



Leicester
City Council

THE FRAMEWORK FOR THE DISPOSAL OF PROPERTY

(As approved at Cabinet on 21 July 2003)

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. Prospective purchasers reading this framework must not assume that they will secure a particular site or property if they consider they fall within one of the exceptions to open marketing of property.

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. A specific application to the Secretary of State for consent may not be necessary in every case where the disposal is at less than best consideration. The Local Government Act 1972: General Disposal Consent (England) 2003 gives local authorities consent to the disposal of land within specified circumstances i.e. where the authority considers that the purpose for which the land is to be disposed of is likely to contribute to the achievement of any one or more of the following objectives in respect of the whole or in any part of its area, or of all or any persons resident or present in its area: -
- The promotion or improvement of economic well-being
 - The promotion or improvement of social well-being
 - The promotion or improvement of environmental well-being

In each case it is a condition that the undervalue must not exceed £2 million. Further, the authority must remain aware of the need to fulfil its fiduciary duty in a way which is accountable to local people. (This consent does not apply to land held under powers derived from certain Planning and Housing Acts nor does it enable the disposal of public open space without undertaking the advertising procedure set out in, for example, the Local Government Act 1972).

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 decided 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

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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 Disposal Consent or where there is adequate comparable evidence to support the valuation of the property). These exceptions are as follows:-

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- 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. Also disposals to other organisations that have broad based community support and which generate significant economic benefits to the City.

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 complements existing regeneration priorities.
- 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"

Freehold or leasehold

6.1 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).

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

Best Consideration

6.3 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 Appendix).

6.6 In both these exceptions the disposal will be subject to the consent of the Secretary of State (unless covered by the General Disposal Consent (England) 2003) 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.
 - whether the disposal will lever in external funding.
 - whether the disposal contributes to the achievement of the promotion or improvement of economic, social or environmental well-being.
- 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. An independent valuation will be obtained in these instances to support the application to the Secretary of State or the use of the General Disposal Consent.

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. Those decisions taken prior to the introduction of this policy will not be affected (unless the need to review any decision arises from a change in circumstances e.g. default by the previously identified prospective purchaser).

Chris Ingham
Head of Asset Strategy and Development

APPENDIX

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.