meetings there is no qualification to be made in respect of this requirement. It needs to be accepted that some negotiations will take place by phone, correspondence or e-mail.
3.0	<u>Further provisos required by EBC CMT</u>
3.1	While it is inherent that officers will deal with third parties seeking to acquire land and buildings, no terms will be discussed with them without internal consultation and a record being kept of the basis of the transaction which is to be proposed.

3.2	When dealing with the disposal of Housing plots to affordable housing providers, it will not be necessary to market the property. To understand any financial support which is to be given to the provider, a formal Open Market Valuation will be required before the commencement of negotiations for the proposed sale.
4.0	<u>Lettings, rent reviews and lease renewals</u>
4.1	The Council has no written protocol for the settling of such matters and the following is proposed:
4.2	That prior to the commencement of any such negotiations, a rental valuation is obtained from either the Estate Manager, Valuation Office, or a chartered surveyor in private practice, approved by the Council.
4.3	That the Director of Finance and Corporate Services, relevant Director and the Cabinet Member for property consider that valuation and determine the terms which the Council will seek to achieve.
4.4	That on completion of the negotiations of terms, acceptance is approved by the Director of Finance and Corporate Services, relevant Director and the lead Cabinet Member for property.
5.0	<u>Rents to be charged to “Not for Profit” tenants</u>
5.1	The council owns many properties occupied by “Not for Profit” organisations, some of which presently benefit from concessionary rents. Such rents are now considered as hidden grant aid.
5.2	It is proposed that in future, rental negotiations will be conducted on an open market basis and that any dispensation will be grant aided. In such circumstances the Director of Finance and Corporate Services will be party to all stages of the negotiations.

5.3	No negotiations on rent will be commenced until agreement has been reached within the Council, as to the level of support which will be afforded the tenant in question.
6.0	<u>Consultations</u>
6.1	None
7.0	<u>Implications (covering Human Resource, Environmental, Financial, Youth and Ant-Poverty Implications)</u>
7.1	None
8.0	<u>Summary</u>
8.1	This document provides a framework within which the Council can clearly identify the steps to be taken in the process of dealing with the financial aspects of disposing and managing its property assets.
Michael J U Reid	
Estate Manager	
Background Papers:	
The Background Papers used in compiling this report were as follows:	
None.	
Estates-Main on 'Ntereg' (H:)/Estate Manager/Reports/Disposal of Land Protocol	

Annex

EASTBOURNE BOROUGH COUNCIL

Procedures for the approval of the sale of EBC owned land and property, and for the settlement of rent reviews & lease renewals

Author: Estate Manager

Reviewed by: Director of Finance & Corporate Services

Head of Audit

Date: 24th October 2002

Further to the Cabinet report to be considered on 7th November 2002, set out below are the proposed actions to be taken when negotiating sales, lettings, rent reviews & lease renewals, on the basis that the EBC Estate Manager in post, is a Chartered Surveyor and a member of the RICS Valuation Faculty:

Sales – For all properties except ad-hoc land worth less than £10,000, and Housing Plots to be sold to affordable housing providers.

1. In all cases Cabinet approval is required for the sale of a property. To guide Cabinet in making its decision, a market valuation will be provided by the Estate Manager, Valuation Office or a Chartered Surveyor approved by the Council.
2. Provided Cabinet approves of the disposal in principle, the terms of the disposal will be negotiated by the Estate Manager, Valuation Office or a Chartered Surveyor approved by the Council. Upon agreement of terms to the satisfaction of the Estate Manager, acceptance of those terms will be subject to the approval by the Director of Finance & Corporate Services and Cabinet Lead.
3. Officers dealing with third parties seeking to acquire land or buildings will not be permitted to discuss terms with them without prior internal consultation with the Estate Manager and a record being kept of the basis of the transaction proposed.
4. As a general rule, all properties which are anticipated will realise in excess of £250,000 will be sold by public tender. If the Estate Manager believes that a different method of sale should be adopted then the approval of the Director of Finance & Corporate Services and Cabinet Lead will be required. Where the best price to be reasonably anticipated will be through a marriage value sale to a tenant, then the Estate Manager has the option to negotiate with the tenant alone. Properties which are expected to make less than £250,000 can be sold through private treaty or public tender, according to the recommendation of the Estate Manager, Valuation Office or a Chartered Surveyor approved by the Council. This threshold can be reviewed and adjusted from time to time on the joint authority of the Director of Finance & Corporate Services and Cabinet lead.
5. In the event that exchange of contracts for a sale does not take place within three months from the agreement of terms then the property is to be re-valued, and if it would be in the Council's financial interest, then terms will be re-negotiated or the property returned to the market.
6. Negotiation meetings with prospective developers should take place at the Council's office or the developers office within normal office hours. Two officers should be present and signed minutes kept. The progress of negotiations should be regularly reported to the Director of Finance & Corporate Services.
7. For sales of ad hoc land, the existing procedures are set out in the Council's Constitution at Clause 4.7 of the Scheme of Delegation to Officers. These are to be augmented to widen the appointment of the Valuation Office to undertake the valuations to include the Estate Manager, who will also be authorised to value and negotiate. A further definition of ad-hoc land is to limit the value of such land to £10,000, whereafter the disposal has to be treated as in the main body of these provisions.
8. For sales of Housing plots to affordable housing providers, it will not be necessary to seek offers in the market. Before the commencement of negotiations the Council will obtain a market valuation from the Estate Manager, Valuation Office or a Chartered Surveyor approved by the Council.

Lettings, Rent Reviews and Lease Renewals

9. Prior to the commencement of such negotiations, a rental valuation will be obtained from the Estate Manager, Valuation Office or a Chartered Surveyor approved by the Council.

10. The valuation and any recommendations, will be considered by the Director of Finance & Corporate Services, Relevant Director and Council Lead, before terms are quoted.

11. At the conclusion of negotiations approval will be recorded on an internal memorandum and signed by the Director of Finance & Corporate Services, relevant Director and the Lead Member.

“Not for profit” Lettings, Rent Reviews and Lease Renewals

12. Such negotiations will be to full open market value and the Director of Finance & Corporate Services will be party to all stages of negotiations.

13. No negotiations on rent will be commenced until agreement has been reached with the Director of Finance & Corporate Services, relevant Director, and Lead Member, as to the level of grant support which will be afforded the tenant in question.