

Report of:	Meeting	Date	Item No.
Cllr Alan Vincent, Resources Portfolio Holder and Philippa Davies, Corporate Director of Resources	Cabinet	9 September 2015	5

Land and Property Disposal Procedure

1. Purpose of report

1.1 To consider the new Land and Property Disposal Procedure.

2. Outcomes

2.1 The ability to demonstrate good financial management by ensuring that all land and property disposals are dealt with in a consistent and appropriate manner which complies with legislative requirements.

3. Recommendations

3.1 Members are requested to approve the Land and Property Disposal Procedure attached at Appendix 1.

4. Background

4.1 It is Government policy that local authorities and other public bodies should dispose of surplus land wherever possible.

4.2 The Council is also keen, particularly in the current economic climate, to ensure that the value of its property assets is maximised in accordance with the Asset Management Strategy. This involves the disposal of assets that are surplus to requirements as well as those that do not make a sufficient rate of return through rental income.

4.3 In order to avoid significant additional financial pressures, capital disposals are required in order to generate capital receipts to meet capital commitments.

5. Key issues and proposals

5.1 The Disposal Procedure attached at Appendix 1 has been developed taking into account best practise and attempts to formally document the relevant process and practise with a view to increasing transparency.

Financial and legal implications	
Finance	None arising directly from the report although disposals will generate capital receipts which will be used to support future capital programmes.
Legal	There are no legal implications arising directly from this report

Other risks/implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

implications	✓ / x
community safety	x
equality and diversity	x
sustainability	x
health and safety	x

risks/implications	✓ / x
asset management	✓
climate change	x
data protection	x

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List of background papers:		
name of document	date	where available for inspection

List of appendices

Appendix 1 – Land and Property Disposal Procedure

arm/ex/cab/cr/15/0909pd2



Land and Property Disposal Procedure

Wyre Council
Civic Centre
Breck Road
Poulton-le-Fylde

September 2015

Land and Property Disposal Procedure

1. Introduction

- 1.1 This procedure note supports the Council's management of the disposal of those assets that are surplus to requirements, ultimately generating capital receipts which can be used to fund the Capital Programme.
- 1.2 For the purpose of this procedure note, a disposal of land means land and/or buildings. A disposal is either a freehold disposal by sale or exchange of land in perpetuity or by the granting of a lease for a period greater than 7 years.
- 1.3 It is important that each land disposal is treated on its own merits and nothing in this document will bind the Council to a particular course of action in respect of a land disposal. Alternative methods of disposal, not specifically mentioned in this procedure note, may be used where appropriate subject to obtaining the proper authority.

2. Key Principles

- 2.1 The Council's actions in disposing of land are subject to statutory provisions, in particular to the overriding duty on the Council under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of land. This duty is subject to certain exceptions that are referred to as 'the General Disposal Consent'.
- 2.2 The Local Government Act 2000 provides Councils with a power to carry out any transaction provided they can prove social, economic or environmental wellbeing. In 2003, the General Disposal Consent was amended to allow disposals to occur without the Secretary of State consent and makes provision for the Council to dispose of land at less than full market value, known as an 'under-value' in the following circumstances:
 - ✓ The Council considers that the purpose for which the land is to be disposed of is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the whole or part of its area, or any person resident or present in its area;
 - ✓ The difference between the unrestricted or market value of the land to be disposal of and the consideration for the disposal does not exceed £2m.
- 2.3 The Council must still comply with its duty to obtain best consideration for the restricted value. For example, if the land were restricted to development for affordable housing, then the Council would still be required to ensure that it achieves the best consideration that may be reasonably obtained for land with such a restriction. The Council must also comply with normal and prudent commercial practices including obtaining the view of a professionally qualified valuer as to the value with voluntary restrictions imposed. If the Council wishes to dispose of land for less than best consideration, and is not covered by the General Disposal Consent, the Council can resolve to do so, but will require the formal consent of the Secretary of State for Communities and Local Government.
- 2.4 Where disposals at restricted values are agreed, it is important to monitor the position and where developments change to seek clawback. Similarly, post disposal monitoring includes checks to ensure that the purchasers comply with any

conditions of sale or covenants.

2.5 Factors that could influence the timing of disposals include:

- ✓ The local market and competing supply – the Council would not want to ‘flood the market’ if other land is already in the market and undeveloped; and
- ✓ Market appetite – where appropriate, the Council may improve the attractiveness of a site to potential purchasers and speed up its development once sold.

2.6 Overage will be used to capture ‘an element of improved development value where there is a general uplift in the market or where the market value of the end development is not known at the time’. This can be the result of increased house prices and/or improved planning permission.

3. Marketing Methods

3.1 **Private Sale** – A disposal may take place after a period during which the land is put on the open market having been the subject of advertising and general marketing including signage that it is available for sale. In this case, the Council will be able to consider the highest bid as representing the best consideration that can be reasonably obtained. A disposal by private treaty can have a closing date and be by way of inviting sealed bids by that date if considerable interest is anticipated. If land is to be sold without being marketed, then the reasons justifying a private sale must be recorded in writing. Where this is the case, and to protect the Council from challenge an independent valuation should be sought to verify that ‘best consideration’ is being obtained. Examples where the land may not be marketed include:

- ✓ The land to be disposed of is relatively small in size and an adjoining or closely located landowner is the only potential or likely purchaser;
- ✓ The nature of the Council’s land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained;
- ✓ The Council’s Business Plan objectives and/or ‘best consideration’ can be achieved by a sale to particular purchaser;
- ✓ The purchaser has a particular interest in purchasing the premises/site or a particular association with the premises/site and where open marketing of the premises/site may lead that purchaser to reduce the value of their offer or withdraw their interest in purchasing the premises/site;
- ✓ The ‘Crichel Down’ Rules apply i.e. where land was formerly acquired by or under threat of compulsory means.

3.2 **Public Auction** – Sale by auction is completely open and may be appropriate where there is no obvious potential purchaser or where a prompt sale is required. An auction reserve is used to ensure that a property is not sold below a certain level and the guide price must be previously agreed with the Council’s Valuer. The contract for sale or lease must be ready for exchange at the auction.

3.3 **Informal Negotiated Tender** – This differs from a formal tender in that neither the Council nor the successful bidder is legally obliged to enter into a contract for the disposal of land. It allows the Council to identify one preferred bidder with whom it may then negotiate further detailed terms or proposals for the development of the

land concerned. The Council may request best and final offers for a sale, or informal development proposals for land that meets a given specification, or request proposals. This is useful for large or complex development sites requiring development in co-operation with the preferred bidder to meet the Council's objectives and to achieve the best consideration that can be reasonably obtained. A binding legal agreement is not created until the exchange of contracts for sale or lease or the signing of a development agreement. This method is suited to sales where there are uncertainties, particularly planning, and allows for use of conditional contracts, including clauses which can allow further sums to become payable upon grant of planning permission at different points in the future.

- 3.4 **Formal Tender** – This will require a detailed specification to be drawn up specifying the land to be sold, any requirements to be met by the tenderer and any obligations that must be met. Tenders should be invited by Public Notice in at least one local newspaper giving details of the property and inviting interested persons to apply within a period of not less than 28 days. The Council is not required to accept the highest tender or indeed any tender. Receipt of Tenders should be dealt with in accordance with the Financial Regulations and Financial Procedure Rules. A legally binding relationship is formed when the Council accepts a tender in writing. It is essential, therefore, that every aspect of the disposal is specified in the tender documents. The tender documents should include a contract for sale or lease which should be completed with the tenderers details, the tender price, include a deposit cheque to preclude withdrawal of the tender prior to acceptance and be signed by the tenderer. It will be released unconditionally to the Council on submission of the tender.
- 3.5 **Exchange of Land** – Disposal by exchange of land will be appropriate when it will achieve best consideration and is advantageous to the Council and other parties. Authority for a land exchange must be sought from the Resources Portfolio Holder, recording the reasons for justifying this method of disposal. A binding legal agreement will be created when a contract is exchanged and will usually be equal in value. Inequality in land value, however, may be compensated for by an equality payment or by other means. In such circumstances, an independent valuation will demonstrate that 'best consideration' has been obtained.
- 3.6 **Late Bids** – The approach to 'late bids' will vary depending upon the method of land disposal used. In each case, the overriding duty will be to obtain the best consideration that it can reasonably obtain. The Council discourages late bids and will attempt to minimise problems by aiming for early exchange of contracts. Where land is being disposed of by formal tender, bids received after the deadline for tenders will be recorded as late and advice will be taken from the Legal team. For other methods of disposal, until the Council has entered into a legally binding contract or agreement it will consider late bids unless there are good commercial reasons for not doing so. Consideration of a late bid does not mean that it will necessarily be accepted even if it is the highest bid. The Council will take into account the likelihood of the late bid proceeding to completion in a timely manner and the possibility of late bids being used as a spoiling or delaying tactic. An option available to the Council is to ask both the late bidder and the other interested parties to submit their best and final offers in a sealed envelope by a set deadline. A decision on whether to accept a late bid for a private sale, informal tender or by exchange will be made by the Resources Portfolio Holder following advice from the Council's Legal team.

4. Community Asset Transfers

4.1 The starting principle for any such disposals, whether by lease or sale, should be at market value. Where this is not the case, undervalue should be formally approved by the Resources Portfolio Holder in light of the following factors:

- ✓ It is considered that the disposal will help to secure the promotion or improvement of the economic, social or environmental wellbeing of the area;
- ✓ An assessment of the constitution, aims and objectives of the proposed transferee demonstrates that they comply with the Council's aims and objectives;
- ✓ A robust and deliverable business plan including good governance, robust financial planning and the necessary policies and procedures expected of a good community organisation are in place;
- ✓ Any transfer by way of a long lease rather than an outright sale incorporates safeguards considered necessary to protect the future community use of the building/land.

5. Valuations

5.1 An unrestricted value is intended to be the amount which would be received for the disposal of the property where the principal aim was to maximise the value of the receipt. It is defined in the same way as market value i.e. the market value of the land as currently defined by the RICS Red Book (Practice Statement 3.2), except that it should take into account any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest. The Valuer should take account of whatever uses might be permitted by the Local Planning Authority insofar as these would be reflected by the market rather than have regard only to the use or uses intended by the parties to the proposed disposal.

5.2 The Valuer should assume that the freehold disposal is made, or the lease is granted, on terms that are intended to maximise the consideration and contain those covenants that a prudent landlord would normally include. In a similar way, the Valuer should also assume that the lease would not include any unusual or onerous covenants that would reduce the consideration, unless these had to be included as a matter of law.

5.3 The restricted value is the market value of the property, having regard to the terms of the proposed transaction. This could reflect the financial circumstances of the purchaser or a restricted use on the building.

6. Disposal of Public Open Space

6.1 The Local Government Act 1972 requires the Council to advertise the disposal of Public Open Space in a local newspaper for two consecutive weeks and to consider any objections received. Any objections will be considered by the Resources Portfolio Holder.

7. State Aid

7.1 Disposals at less than market value or ones that cannot be proved readily to be at market value may come under the state aid provisions set by the European Union. These provisions relate to businesses, not householders, and are intended to prevent the distortion of markets as a result of explicit or implicit public subsidies.

All potential state aid has to be referred to the European Commission so that the commission can assess whether or not the transaction constitutes state aid and, if it does then, whether or not the aid is compatible with the common market. State aid that is not approved by the Commission is unlawful and may result in the value of aid being recovered, together with interest, from the recipient.

7.2 State aid is held not to occur or the Commission does not have to be notified in the following situations:

- ✓ A disposal on an open and unconditional bidding procedure, accepting the best or only bid;
- ✓ A disposal conducted at market value as established by independent valuers;
- ✓ A disposal that creates state aid, but the aid is of low value and not covered by other arrangements. This is called De Minimis aid. A recipient of aid can be given up to 200,000 Euros of such aid in total over a rolling three year period (consisting of the current financial year and the two previous financial years). The total relates to De Minimis aid from all public sources and not just from the Council;
- ✓ A disposal that is block exemplified under GBER (1998/2006) or approved by the Commission.