



Corporate Property Strategy

Supplementary Policy & Procedures

Disposal,
Acquisition

&

Community Asset Transfer
Policy

**Corporate Property Strategy
Disposals, Acquisitions & Community Asset Transfer Policy**

CONTENTS	
1.	Introduction
2.	Reasons for the Council Holding Property
PART A DISPOSALS	
3.	General
4.	Identification of Surplus and Under-Utilised Property
5.	Property Disposal Responsibilities
6.	Disposal Methods
7.	Preparation for Disposal
8.	Legal Process
9.	Disposal due to Compulsory Disposal Order
PART B ACQUISITIONS	
10.	Reasons for the Acquisition of Land or Property
11.	Property Search
12.	Financial Appraisal
13.	Due diligence
14.	Independent Valuation
15.	Negotiation
16.	Council's decision making and delegated authority
17.	Instructions
18.	Completion
19.	Adoption of Public Open Space
20.	Acquisition by Gift or Possessory Title
21.	Acquisition by Lease or Licence
PART C COMMUNITY ASSET TRANSFER	
22.	Definition of Community Asset Transfer
23.	National Policy Context
24.	Local Policy Context
25.	Our Commitment to Community Asset Transfer
26.	Who Can Apply?
27.	Principles of Community Asset Transfer
28.	The Framework for considering Community Asset Transfer
29.	Disposal & Legal Considerations

**Corporate Property Strategy
Disposals, Acquisitions & Community Asset Transfer Policy**

APPENDICES	
A.	Former Owners – Crichton Down Rules
B.	Financial Procedure Rule 14
C.	Standard Heads of Terms
D.	Community Asset Transfer Process
E.	Community Asset Transfer Application Criteria

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

1. INTRODUCTION

- 1.1 The purpose of this strategy is to provide a framework with transparency and fairness for the disposal of property assets in accordance with the Corporate Property Strategy (approved by Council on 29 July 2013).
- 1.2 The requirement to develop a Disposals Policy is an action within the Corporate Property Strategy. During development of this Policy, a need to widen the scope of the policy and framework to include the acquisition of land and property has been identified.
- 1.3 The aim of this Policy is to provide a consistent process and framework to be followed with regard to the disposal and acquisition of land and property.
- 1.4 Essentially this Policy will;
- a. Act as reference point for procedural matters when managing the acquisition and disposal of the land and property assets.
 - b. Ensure that the Council is consistent in its dealings in relation to property matters.
 - c. Ensure that best practice is taken in to account when managing the acquisition and disposal of Land and Property.
 - d. Ensure that the Council meets the requirements of current legislation in relation to Local Authority property management, in particular, the Local Government Act 1972, General Disposal Consent or any subsequent revisions. (refer 3.2 below).
 - e. Enable the Council to act in an efficient and effective manner when responding to requests from the general public in relation to its property portfolio.
 - f. To reduce the liabilities associated with holding and managing a land and property portfolio.
- 1.5 In respect of Community Asset Transfer, to set a transparent, positive and proactive framework to enable, where appropriate, the transfer of assets from the Council to a third sector organisation (TSO).

The framework will support asset transfers that:

- meet **community need and demand**
- support the **Council's aims and objectives**
- are evidenced by a **transparent business case** including financial implications to the authority
- are **sustainable** in the long term (particularly if long lease or freehold transfer)

2. REASONS FOR THE COUNCIL HOLDING PROPERTY

- 2.1 The reasons for the Council holding property is defined in the Corporate Property Strategy as;

“Property will only be held to support service delivery – exceptions may include:

- *Property held to generate income, subject to the business case for retention being demonstrated.*

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

- *Property required to achieve a regeneration objective.*
- *Property required for future service provision.”*

2.2 The aims of the Corporate Property Strategy are to facilitate and ensure that:

- The Council will make effective and efficient use of property holdings in line with the Council’s key objectives and targets.
- Construction and maintenance expenditure will be optimised having regard to whole life costings, which may justify additional capital spending to secure sustainable features and lower running costs.
- Property running costs are to be minimised and subject to regular benchmarking reviews.
- The business case for the retention of non-operational assets will be kept under review.
- The Council will work with public and private partners to secure optimum property use and is committed to maximising opportunities for the shared use of property assets to secure excellent space utilisation and to reduce running costs.

PART A DISPOSALS

3. GENERAL

3.1 This procedure sets out the framework to be followed in relation to the disposal of land and property.

As outlined in the Corporate Property Strategy operational property will be subject to review at a minimum of 5 yearly intervals. In addition, non-operational property will be subject to annual review. These processes, undertaken in conjunction with service areas by the Corporate Asset Manager, will identify any surplus land or property for disposal.

3.2 Local Authorities are subject to constraints when they come to dispose of land or buildings in their ownership. Some of these constraints are enshrined in law; others arise because of a general expectation that Local Authorities should be seen to act fairly when disposing of land as in other aspects of their work. The Constitution of the Council also sets out various requirements and responsibilities.

3.3 Changing requirements for service delivery and the regular review of properties will at times lead to some land and/or property assets becoming surplus. In addition, there may be circumstances in which a disposal is considered the best way to achieve one or more of the strategic objectives of the Council.

3.4 When developing a project for the replacement or rationalisation of a service which involves the closure of a facility, the Council will at the planning stage for the replacement facility;

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

- a. Have regard to any statutory processes which may apply to the particular service and consult and identify the future use of the property, which will become effective immediately upon the closure of the facility being replaced.
 - b. Identify funding as part of the project plan to deal with the demolition and management costs (if appropriate) of the property being replaced.
- 3.5 The Corporate Asset Manager will assess demand for use of the property from other services of the Council, partners, and market demands and will request information on any legal and planning restrictions, finance arrangements (eg claw back provisions).
- 3.6 For internal re-use of a property, the Corporate Asset Manager will assemble all relevant information in a report for CMT and, if necessary, Executive.
- 3.7 For disposals, the Corporate Asset Manager will assemble all relevant information and a report will be submitted to Executive with recommendations.
- 3.8 Legal Powers

Under the Local Government Act 1972 local authorities have powers to dispose of property in any manner they wish, subject to certain constraints.

Under the Local Government Act 1972: General Disposal Consent (England) Order 2003, prescribe that a Council shall not dispose of land for a consideration less than the best price than can reasonably be obtained. However, Councils may dispose of land at less than the best consideration reasonably obtainable provided that any undervalue does not exceed £2 million and the transaction is considered by the local authority to help secure the promotion or improvement of the economic, social or environmental well-being of its area.

Disposals at greater under-value require consent of the Secretary of State. A disposal for the purposes of the 1972 Act consists of -

- a. a freehold transfer; or
- b. a grant of a term exceeding seven years; or
- c. the assignment of a term which, at the date of the assignment, has more than seven years to run.

Since the 1972 Act, Government policy has introduced the concepts of Community Asset Transfer, community rights in respect of Assets of Community Value, and recognition of the Social Return on investment. The Localism Act 2011 further extends rights and powers for communities and individuals.

Councils may also be restrained from disposing of land for a purpose that was not the purpose for which it was acquired under legislative powers and this is particularly relevant for:

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

- Allotments (in certain specific circumstances)
- Open Space and Burial Grounds
- Pleasure Grounds

This strategy applies to freehold or long leasehold disposal of commercial or operational land and buildings.

4. IDENTIFICATION OF SURPLUS AND UNDER UTILISED PROPERTY OPERATIONAL AND COMMERCIAL PROPERTY

- 4.1 Identification of surplus corporate assets should follow the guidelines and procedure as set out below;
- 4.2 As outlined in the Corporate Property Strategy, property will be identified as surplus if it does not meet any of the reasons or objectives for the Council holding property assets as set out above or is identified as performing inadequately – functionally or financially.

It is the responsibility of each Service, in conjunction with the Corporate Asset Manager, to identify any property or part thereof that is under utilised or surplus to individual service delivery requirements. Following the identification of surplus property, the Corporate Asset Manager will consider any other potential uses for the property, which will include the identification of any other parties that may be interested in the property, e.g. another Service, County Council Departments, partners or external organisations.

Other referral may be required with:

- Corporate Management Team
- Capital Programme Board
- Executive
- Council

4.3 OPEN SPACE

- 4.3.1 The Council will not normally dispose of any core recreational open spaces identified in its open spaces strategy May 2011 or Provision for Open Space, Sport & Recreation March 2009 and subsequent revisions i.e. Parks and Gardens, Natural and Semi-natural areas, Green Corridors, Amenity Greenspace, Provision for Children and Young People, Outdoor Sports Facilities, Allotments (where the Council is the statutory provider) and Community Gardens, Cemeteries and Churchyards and Civic Space. Circumstances where disposal could be seen as preferable is where a sale of the open space and re-provision elsewhere will significantly benefit the wider community.

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

- 4.3.2 The Council will contemplate disposal of 'incidental open space' and areas of landscaping or parts of these – particularly where it will improve the management of the land benefiting the wider public, will reduce an unacceptable and significant impact on a neighbouring property resulting from miss-use of open space and/or clears up anomalies of past land sales, acquisitions, transfers.
- 4.3.3 In contemplating these sales, the Council must comply with its legal requirement to advertise proposed sales of public open space and consider objections prior to deciding to dispose of the site. (Applicants / proposed purchaser will be required to meet the costs of advertising the proposed sale).
- 4.3.4 There is no legal requirement for the Council to provide a reason for not selling, however, the Council may refuse to sell on the following grounds:-
- it judges that the personal safety for users of the remainder of nearby open space will be detrimentally affected e.g. where a narrow alleyway is created; or
 - it will result in the wholesale loss of, or detract from the visual quality/amenity of the surrounding area. Alternatively, in such cases it may apply covenants on sales to retain the open nature of landscaped areas and/or to require the provision of certain standards of new boundary fencing, walling or delineation; or
 - it is considered that there will be detrimental impact of such sales on neighbouring properties not financially involved in, or not benefiting from the sale.

5. PROPERTY DISPOSAL RESPONSIBILITIES

5.1 Disposals are the responsibility of the Corporate Asset Manager under the Corporate Property Officer. The principles set out in this strategy should be followed in all disposal cases.

5.2 Minor Disposals

A minor disposal is where the sale price does not exceed £5,000 or as defined in the Financial Procedure Rules.

The disposal shall proceed in accordance with the Financial Procedure Rules.

There may be circumstances where it is in the Council's interest to initiate a minor disposal e.g. land surplus to requirements or for reasons of good estate management.

However, departure from open marketing should only be considered in the circumstances as outlined later in this policy and on professional advice. In cases where there is more than one other contiguous land holding, consideration should be given to alternative disposal strategies to obtain the best price.

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

In the case of minor disposals, the Corporate Asset Manager is responsible for the disposal of property assets in accordance with this strategy, and the necessary approval will be sought from the Executive.

5.3 Major Disposals

A major disposal is any disposal not covered by the minor disposal definition above.

The disposal shall proceed in accordance with the Financial Procedure Rules

When a property has been identified as surplus to the requirements of the Council, the CPO should be notified. Once identified the Asset Management Dept. will establish the likely sale value after which the CPO may seek Executive approval to it being declared surplus and add the record for an appropriate programmed sale.

5.4 Disposal at less than best consideration

In contemplating a disposal or in marketing the premises, opportunities might come forward to consider a Community Asset Transfer or a community request in respect of an Asset of Community Value. It is recognised that disposals through these mechanisms may likely produce a receipt less than best consideration.

Also there might be opportunities where the Council wishes to facilitate a policy objective by sale at lower value.

Disposals at less than best consideration shall require approval by Council – unless already approved within another Council approved policy. In such cases the RICS Guidance Note should be consulted.

Whether or not Ministerial consent is required, the Valuer shall provide the following figures in all cases:

- a. unrestricted value;
- b. restricted value;
- c. the value of voluntary conditions.

6. DISPOSAL METHODS

- 6.1 As a general principle, disposal with open marketing is the most appropriate way to attract interest and secure best consideration. However, there are circumstances where alternatives should be considered.

Financial Procedure Rule 14 outlines the procedure for disposal, and the financial thresholds that need to be considered. However, there are circumstances where alternative methods may be appropriate and these are outlined below, and are able to be utilised subject to approval by the Executive.

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

The principal method of disposal outlined in the Financial Procedures Rule is a Sale by tender, which should be utilised for any sale in excess of £10,000 unless otherwise agreed by the Executive.

6.2 Formal Tender

Requires a great deal of preparation, as the tender document forms the contract for sale. A full appraisal of the transaction needs to be carried out, including a valuation which may be used to provide a guide price, in order to have a baseline against which to assess the tenders when they are returned.

Advantages:

- it can be concluded quickly where it is unconditional;
- it avoids tentative time-wasting enquiries;
- the Council does not need to accept any tender if the offer is not satisfactory provided this is made clear in the invitation to tender;
- the tender procedure should guarantee complete fairness; and
- as bids are not public, tenderers should put forward their best offer.

Disadvantages:

- potential purchasers are often put off by the procedure whereby they commit themselves contractually upon making any financial offer;
- there is little room for discussion about the scheme itself, and this method is too robust and inflexible to take account of any conditional offers, e.g. subject to planning etc.

In view of the inflexibility and disadvantages of the formal tender procedure there should, in normal circumstance, be a presumption against this method for the disposal of property, with a preference for a more informal approach.

6.3 Informal Tender (sealed bids)

The Local Government Ombudsman has issued the following guidance on informal tendering:

“Informal tendering is a process by which offers are invited but perhaps without a firm closing date. Unlike a formal tendering process (when tenders are submitted in sealed envelopes all of which are opened together) offers in the informal process are opened as they are received. Bidders may be invited to increase their bids, possibly having been told that a higher bid has been received. Whilst the practice of informal tendering (which might also be described as extended auction) does frequently give rise to complaints, the Ombudsman accepts that such a procedure may sometimes be appropriate and may result in the Council obtaining a higher price for the land than if bidding was restricted to a single sealed tender. At the end of such

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

an extended auction process all parties still expressing interest should be asked to submit a final bid by a specified date”.

Advantages:

- the most advantageous terms for the Council can be formulated even in very complex cases;
- the Council does not need to accept any tender if the offer is not satisfactory;
- as bids are not public, tenderers should put forward their best offer. (Though not necessarily going to achieve best price because in an auction situation people are sometimes prepared to bid more than they had envisaged, particularly when they see others prepared to bid at that level)
- most useful as a tool for resolving competing interest following private treaty marketing.

Disadvantages:

- lacks the certainty of the Formal Tender procedure, can be frustrating since post-tender negotiations can be protracted and may not be successful; and
- the requirement to negotiate raises some of the disadvantages of a sale by private treaty.

Current Contract Procedure Rules do not state that they apply to the sale of property nor do they regulate formal tender procedures. However, the Statement of Required Practice for Procurement (SORP), includes methods for tender on procurement, and any tender process for the sale of property will use the principles as the basis of good practice.

6.4 Use of an Approved List

The Financial Procedure Rule 14 includes the use of a process of potential bidders expressing an interest to submit an offer. The expressions of interest are reviewed and a selected list invited to submit offers.

This could be advantageous where there is a requirement to deliver corporate objectives and priorities alongside the need to demonstrate best value from a sale.

6.5 There are other principal methods of disposal available, which could be utilised subject to approval by the Executive, and their use will be based on the best method available to ensure that the Council meet the requirements of s. 123 of the Local Government Act 1972:-

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

6.6 Private Treaty – sole party without marketing

This is to be considered where there is unlikely to be more than one party interested in the property at an open-market price or there is clearly a special-interest purchaser likely prepared to pay above the market price.

This generally arises when an application is received from adjacent or neighbouring owner(s) to purchase the freehold or leasehold interest of a small or inconsequential area of land in the Council's ownership. If the land is surplus to requirements as identified in the Acquisition and Disposal Strategy, and as a guide has no development value or open market opportunity and has a market value of less than £5,000, in these circumstances, Executive approval will be required to comply with the Financial Procedures Rule 14, dated February 2014 or as amended to open 'confined' negotiations with the adjacent or neighbouring owner in order to achieve the most advantageous financial or economic result e.g. if the land is 'landlocked' or is difficult or expensive to maintain.

It might also arise in special circumstances where an adjacent owner can gain advantage by combining land to give rise to:

- Ransom Value
- Betterment Value
- Overage

In such cases it is necessary to establish both the market value and the value advantage to the proposed purchaser.

6.7 Private Treaty – with open marketing

After a reasonable period of exposure to the market, negotiations are carried out with interested parties and a clear highest bidder might emerge.

In the event that two or more interested buyers are identified at similar prices it is possible to consider moving on to the Informal Tender method below

Advantages:

- allows a flexible approach;
- time pressures are seldom imposed on either the seller or buyer; and
- it is widely understood and accepted by the general public.

Disadvantages:

- the proceedings cannot always overcome suspicions of unfair dealings, and it is therefore a method to be used with caution.

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

6.8 Auction

This method is to be considered when value is difficult to establish or where there could be numerous bidders, especially for small parcels of development land.

To achieve success with this method of disposal, external auctioneers will inevitably be used. The auctioneer should be briefed at an early stage, and fully involved in preparing conditions of sale and fixing the reserve price. The reserve should be approved by the appropriate delegated authority route and conveyed to the auctioneer before the auction. It should also be recorded in writing which the auctioneer will have available at the time of sale. Sale by auction requires preparation of all contractual details beforehand in order that a binding contract may be effected immediately a bid is accepted. Development land should only be considered for auction with planning permission and after pre-marketing.

Advantages:

- Certainty: contracts are exchanged on the fall of the hammer;
- Open process of competitive bidding may lead to a price in excess of that by private treaty;
- Regional/national marketing by the auction house.

Disadvantages:

- the seller has no control over who buys;
- funds to meet the sale price must be available within a specified period, and this may put off purchasers who need to raise finance;
- potential purchasers have to consider the transaction during the marketing period, with no opportunity to discuss alternative ways to structure the deal;
- the winning bid need only be marginally more than the second highest bid, and need not represent the maximum the purchaser would have been willing to pay;

6.9 Advertising

The Financial Procedure Rule 14 require that at least 10 days notice has been given in one or more of the local newspapers circulating in the area of the authority and/or such national journals as the Corporate Property Officer considers appropriate stating the nature of the property and inviting Tenders for its purchase and stating the last date when Tenders will be accepted.

As such, the same principles should be adopted for sale by Private Treaty – with open marketing and Auction if these options are utilised following approval by the Executive.

7. PREPARATION FOR DISPOSAL

The stages of preparation for disposal should include the following:

- i. Internal Circulation to SMT members what about CMT?
- ii. - To be carried out prior to declaring property surplus in order to give Services the opportunity to comment or express an interest within a time limit of 21 days.
- iii. Legal Consultation - To report fully on the Council's title, any rights or obligations which may be bound to the site and any restraints on disposal which might be in place due to legislation. Where it is intended to include covenants or conditions, legal advice should be obtained prior to negotiations.
- iv. Former Owner – Consider if there is an obligation under the Crichel Down Rules to offer the land back to a former owner. A summary of these rules and procedures is in Appendix A.
- v. Inspection - The purpose of which will be to identify development potential or any matter which is likely to aid or hinder the disposal.
- vi. Physical Constraints – Check the Council's own records, and also those of statutory undertakers, if appropriate.
- vii. Define Development Potential - Appraisal of potential disposal property should always consider the means by which maximum sale proceeds can be generated. In straightforward cases, the equivalent of an "outline planning consent" for the most valuable use available should be secured.
- viii. Where the Council wishes to consider ensuring a desired use of property to achieve its policy objectives, it will be necessary to introduce restrictive covenants, where appropriate.
- ix. An overage provision may be contemplated, so that the Council can participate in the benefits of any future increase in value due to a more valuable planning consent or significant uncertainty in valuation.
- x. Consideration of Method of Disposal as set out above to consider the options available. Financial Regulations provide guidance aimed at minimising or addressing the difficulties presented by late or revised bids.
- xi. Special Purchaser - It may be prudent to deal with a "special purchaser" if it would result in capital receipts above that which would be paid in the general open market, or in the furtherance of achieving one or more of the Council's Corporate objectives, subject to compliance with the Council's legal requirements.

8. LEGAL PROCESS

- 7.1 Once the principle terms are agreed between vendor and purchaser, Heads of Terms (refer Appendix C) will be completed by the Corporate Asset Manager. These will be approved by Executive and/or Council as appropriate.
- 7.2 Once approval has been obtained, the Heads of Terms will be issued to the Legal Dept. to execute the sale or lease.

**Corporate Property Strategy
Disposals, Acquisitions & Community Asset Transfer Policy**

7.3 On receipt of a Completion Notice, the sale will be recorded on the Council's Terrier and Asset Register.

9. DISPOSAL DUE TO Compulsory Purchase Order

The procedure for obtaining a Compulsory Purchase Order is already enshrined in legislation and therefore is not set out here. This strategy does not apply to Compulsory Purchase Order situations until a disposal stage has been reached e.g.:

- General Vesting Declaration
- Notice of Entry and Notice to Treat
- Agreed Transfer of Title

At such stage the procedure generally as set out in section 4 onwards shall apply with further administrative steps being taken as appropriate once the Notice to Treat crystallises as an acquisition of title.

PART B ACQUISITIONS

10. REASONS FOR THE ACQUISITION OF LAND AND PROPERTY

- 10.1 Unless there are exceptional circumstances, the Council will only acquire land or property for the purposes set out in section 2 of this Strategy.
- 10.2 A property requirement may be identified through a business planning process or asset management review.
- 10.3 Once a requirement has been identified, a strategic outline business case for the acquisition must be prepared by the Project Sponsor. This will set out the rationale, background, policy context and strategic fir for the requirement. The strategic case should clearly state the objectives that are to be delivered and identify SMART outcomes. The level of detail required will be reflected by the value of the potential acquisition.

11. PROPERTY SEARCH

- 11.1 Once a property requirement has been approved by Executive, the Corporate Asset Manager in association with key services will carry out a search to establish whether suitable land or property is available to fulfil the requirements of the Council. This includes utilisation of existing assets and opportunities with potential Partner organisations. Where a number of potentially suitable properties exist in the market place, comparisons will be made to establish which is the most suitable for the Council's needs. Criteria against which such decisions will be made include:
- Extent of Suitability
 - Price
 - Condition of property
 - Availability (in terms of timing)
 - Nature of tenure being offered (freehold or leasehold)
 - Location advantages (where a strategic acquisition is under consideration)
 - Return on investment (where a revenue generating asset is being considered)
 - Restrictive covenants / easements etc
 - Costs in-use for premises for Operational purposes
 - Cost to build, adapt or improve any premises and other costs relevant to the purpose

12. FINANCIAL APPRAISAL

- 12.1 When a suitable property has been identified, a financial appraisal will be carried out to establish the financial/budgetary implications of acquiring the property. The advice of the Head of Finance & Assets will be sought regarding interest on capital invested, to enable the opportunity cost of the acquisition to be fully assessed. The financial appraisal will take into account the following matters:
- The capital cost of acquisition and relevant expenditure
 - The opportunity cost of acquisition
 - Any revenue, or potential revenue, generated from the property, both short and long term
 - Availability of external funding sources

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

- Possibility of joint ventures
- The cost, in Asset Management terms, of owning the property, including:
 - Immediate maintenance/refurbishment requirements
 - Demolition costs, if appropriate
 - Adaptation requirements
- The overall effect of the acquisition on the Council's budgetary position.

13. DUE DILIGENCE

13.1 Appropriate investigations will be undertaken into matters relating to:

- The legal title of the property
- Planning and Building Regulation compliance for the existing use and proposed purpose
- Energy Performance Certificate
- Other relevant statutory consents
- Pollution
- Existing construction and mechanical and electrical plant

14. INDEPENDENT VALUATION

14.1 A written formal report compliant with the RICS Red Book shall be obtained before any legal obligation or purchase is completed. Appropriate informal advice shall be obtained prior to that to assist with assessing options and recommendations.

15. NEGOTIATION

15.1 Once the Executive or Council or other appropriate decision maker has agreed to support a case to the Council for acquisition, negotiations will be commenced with the vendor – to include any appropriate caveats such as investigation of title, planning consent and full Council approval. Where the sale of the site is by auction or tender, a bidding strategy will need to be formulated as appropriate and approved by the appropriate person / body with delegated authority.

16. COUNCIL DECISION MAKING

16.1 The Constitution sets out the powers and duties in respect of decision making relating to acquisition, which requires all acquisitions to be considered by Full Council.

All decisions shall be in accordance with the Council's Financial Procedure Rules.

17. INSTRUCTIONS

17.1 Once appropriate approval has been received, and all investigations satisfactorily carried out (or earlier if appropriate), the Proper Officer will be instructed to complete the documentation associated with the acquisition.

18. COMPLETION

18.1 Once the acquisition has been completed, Members will be informed as appropriate. The Corporate Asset Manager will ensure the Asset is added to the Asset Database and surveyed and maintained as identified in the Corporate Property Strategy. The

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

Legal Service will ensure that Land Registration information is provided so that GIS database system can be updated

- 18.2 Where appropriate or where requested as a requirement, the relevant officer to provide regular update reports to Council or Executive providing detail on the progress of the project for which the asset was acquired.

19. ADOPTION OF PUBLIC OPEN SPACE

- 19.1 The adoption of public open space should be considered by all relevant departments set out below prior to a report to Council for approval.
- 19.2 The relevant departments will include those with responsibility for Asset Management, Neighbourhood & Green Spaces and Grounds Maintenance CMT involvement?. The maintenance liability of each parcel of land must be considered in full before any adoption agreement will be agreed.

The Council will not adopt areas of Public Open Space unless one of the following applies;

1. A commuted payment is available from the developer to cover at least 15 years of maintenance, details of how sums are calculated are to be found within the Councils Provision for Open Space, Sport & Recreation March 2009, Appendix 4; or
 2. The Area is of interest to a charitable trust, which will maintain the land to which the Council can transfer the ownership of the land; or
 3. The developer has ceased trading and there are no assets to fund future maintenance of the Public Open Space; or
 4. It has proven impossible to negotiate an agreement between the developer and owners of houses on the estate and local parish councils to adopt the areas of Public Open Space.
- 19.3 It is intended that the developer will liaise with the Council before and during the adoption process to ensure that any agreed works are being carried out to the correct standards and specifications. The supervising officer for this development will be the Technical Officer responsible for Grounds Maintenance.
- 19.4 Boundary, hedges, fences, ditches and trees should be conveyed where appropriate with the adjoining development, and not with the public open space to reduce future maintenance costs.
- 19.5 Any adopted land parcel will be registered by the Legal department with the Land registry and the GIS database system updated with the relevant information by whom?.

20. ACQUISITION BY GIFT OR POSSESSORY TITLE

- 20.1 If such an acquisition opportunity arises, it will be considered if meeting the criteria set out in section 9 above and subject to appropriate measures under sections 11, 12 and 15.

21. LEASES AND LICENCES

- 21.1 Entering into a lease or licence agreement shall be considered in the same terms as any property acquisition the Council makes. Therefore, reasons for the purchase,

Corporate Property Strategy
Disposals, Acquisitions & Community Asset Transfer Policy

property searches, financial appraisals, independent valuation, negotiations and Council approvals should all be identifiable stages. Clear ownership of responsibilities will require agreement prior to assignment of a lease in terms of health & safety, maintenance requirements etc..

PART C COMMUNITY ASSET TRANSFER

22. DEFINITION OF COMMUNITY ASSET TRANSFER

22.1 The transfer of land or buildings from the Council's ownership into the stewardship and/or ownership of third sector (voluntary and community sector) organisations to include:

- management agreement
- licence to occupy
- short lease
- long lease
- freehold transfer (exceptional circumstances)

22.2 Community Asset Transfer usually involves a transfer at less than market value, either at a reduced cost, or for a nominal consideration. The social, economic or environmental benefits of the proposed transfer may be taken into account in determining the value.

22.3 There will be a presumption that any lease will be on a full repairing and insuring basis and the third sector organisation will be responsible for all running costs of the asset.

23. NATIONAL POLICY CONTEXT

23.1 The Local Government Act 2000 introduced the power for Local Authorities to undertake activities that promote economic, social and environmental well-being of the area.

23.2 *Making Assets Work – the Quirk Review of community management and ownership of public assets (2007)* considered the role of public assets as an enabler of community empowerment. Local Authorities have traditionally been risk averse in their consideration of asset transfer, but the Quirk Review concluded that the benefits of community management and ownership of public assets could outweigh the risks and opportunity costs in appropriate circumstances.

24. LOCAL POLICY CONTEXT

24.1 The Council's policy direction is defined in the *Corporate Plan 2013 - 15* which identifies the most important issues for local people and the subsequent Council priorities and strategic outcomes. The focus is on improving the lives of local people and making Harborough a better place to live, work and visit.

24.2 The *Corporate Property Strategy* highlights the links between these themes and the Council's property holdings, and also recognises the importance of reflecting the aspirations of the community through its asset management policies.

24.3 A collaborative approach by the Council and a range of public, private and voluntary sector partners to deliver our overall vision and priorities is critical.

25. OUR COMMITMENT TO COMMUNITY ASSET TRANSFER

25.1 The Council is committed to using Community Asset Transfer (CAT) where appropriate, and recognises the benefits it can bring to our communities:

- Economic development and social enterprise potentially leveraging in additional investment
- Community empowerment
- Improvements to local services
- Building capacity and encouraging a more sustainable third sector
- Value for money
- Supporting delivery of the Council's corporate objectives

We will provide a transparent framework to support decision-making and an agreed method of assessing all requests for transfer of Council assets.

We will pro-actively consider opportunities for CAT as part of our asset management planning processes in accordance with the Acquisitions and Disposals Policy

We will support third sector organisations and the CAT process through the Capital Programme Board. This will complement the valuable support provided by VASL and social enterprise organisations.

26. WHO CAN APPLY?

26.1 The Council will accept expressions of interest from not-for-profit groups and organisations. Applicants should be:

26.2 *Community led*

- Strong links with the local community and directly benefit the people of Harborough.
- Benefit as wide and diverse a range of local people as possible and demonstrate an inclusive approach to all members of the community.
- Decision making process influenced by local community.
- Primary purpose must be non-commercial

26.3 *Properly constituted*

- Demonstrate good governance through open and accountable processes
- Clear management and financial systems

26.4 They should also have the necessary ***skills and capacity*** to:

- Deliver services and manage the asset being transferred or have access to appropriate skills; or
- Be aware of the need to build capacity and demonstrate how they will achieve this

27. THE PRINCIPLES OF COMMUNITY ASSET TRANSFER

27.1 Our guidance on CAT is underpinned by the following principles:

27.2 Meeting Community Need and Demand

- There must be both a need and demand for the activities being proposed
- The proposed use of the asset should not duplicate activities, services or facilities already being satisfactorily provided in the local community
- Collaboration between third sector organisations and co-location of services will be actively encouraged to optimise social value and value for money.

27.3 Supporting the Council's Corporate Objectives

27.3.1 The proposed transfer must demonstrably support the delivery of the Council's corporate priorities and community strategy

27.4 Transparency

27.4.1 The asset transfer decision must be transparent and include an assessment of detailed criteria (Appendix 2) including:

- The Council's asset management planning requirements for the asset
- Benefits to the community and the Council
- Potential loss of capital receipt and existing income or other opportunity cost to the Council arising from the transfer
- Potential revenue saving to the Council

27.4.2 We will not guarantee exclusivity on a "first come first served" basis and will consider other expressions of interest. If more than one organisation is interested in a property then a collaborative approach to consider co-location will be encouraged. If co-location is not appropriate then a selection procedure will be adopted taking into account the extent to which each organisation meets the application criteria.

27.5 Sustainability

27.5.1 The applicant should demonstrate their ability to manage the asset effectively through the provision of a robust business case. This should include an assessment of their financial and organisational capacity:

- Income generation proposals
- Clear analysis of community/social need and demand for the proposed activities
- Space required to effectively deliver proposals
- Clear management structure and details of how building/land will be managed on a day to day basis including meeting any statutory requirements

28. THE FRAMEWORK FOR CONSIDERING COMMUNITY ASSET TRANSFER

28.1 The process for considering applications is detailed in Appendix 1. Requests for the transfer of Council owned assets will be considered where all the criteria contained in Appendix 2 are met. The degree to which the criteria is met, the condition of the asset and the requirements of potential funders/lenders will be used to determine the most appropriate type of transfer agreement where applicable. For example, an organisation may apply for a long leasehold but the Council recommend that a short term lease as part of a phased transfer is more appropriate whilst additional capacity is built.

29. DISPOSAL AND LEGAL CONSIDERATIONS

29.1 Any disposal will be in accordance with the Council's Disposal and Acquisition Policy. Community Asset Transfer of premises will be by way of leases or licences and freehold transfer will only be considered in exceptional circumstances where significant funding depends on such tenure. The tenure offered will be determined on a case-by-case basis dependant on the strength of the applicant and sustainability of the business case, but the Council will endeavour to meet funders requirements for security of tenure.

29.2 The decision whether to charge an open market consideration for the asset will be determined on a case by case basis. Factors influencing the decision will include proposed uses, extent of revenue producing opportunities and benefits to the community. Any asset transfer at less than best consideration will be dealt with in accordance with the Local Government Act, 1972; Royal Institution of Chartered Surveyors (RICS); Local Authority Asset Management Best Practice guidelines on disposal of land at less than best consideration, and valued in accordance with the RICS Valuation – Professional Standards in force at the time.

29.3 In all cases a Restrictive Covenant or claw-back provision will be inserted within any Transfer to protect the Council's position and ensure the Council receives the Opportunity Cost equal to the undervalue on a future sale and any windfall gain if a purchaser obtains a more profitable planning use.

29.4 Issues may arise in respect of EC law applicable to procurement issues, state aid, employment contracts, service agreements and other legal issues. These will be considered on a case-by-case basis with appropriate legal guidance. Third Sector Organisations will need to recognise that it is their responsibility to ensure that any disposal at an undervalue complies with and meets EC State Aid regulations and demonstrate this to the Council so that the Council are able to satisfy themselves that there has been no breach.

29.5 The decision to transfer an asset will not be considered as setting a precedent. Each asset transfer will be judged on its own merits and the detail of the transfer arrangements will be subject to individual negotiation.

APPENDIX A

FORMER OWNERS – CRICHEL DOWN RULES

Successive Governments have accepted the basic principle that land, whether in agricultural or other use originally, should be offered back to former owners or their successors if it was acquired by or under threat of, compulsion or under statutory blight provisions, and if it had not been materially changed in the interim, and was found to be surplus to requirements or otherwise appropriate for disposal. Disposals to former owners under these arrangements will be at current market value.

This principle was established in the 1954 Crichel Down case and has been used as a guideline for policy ever since.

ODPM Circular 06/2004 sets out the revised arrangements under which the rules should apply. The Rules are non-statutory but it is recommended, by central government, that they be followed.

The general obligation to offer back will not apply to the following types of land:

- a. agricultural land acquired before 1 January 1935;
- b. agricultural land acquired on and after 30 October 1992 which becomes surplus, and available for disposal more than 25 years after the date of acquisition;
- c. non-agricultural land which becomes surplus, and available for disposal more than 25 years after the date of acquisition.

The date of acquisition is the date of the conveyance, transfer or vesting declaration.

POLICY

The Council shall follow the guidelines of the Crichel Down rules.

APPENDIX B

FINANCIAL PROCEDURE RULE 14

PROPERTY AND LAND HOLDINGS

1. General

- (i) It shall be the responsibility of the Head of Legal and Democratic Services to maintain a land and property database (terrier) for all land and property currently owned or used by the Council.
- (ii) The Chief Finance Officer is the Council's designated Corporate Property Officer. The designated Corporate Property Officer is the lead Officer for the strategic asset management of the Council.
- (iii) Members of the Corporate Management Team responsible for the non-housing land and buildings owned by the Council must consult with and refer to the designated Corporate Property Officer on matters that are outside the day to day management of the properties and budget provision in respect of facilities and asset management.
- (iv) The Chief Finance Officer is responsible for keeping a register of Council assets according to the law.
- (v) The Chief Finance Officer is responsible for ensuring that assets of the Council are valued in accordance with statutory requirements. They must make sure that any resulting changes are recorded in the asset register.
- (vi) The Head of Legal and Democratic Services will keep the title deeds of all the properties the Council owns. These deeds must be kept in a safe place.
- (vii) Each member of the Corporate Management Team, in consultation with the Designated Corporate Property Officer, must follow the procedures for granting, renewing and transferring leases and reviewing and collecting rents for the properties the Council owns.
- (viii) Approvals for any sales or purchases of land or the granting of leases, easements, wayleaves or other rights or matters affecting land must be obtained in accordance with the Scheme of Delegation shown in Part 3 of the Constitution.

2. Sales

- (i) Sale of land or buildings, with the exception of 'Right to Buy' sales, must be referred to the Executive or Council for a decision as follows:
 - (a) where the price offered is in the range £5,000 to £25,000 – refer to the Executive; and
 - (b) where the price offered is above £25,000 – refer to Council.

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

- (ii) All land or buildings shall be offered for sale in accordance with one of the following procedures, unless otherwise agreed by the Executive:

(a) Sale by Tender

Property, other than under 'Right to Buy', which is valued at more than £10,000 shall be disposed of in accordance with the following process:

(1) Ad-hoc Tenders

At least ten days notice has been given in one or more of the local newspapers circulating in the area of the Authority and/or in such national journals as the Designated Corporate Property Officer considers appropriate, stating the nature of the property and inviting Tenders for its purchase and stating the last date when Tenders will be accepted; or

(2) Approved List

Public notice has been given in respect of a particular transaction in the manner described in (1) above inviting applications from interested persons to be placed on a list to be approved by the Council from which prospective purchasers shall be selected and invited to submit Tenders.

(b) Sale at a named figure

An assessment of the value of the property shall be made by the Designated Corporate Property Officer on the advice of a qualified valuer who shall issue particulars of the property and the price to all enquiring persons. Details of the property shall be publicly advertised on at least one occasion, and a sign board erected on the site.

(c) Invited offers

The property shall be advertised in accordance with (b) above, but no figures shall be placed in the particulars and interested parties shall be asked to make offers for consideration by the Council. In order to give guidance to would-be purchasers, a minimum figure may be quoted where appropriate.

(d) Negotiation with Housing Associations

The Executive may determine to dispose of housing land for social housing to a selected housing association subject to valuation by a qualified valuer. The Executive may determine to dispose of the land for less than market value subject to any current and prevailing general consents or in their absence the relevant consents being obtained from Communities and Local Government (CLG).

- (iii) The administration of (ii) (a) to (d) above may be carried out by approved agents. Where it is deemed in the best interest of the Council, properly qualified and experienced auctioneers shall be commissioned to act on behalf of the Council in offering for sale by auction land or buildings in the Council's ownership.

Corporate Property Strategy
Disposals, Acquisitions & Community Asset Transfer Policy

(iv) Exceptions

Every exception to the procedure shall require the authority of the Executive and shall be reported, with the reasons justifying the exception being made. Transactions involving sums of less than £5,000 shall be authorised by the Chief Executive, in consultation with the designated Corporate Property Officer, on such terms and conditions as thought fit.

3. Purchases

- (i) All purchases of land and/ or buildings shall be the subject of a valuation report by qualified valuer, who shall be a Chartered Surveyor.
- (ii) All decisions on purchases of land and/ or buildings shall be matters for full Council.

**Corporate Property Strategy
Disposals, Acquisitions & Community Asset Transfer Policy**

**APPENDIX C
<Property>**

Subject to Lease/License *

Heads of Terms

Lease/License Particulars *

Between	
Landlord	Harborough District Council The Symington Building Adam & Eve Street Market Harborough LE16 7AG
Tenant (Full Names & Full Address of all Tenants)	
Demised Premises	
Lease/License * Term	
Lease/License * Commencement Date	
Rent Review Intervals	
Initial Rent (exc. VAT)	
Rent Payment Dates	
Rent Commencement Date	
Permitted Use	
Security of Tenure	
Assignment	

**Corporate Property Strategy
Disposals, Acquisitions & Community Asset Transfer Policy**

Break Options	
Other	
Landlords Solicitor	
Tenants Solicitor	

* delete as appropriate

TENANT

Signed:

Name:

**Corporate Property Strategy
Disposals, Acquisitions & Community Asset Transfer Policy**

<Property>

Subject to Contract

Heads of Terms

Particulars

Between	
Vendor	Harborough District Council The Symington Building Adam & Eve Street Market Harborough LE16 7AG
Purchaser (Full Names & Full Address of all Tenants)	
Premises	
Tenure	
Price (exc VAT)	
Legal Costs	
Other	
Vendors Solicitor	
Purchasers Solicitor	

APPENDIX D

COMMUNITY ASSET TRANSFER PROCESS

STAGE	REQUIREMENTS	DECISION MAKER
<p>STAGE 1: Formal Expression of Interest submitted to the Corporate Asset Manager by the Third Sector Organisation (TSO) in response to:</p> <ul style="list-style-type: none"> • Request from TSO to take on a community asset • Invitation to express interest in surplus property following asset review 	<p>Outline business case:</p> <ul style="list-style-type: none"> • Why the asset is needed • Benefits to community, TSO and Council • Support from community/partners • Governance arrangements <p>If the application is supported the TSO will be invited to proceed to Stage 2. If the application is not supported a full explanation will be provided.</p>	<p>Corporate Management Team (to assess asset management implications) In consultation with: Relevant Service Managers (to assess any service implications) Corporate Asset Manager Ward Members Executive Member</p>
<p>STAGE 2: Detailed Business Plan submitted The Council will support the development of the Business Plan including the provision of any relevant asset information available</p>	<p>Detailed Business Plan:</p> <ul style="list-style-type: none"> • Needs analysis and projected utilisation • Type of transfer sought and why • Planned outcomes and benefits and how they will be measured/monitored • Details of any proposed partnership/collaborative working • Track record for delivering service/managing property • Capacity to manage the asset • 3 year plans for revenue and capital funding – projected income and expenditure including costs of managing and operating the asset • Financial sustainability and forward 	

**Corporate Property Strategy
Disposals, Acquisitions & Community Asset Transfer Policy**

	planning	
STAGE	REQUIREMENTS	DECISION MAKER
<p>STAGE 3: Full assessment of Business Plan</p>	<p>Report to Executive with a detailed assessment of:</p> <ul style="list-style-type: none"> • Benefits for community, the TSO and how they relate to delivering Council priorities • Risks in relation to financial and organisational ability to manage the asset • Potential loss of capital receipt and existing income or other opportunity cost to the Council arising from the transfer • Establish level of discount (if applicable) • Terms of transfer and any legal issues • Monitoring arrangements e.g. Service Level Agreement 	<p>Executive</p>
<p>STAGE 4: Recommendation, Decision and Completion</p>	<p>Report in line with Disposals and Acquisition Policy</p>	<p>Council</p>

APPENDIX E

APPLICATION CRITERIA

a) The Applicant must be:

A Third Sector organisation

- Legal entity
- Exist for community/social/environmental benefit
- Non-profit distributing – any surpluses must be reinvested to further its community benefits/social aims
- Properly constituted e.g. registered charity, not for profit company and constitution allows the management/ownership of buildings and provision of services
- Demonstrate good governance through open and accountable processes
- Demonstrate it has the skills and capacity within or available to effectively deliver its services and manage the asset
- Provide services or engage in activities that deliver economic, environmental or social benefits in line with the Council's core priorities
- Provide copies of the organisation's Annual Report and accounts if available
- Excludes Housing Associations

Community-led

- Strong links with the local community and directly benefit the people of Harborough
- Benefit as wide and diverse a range of local people as possible and demonstrate an inclusive approach to all members of the community
- Decision making process influenced by local community

b) The Asset

- A legal interest owned by the Council from which the TSO can demonstrate community benefit
- The asset is in the freehold/leasehold ownership of the Council
- The asset is not currently needed or identified for direct service delivery or future investment value
- Preference will be given to applications for multi-uses and co-location of services. Single interest uses will only be considered where there is a significant business case to do so

c) Proposed Use

- There is both a need and demand for the proposed activities and consideration is given as to whether or not this is being satisfactorily addressed by another organisation
- The proposed use will support the delivery of the Council's corporate priorities

Corporate Property Strategy Disposals, Acquisitions & Community Asset Transfer Policy

- The proposed use will maximise opportunities for income generation to ensure sustainability
- The TSO has established how much space it requires to deliver its proposals, and how they will make optimum use of the asset
- The proposed use will deliver extensive and inclusive reach into the community and will be open to all

d) Business Plan and Finance

- A robust business plan clearly stating the operation and service provision and financial and organisational capacity of the TSO to deliver the proposed services/activities and manage the asset is critical to the success of any transfer. This will include:
 - Needs analysis – how has the need for the services and use of asset been identified and what needs will be met
 - How the building will be utilised to optimum effect
 - Type and key terms of transfer sought and why
 - Benefits analysis and how they will be measured and monitored
 - Details of any proposed partnership/collaborative working
 - Track record for delivering service and/or managing property
 - Capacity of the TSO to acquire and manage the asset (including managing any liabilities) and how any future capacity building requirements will be addressed
 - 3 year revenue and capital funding plans – projected income and expenditure including costs of managing, operating and maintaining the asset (including Health and Safety responsibilities)
 - Financial sustainability and forward planning