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Lewes District Council



Working in partnership with **Eastbourne Homes**

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Property Disposal and Transfer Policy

Introduction

This strategy applies to the disposal or transfer of all interests in any non-residential property by Lewes District Council (LDC) or Eastbourne Borough Council (EBC), 'the Councils'. It sets out procedures that are open, transparent and consistent, to ensure maximum benefit from disposal of the Councils' assets. Within this framework the policy will ensure the Councils achieve best value, act within the appropriate legal framework, and perform in a demonstrably fair and open manner.

Whilst this strategy outlines the guiding principles and procedures around disposals, it does not bind either Council to a particular course of action. As such, alternative methods of disposal or transfer, not specifically mentioned in this policy, may be used where appropriate, subject to the relevant approval.

Commercial Business, Property and Development (CBPD)

CBPD will lead on all commercial property disposals on behalf of LDC and EBC.

The service will:

- Work within the guidelines of the Property Disposal and Transfer Strategy and relevant delegated authority at all times;
- Seek disposal opportunities that will further the corporate aims and objectives of LDC and EBC;
- Ensure the local property market and relevant external influences are monitored for market risk;
- Use accurate building performance information to feed into the Asset Challenge process and identification of surplus properties outside of Asset Challenge;
- Hold an accurate and up to date record of surplus properties and expected capital receipts;
- Dispose of properties no longer required as efficiently as possible;
- Dispose of the least efficient properties taking into account service needs, community, social, cultural, economic and environmental benefits and risks;
- Work strategically with partners to review opportunities to enhance disposal receipts, learn from our common experience and share best practice;

- Work strategically with partners to reduce our Carbon Footprint through identifying the least efficient properties and ensuring disposal properties are compliant with all existing and future energy requirements.

Identifying Property for Disposal

Usually property will only be disposed of where it has been identified as surplus to requirements or suitable for CAT, having first been through the Asset Challenge process. In some circumstances, properties may be identified for disposal in advance of Asset Challenge where they are underperforming or there is a strategic importance, or where a community organisation involved with the asset has registered an interest in a CAT.

Parks and open spaces relevant for possible devolution to Town and Parish Councils have already been identified by LDC, however, additional sites may come forward. Devolution of this land is guided via the Devolution Committee which makes recommendations and progress reports on devolution to Cabinet.

Definition of surplus assets for disposal

A property may be determined as surplus for disposal following a property review and option appraisal if some or all of the following criteria apply:

- Where there is a clear business case that an alternative organisation is better placed to own/manage the asset in order to maximise positive benefits for local communities;
- It does not meet the aspirations or key aims of the Corporate Asset Management Plan;
- It does not have combined social, cultural, environmental and economic benefits;
- It makes no contribution to the delivery of the Councils services and is unlikely to be required for service delivery in the future;
- It is no longer appropriate for service provision;
- It has no potential for future strategic or regeneration/ redevelopment purposes (including affordable housing);
- 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;
- The land or property is not adjacent to a larger area of land or property in the ownership of the Council where a strategic reason may apply for retaining the asset.

Disposal of surplus assets by freehold or leasehold disposal

The Councils should plan to dispose of all surplus land or property identified for disposal within its portfolio subject to the following criteria:

- That the disposal does not have a negative impact on the Council Medium Term Financial Plan (MTFP);
- Terms to be approved by an independent valuer where appropriate;
- Best financial consideration to be obtained unless social, environmental or economic benefits are evidenced;
- The method of disposal determined on a case by case basis;
- Any long leasehold disposal transfers all liabilities to the tenant;
- Prior to final disposal, short term intermediate use should be considered where possible to ensure that disposal can be progressed when viable.

Methods of Transfer

The Councils may consider one of the following options for the transfer of an interest in land:

Freehold Disposal

This is the complete transfer of all rights and responsibilities of continuing to hold that property. The transfer may be subject to certain claw back or overage restrictions that seek to secure further payments in the event of excess development profits (see Due Diligence section for further information).

Leasehold Disposal

The grant of a long lease (usually over 99 years), where the Councils wish to retain control of a surplus asset, or where the income stream is assessed to be of greater value than the foregone capital receipt that may be achieved through its sale, or where the Councils decide to receive a premium for a long leasehold interest and reduced revenue return for strategic purposes.

Community Asset Transfer (CAT)

The role of local authorities is changing, partly in response to the current financial climate, but also the recognition that local authorities are not always best placed to deliver community services or own community buildings. The Councils have a desire to ensure that community assets are owned, managed and run in a way that best meets the needs of the communities they serve and provides the best future prospects for that asset, where a future is viable and desirable.

CAT is the transfer of management and/or ownership of property to an organisation where there is an identified social, economic or environmental benefit; sometimes, but not exclusively, the transfer may be at undervalue justified by that benefit – this could be via a freehold/leasehold disposal, short lease or licence.

Community-based organisations can sometimes be better placed than local authorities at securing investment through sources such as the National Lottery, crowdfunding, sponsorship and legacies. Having control over their assets can enable these organisations to become more self-sufficient, secure and sustainable whilst also ensuring the long-term community benefit of assets. Consideration of CAT might be appropriate in instances involving community and voluntary groups, Development Trusts, Community Interest Companies or Town/Parish Councils (where this is related to buildings rather than parks and open spaces).

Devolution of Parks and Open Spaces

In LDC, where there are Town and Parish Councils, a process of devolution is taking place to transfer the ownership and responsibilities for relevant parks and open spaces to Town or Parish Councils.

Financial criteria for disposals

An option appraisal should be carried out which assesses the capital and revenue implications of each option, including the impact of the current economic and the VAT implications. Valuations should be obtained for all viable options, provided by an independent valuer.

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 MTFP/Asset Register. 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.

Valuations for disposal for inclusion in Asset Register

The Finance Team must be provided with copies of valuation documents and details of the following values when a property is disposed of by freehold sale:

- Unrestricted value
- Restricted value (if relevant)
- Actual disposal value

Due Diligence

Due diligence will be carried out prior to consideration of a disposal, to include consideration of:

- Best consideration;
- Existing lease arrangements regarding the property (to include minimum length of the unexpired lease terms, covenant strengths, legal encumbrances, 3rd party rights);
- Asset maintenance liability and building condition true lifecycle costs;
- Future planning, and/or regeneration potential and impacts on enhanced disposal receipts;
- Community, social, cultural, economic and environmental benefits and risks;
- Crichel Down Rules, State Aid, and Contract Procedure Rules;
- Potential for including restrictive covenants and overage clauses;
- In addition, for property taken through the CAT process, future management and use of the property and the relevant organisation's skills, governance and financial arrangements.

Best consideration and advertising disposal – section 123 Local Government Act 1972

Local Authorities have an overriding duty under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of property, subject to certain exceptions set out in the Local Government Act 1972: General Disposal Consent 2003. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State where the disposal:

- will help the Council to secure the promotion of the improvement of the economic, or environmental well-being of its area; and
- where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2,000,000 or less.

The Councils must still comply with their duty to obtain best consideration for the restricted value and comply with normal and prudent commercial practices, including obtaining the view from a professionally qualified and independent Chartered Surveyor.

There are further procedural requirements to be complied with on disposal of open space land. A local authority is required to advertise its "intention" in a local newspaper for two consecutive weeks and to consider objections. The advertising process should be undertaken before any final decision is made on the disposal so that proper consideration is given to the responses that are received.

Crichel Down Rules

The Rules apply in certain circumstances where land that is to be disposed of was previously acquired by or under threat of compulsion. Where the Rules apply, former owners will, as a general rule, be given a first opportunity to re-purchase the land previously in their ownership.

State aid

In disposing of any land or interest in land the Council must ensure that it does so in accordance with State aid rules. There is an automatic assumption that no State aid is present in a sale for "market value" through (i) an open and unconditional bidding process or (ii) an expert valuation. If the automatic assumption does not apply it will be necessary to look at other aspects of the proposal, including whether the disposal falls outside of the State aid regime because it does not fulfil all of the State aid tests.

Contract Procedure Rules

Subject to certain exceptions, the Council's Contract Procedure Rules say that no freehold sale of land, where the value exceeds £50,000, shall be made, except after auction or the invitation of tenders or expressions of interest following appropriate public advertisement, unless authorised by Cabinet.

Restrictive covenants and overage

Consideration may be given to:

- Imposing restrictive covenants in freehold transfers limiting the future use of the properties.
- Including overage clauses in freehold transfers enabling the Councils to share in any future increase in value in the properties realised after the properties have been sold. This would enable the Councils to share in any uplift in value if planning permission is granted to develop the properties for something much more valuable, e.g. residential use. The precise terms of the overage, including the percentage share and duration of the overage rights, would have to be settled after taking professional advice.

An Equality and Fairness Impact Assessment will be undertaken for each disposal, or where relevant, group of property disposals to assess community, social, cultural, economic and environmental benefits and risks.

CBPD will enter into detailed discussions on behalf of the Councils only when Cabinet has agreed to a proposal or there is agreement through the relevant delegated authority.

Types of transfer

There are a number of ways in which a property can be transferred including, but not limited to:

Private Sale/Transfer: Sale/transfer of property negotiated with one or a small number of purchasers/community organisations. A binding legal agreement is created on 'exchange of contracts' between the Councils and the purchaser/transferee.

Public Auction: Sale of property by open auction available to anyone. The sale will be advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer.

Informal Negotiated Tender: Sale of property after a public advertisement that requests informal offers or bids that meet a given specification or 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.

Formal Tender: Sale of property by a process of public advertisement and tenders submitted by a given date in accordance with a strict procedure. A binding legal agreement is created upon the acceptance of a tender by the Council.

Exchange of Property: A transaction involving the exchange of Council owned property with another land owner. The land acquired by the Council will meet at least one of its corporate objectives and will be 'equal' in value to the property exchanged or there can be an equality payment made by either party.

A freehold or leasehold transfer may be considered appropriate, depending on the circumstances.

Decision Making

LDC and EBC retain sovereignty over their respective property assets. Overall authority for agreeing disposals will generally sit with the relevant Cabinet, but officers will normally have first consulted LDC/EBC Strategic Property Board.

The following procedures relate to the disposal of land:-

- Approvals for declaring land surplus to the Council's requirements, and authorising its disposal will be obtained in accordance with procedures set out in Councils Constitutions;

- Local Members are consulted on all property disposals at an early stage including when the land is in the process of being declared surplus. It is recognised that local members, because of their local knowledge of the district that they represent, will be able to contribute to the discussion as to the value or otherwise of continued retention of the asset and also provide valuable market intelligence such as potential special purchasers. Therefore engagement should be sought and encouraged at an early stage of the disposal process.
- Where delegated by Cabinet, the final decision to dispose of a property and at what terms will be at the discretion of the relevant Lead Member as advised by the Director of Regeneration and Planning in accordance with the scheme of delegation.
- Where delegated by Cabinet, decisions to approve the terms of any disposal of land are made by either the Director of Regeneration and Planning in conjunction with the relevant Lead Member or on some major projects, the Director of Regeneration and Planning alone.
- Where a property has been previously acquired through or under the threat of compulsory purchase means and is now surplus to Council requirements, consideration of the Crichel Down rules may apply.