DISTRICT OF HARBOROUGH

Corporate Property Strategy

Disposal & Acquisition Procedure



Reviewed by

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1. Introduction

1.1 The purpose of this procedure is to provide a transparent framework for the disposal and acquisition of property assets in accordance with the corporate property strategy and is to be considered alongside the council's constitution.

1.2 The aim of this procedure is to:

- manage the acquisition and disposal of the land and property assets according to best practice and legislation;
- ensure that the council is consistent in its dealings in relation to property matters; and
- to reduce the liabilities associated with holding land and property.

1.3 This procedure applies to freehold or long leasehold disposal of commercial or operational land and buildings. It excludes compulsory purchase.

2. Disposals

2.1 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.

Legal Powers

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

2.3 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 if 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.

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

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

2.5 The Council has a separate Community Transfer Policy.

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:

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

2.6 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 mis-use of open space and/or clears up anomalies of past land sales, acquisitions, transfers.

2.7 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).

2.8 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 detraction 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.

3. Identification of surplus and under-utilised property operational and commercial property

3.1 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.

3.2 It is the responsibility of each service area, in conjunction with the property team, 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 property officer 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, partners or external organisations.

3.3 Disposals are the responsibility of the corporate property officer who shall be provided with sufficient information from the property team. In the absence of the corporate property officer, depending on conflicts of interest, the role of corporate property officer shall be undertaken by the chief executive or the director of resources. The matrix setting out the approval routes for disposals and acquisitions in accordance with the council's constitution and financial procedure rules.

3.4 A minor disposal is where the sale price does not exceed the value as defined in the financial procedure rules and shall proceed in accordance with the financial procedure rules.

3.5 Any departure from open marketing should only be considered in the circumstances on professional advice from the property team. 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.

3.6 A major disposal is any disposal above the threshold set out in financial procedure rules. The disposal shall proceed in accordance with the financial procedure rule and this procedure.

3.7 Disposals at less than best consideration shall require approval by council unless already approved within another council approved policy. Whether or not Ministerial consent is required.

Disposal Methods

3.8 As a general principle, disposal with open market tender is the most appropriate way to attract interest and secure best consideration. However, there are circumstances where alternatives should be considered and subject to approval by the cabinet. The alternative disposal methods will be evaluated by the property team and included in a report for its corporate property officer.

Advertising

3.9 Advertising shall be undertaken in an appropriate manner and for a reasonable period, proportionate to the asset and in accordance with legal requirements. At least 10 days' notice is generally considered a suitable period of advertisement for open space. Adverts will be included 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.

Preparation for Disposal

3.10 The property team will prepare a report to the corporate property officer, including:

- Internal circulation to CMT and heads of service.
- Legal services - 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 disposal and negotiations.
- Former owner – Consider if there is an obligation under the crichel down rules to offer the land back to a former owner.
- Inspection - the purpose of which will be to identify development potential or any matter which is likely to aide or hinder the disposal.
- Physical constraints – check the council's own records, and also those of statutory undertakers, if appropriate.
- 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.
- 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.

- 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.
- 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.
- 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.
- The appraisal process (delegation, Cabinet and Council) and timescales for approval and the disposal process.

All disposals must be supported by a documented appraisal process, including:

- evidence of surplus declaration;
- options appraisal (including do nothing / alternative uses);
- valuation advice;
- recommended disposal route; and
- record of approvals.

Legal Process

3.11 Once the principal terms are agreed between vendor and purchaser, heads of terms will be completed by the property team in conjunction with legal services. These will be approved by the corporate property officer, cabinet and/or council as required by the constitution.

3.12 On receipt of a Completion Notice, the sale will be recorded on the council’s terrier and asset register.

Disposal due to Compulsory Purchase Order

3.13 The procedure for obtaining a compulsory purchase order is already enshrined in legislation. This procedure does not apply to compulsory purchase order situations until a disposal stage has been reached.

4. Acquisitions

4.1 Unless there are exceptional circumstances, the council will only acquire land or property for the purposes set out in the corporate property strategy and will be the decision of the corporate property officer to recommend a course of action to cabinet or council on receipt of sufficient information where required by the constitution.

4.2 A property requirement may be identified through a business planning process or asset management review.

4.3 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 need for the requirement. The strategic case should clearly state the objectives that are to be delivered and identify SMART outcomes (specific measurable, attainable, relevant,

timebound). The level of detail required should be proportionate by the value of the potential acquisition.

Property Search

4.4 The property team in association with 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; and
- whole life costs.

Financial Appraisal

4.5 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 Director of Resources will be sought regarding interest on capital invested, capital flexibilities and financing options, 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;
- any revenue, or potential revenue, generated from the property, both short and long term;
- availability of external funding sources;
- 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; and
  - the affordability of the acquisition on the council's budgetary position.

Due Diligence

4.6 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;
- appropriate surveys (e.g. condition, asbestos, and compliance) should be undertaken proportionate to the nature of the asset.
- energy performance certificate;
- other relevant statutory consents;
- pollution;
- existing construction and mechanical and electrical plant.

Independent Valuation

4.7 A formal independent 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.

Negotiation

4.8 Once the cabinet 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 corporate property officer, on the advice of the property team.

Instructions

4.9 Once appropriate approval has been received, and all investigations satisfactorily carried out (or earlier if appropriate), the corporate property officer will instruct legal services to complete the documentation associated with the acquisition.

Completion

4.10 Once the acquisition has been completed, Members will be informed as appropriate. The corporate property officer will ensure the asset is added to the asset database. Legal service will ensure that land registration information is provided so that GIS database system can be updated.

5. Adoption of public open space

5.1 Public open space (POS) should be transferred to the parish/town council or Harborough District Council for adoption where appropriate and finally to a third party management organisation in accordance with the adoption hierarchy set out in the open space policy and guidance.

5.2 The approved landscape management plan must be in place and approved by the planning authority prior to commencement of development.

5.3 POS must provide unrestricted public access, year-round. Where safety or operational needs require fencing or gating, these must be agreed early in the design process and allow for council or other maintenance vehicles access the areas post-adoption.

5.4 A post-installation independent safety audit, including a specialist audit for children’s play areas, will be required before POS is signed off as complete.

5.5 Harborough District Council will adopt areas of POS only if the following apply;

- A commuted payment is available from the developer for maintenance for 15 years in accordance with extant planning guidance for developer contributions
- A landscape maintenance transfer inspection has been passed and final certificate issued.
- Developer transfers the POS with the commuted sum for maintenance to parish/town council or Harborough District Council in accordance with the adoption hierarchy set out in the open spaces strategy 2026.

5.6 Exceptional circumstances to the above will be considered where strategic sites may not be applicable to the adoption hierarchy set out in the open spaces strategy 2026. These will be considered on a case by case basis without setting a precedent.

5.7 Legal services, property services, planning service/compliance and environmental services will deal with the transfer of open space to Harborough District Council.

6. Leases and Licences

6.1 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, 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.