

**CENTRAL BEDFORDSHIRE COUNCIL**

**CORPORATE PROPERTY ASSETS DISPOSAL PROTOCOL**

**1. Introduction**

- 1.1 Central Bedfordshire Council (CBC) is committed to using its Corporate property assets in a corporate manner which realises their optimum benefit to the community and represents value for money. This requires proactive good practice management of the existing portfolio, a commercial approach to the development of new assets and the disposal of assets no longer required.
- 1.2 Where Corporate property assets are not meeting CBC's objectives then a process of rationalisation and disposal for surplus/under-performing property will be adopted that complies with the Government guidelines on Asset Management, meets CBC Corporate requirements and relates to Sustainable Communities plans for the area..
- 1.3 The adoption of this protocol will demonstrate that CBC are rationalising or disposing of surplus or under-performing assets, subject to market conditions and possible community use that may affect any such decision.

**2. Objectives**

- 2.1 The objectives of the protocol will be to optimise the proceeds from disposal for the benefit of CBC and its community.

**3. Definition of Surplus property**

- 3.1 Corporate property should be declared surplus if:-
  - a) It makes no contribution to delivery of the Council's services, either directly or indirectly, and
  - b) It does not generate sufficient income and
  - c) It has no potential for future service delivery or regeneration purposes and
  - d) It is not fit for purpose.
- 3.2 A site could be considered surplus if an alternative site has been identified which would achieve more cost effective service delivery and the existing site has no potential for future alternative service delivery or regeneration.
- 3.3 A site may also be considered surplus if a community body can more effectively deliver the objectives for managing the land and provide a sustainable Business Case to support the objectives.

#### **4. Definition of under-performing Corporate property**

4.1 Corporate property should be deemed to be under-performing if:-

- Part of the property is vacant and likely to remain vacant for some time
- The beneficial use, including any joint users and/or Total Place partners, or financial return (both revenue and capital growth including the effects of backlog maintenance) generated from the property is below that which could be achieved from an alternative use, or a disposal and alternative investment opportunity following a Whole Life Cost appraisal. A risk analyses will be carried out of all potential properties prior to any disposal.

#### **5. Disposal of non surplus or under-performing assets**

5.1 CBC may also dispose of property that is not formally classified as surplus or considered to be under-performing: to developers for regeneration schemes; to nominated registered housing associations for the development of affordable housing or local communities as part of its aims to benefit the community.

#### **6. Statutory powers**

6.1 In most cases CBC's power of disposal is contained in Section 123 of the Local Government Act 1972. This section provides that the consideration (price) should not (except in certain circumstances with the consent of the Secretary of State) be less than that which can reasonably be obtained.

6.2 Some concession to this principle is contained in the Local Government Act 1972, General Disposal Consent (England) 2003. Disposals to registered housing associations and some third sector bodies can also take place at less than the best price that can reasonably be obtained provided adequate benefit can be shown to the Council/Community.(The so called "well being powers")

6.3 Some property disposals are driven by statute rather than the identification of surplus assets, the most significant being the right to buy provisions in the Housing Acts and the transfer of the whole of the housing stock.

#### **7. External consents and formal notification of a disposal**

7.1 External consents are required to declare certain types of properties surplus i.e. schools where Department of Education and Sports Council consent is required and public open space that has to be advertised. Following any Executive Approval this process should be commenced at the earliest opportunity as it can take some considerable time to obtain these consents.

#### **8. Data Collection**

8.1 A corporate schedule of all Surplus property is held with the Corporate Fixed Asset Register held by Corporate Property.

## **9. Surplus Corporate property identification**

9.1 Disposals will arise in a number of ways: -

- Rationalisation programmes
- Local Plan designation and development of Local Development Framework
- Asset Management reviews
- Best value/efficiency reviews
- Service reviews declaring property no longer meeting operational needs or alternative (third sector) management
- Property has potential for development or redevelopment and service can be relocated
- Approaches from outside parties e.g. developer, adjoining owners
- Request from community, third sector or public body to the transfer of an asset (where disposal will result in more effective management of the land in keeping with CBC's objectives for the land) including small areas of vacant land.
- Where a statutory duty to transfer arises
- Requirement to fund the capital programme (as this may accelerate disposal timescales).

## **10. Suitability for other Council uses**

10.1 Before land and buildings are formally declared surplus, use for other council purposes should be considered. Services will be informed by Property Services as soon as possible that a property is to be declared surplus.

## **11. Transfer to the community**

11.1 A transfer should only take place, normally by way of a long lease, if it is supported by a robust business case; the proposed use for the property meets the council's objectives and community strategy; there is an agreed SLA and performance schedule with appropriate penalties for failing to meet the requirements; the lease to contain appropriate terms for maintaining the property; there is an agreed time-scale within which a disposal is expected to be completed and there is certainty of funding.

11.2 If the disposal is to be at less than best price that can reasonably be obtained then this needs to be considered against the authority's capital programme, the ongoing revenue commitments both in the cost of maintaining the property and staff management and the opportunity cost of a foregone open market disposal.

11.3 There may be legislative reasons for a legal transfer of property to another body, e.g. School Trusts, where CBC is obliged to transfer the asset that is used by the school for educational purposes to a newly formed Trust for no consideration.

## 12. Site Investigation

- 12.1 Once a property has been identified as surplus Corporate Property will establish whether there are any constraints on the site – legal, planning, statutory authorities, etc.

## 13. Corporate Property disposals

- 13.1 All disposals will be arranged and managed by the Corporate Property Officer. The Council should obtain the best consideration by the most appropriate method of disposal. (Best consideration does not necessarily need to be financial. e.g. The transfer of land to a Housing Association to provide Social Housing for the benefit of the Council.)
- 13.2 There will be regular progress updates with all stakeholders, portfolio holders and relevant members between a property being declared surplus and the completion of a disposal. In particular the party responsible for the day-to-day management of the property be kept regularly informed of developments to an agreed timetable.
- 13.3 The Council and other party/parties to the disposal need to work in a confidential and commercially sensitive manner until such time as the contract is completed.
- 13.4 Once declared surplus the Corporate Property Officer will be responsible for obtaining approvals to any disposal above the delegated authority, subject to Portfolio Holder agreement, including Executive Committee approval where appropriate, and to achieving best consideration.
- 13.5 In order that small transactions taking up too much time in relation to the capital return can be eliminated the following will apply:

Any application to purchase, all or part of, a parcel of public open space or amenity land, the total area of which is 100 square metres or less, be considered on the following terms:

- i. That the following list of extenuating circumstances be given priority;

<b>Extenuating Circumstances</b>	<b>Evidence Requirement</b>
Physical disability – pedestrian access	Medical certification
Physical disability – vehicular access	Disabled vehicle registration
Land subject to repeated misuse or vandalism	Police report
Land required by a statutory undertaker	Compulsory purchase powers in the background

- ii. Where applications to incorporate land into neighbouring gardens realises a reduction in CBC operating costs.

For any application meeting the above criteria for disposal:

- i. The Council's surveying, planning and legal fees be met by the applicant, including abortive costs on withdrawal from the sale.
- ii. The applicant be responsible, at their own risk and expense, for obtaining any third party consents. (For example, permission may be required from the original developer of the land.)

#### **14. Valuations**

14.1 A commercially confidential valuation of the property for disposal will be undertaken at the earliest opportunity in the process and continually reviewed through the disposal process. Where it is decided to negotiate in house a disposal to a single party, rather than offer on the open market, it may be appropriate to obtain a valuation from a third party i.e District Valuer.

#### **15. Disposal at less than best consideration**

15.1 Where a disposal is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent sales, it will include where appropriate an asset lock, claw back or uplift clause, restrictive covenants, ransom strip retention, user rights or right of pre-emption.

15.2 A valuation will be undertaken to identify the undervalue (unrestricted less restricted value) and an attempt will be made to financially value the economic, social or environmental benefits to the council and community which justify a disposal at less than best price.

15.3 In the case of a proposed undervalue of £2 million or more the disposal requires the consent of the Secretary of State.

#### **16. Method of disposal**

16.1 The most appropriate method of disposal should be adopted from the following:

<b><u>Method</u></b>	<b><u>When to be used</u></b>
<b>Open Market</b>	
• Private Treaty	Limited interest and narrow valuation band
• Auction (With reserve)	Wide interest and easy to allocate a reserve
• Formal Tender	Wide interest but wide valuation band
• Informal Tender	Wide interest but wide valuation band

## **Special Purchaser (Private Treaty)**

By way of example:

- Sale to adjoining owner or lessee where special circumstances appertain.
- Sale to sitting tenants.
- Conditional disposal where the Council is selling for a particular purpose i.e. to a developer for regeneration or to a nominated housing association for social housing development.
- Sale of an access for benefit of recipient.
- Sales to former owners under the “Crichel Down” rules.
- Sale to a community group.

## **17. Tenure**

17.1 A disposal will be by way of the transfer of a freehold or leasehold interest.

17.2 In cases where CBC do not wish to exercise any control over the future use of the property, other than through the planning process, then the disposal of the freehold will obtain the best price. But in certain instances CBC will want to exercise some control of the future use of the land. In such cases a leasehold disposal is recommended for a term necessary to ensure the satisfactory completion of the scheme. Additionally control can be exercised through a service level agreement between the authority and the building operator. A leasehold disposal to a developer for a major town centre mixed use regeneration scheme may need at least 150 years to secure institutional funding. Because of the complexity and time frames involved a development agreement will also usually be entered into before a formal disposal is concluded, plus in many instances a section 106 agreement setting out conditions and contributions to the community through the planning system. The property disposal and section 106 Agreement will normally be negotiated in parallel in order to maximise the benefits to the council.

## **18 Timing**

18.1 This needs to be considered against the background of the council's budget and capital programme requirements, current state of the market, local and regional planning framework and potential for property values to increase or decrease in the future. Consideration should be given to obtaining planning consent or investment in the property prior to disposal to enhance its value and make it more attractive to the market. Alternatively planning briefs may be prepared highlighting likely acceptable future uses giving developers greater flexibility in bringing forward designs for planning permission.

18.2 In times when the market is not appropriate for a disposal, a temporary use should be found for a property as CBC will have to pay void rates and occupation will help with security. In cases where there is an external letting then this should be by way of a contracted out lease under the Landlord and Tenant Act 1954 so that vacant possession can be easily obtained.

## **19. Option appraisal**

19.1 Properties must only be sold after rigorous option appraisal testing for retained future authority needs and those of related bodies.

## **20. Performance Management**

20.1 Sales targets for the financial year, and two years following, and forming part of the capital budget to be agreed with the Director of Customer and Shared Services and the relevant Portfolio Holders.

20.2 Progress towards sales targets will be reported through the quarterly budget monitoring reports.

## **21. Delegated Authority**

21.1 The current levels of delegation are:

- Capital disposals and acquisitions:

Up to £50,000 Head of Assets can authorise

Up to £100,000 Assistant Director Assets can authorise

Up to £200,000 Director, Customer and Shared Services can authorise

Over £200,000 Executive Committee approval required.

- Leasehold disposals up to 15 years

Up to £50,000 p.a. Head of Assets can authorise

Up to £100,000 p.a. Assistant Director Assets can authorise

Up to £200,000 p.a. Director, Customer and Shared Services can authorise

Over £200,000 p.a. Executive Committee approval required.

However, the Constitution also provides for delegation of leases to be subject to a whole life cost provision limiting to £200,000.

21.2 There is a need to review the levels of delegation in order to manage the disposals programme effectively.

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