

Review of Property Protocols

Report of Councillor John McCann

Portfolio Responsibility : Regeneration and Environment

28th June 2010

Officer Contact : Cath Conroy
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Purpose of Report

The purpose of the report is to seek approval to revised Property Protocols

Recommendations

Council is recommended to approve revised Property Protocols

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1 Purpose of Report

1.1 The purpose of the report is to seek approval to revised Property Protocols

2 Recommendations

2.1 Council is recommended to approve revised Property Protocols

3 Background

3.1 The importance of a comprehensive approach to asset management has been recognised by the Council in recent years,

As part of the work being undertaken to progress development of the Corporate Asset management function, in order to provide a firm foundation and basis for embedding the significant change within the organisation, the Property Protocols have been reviewed and amended to reflect the Council's structural changes, and provisions relating to disposal of Open Space have been streamlined.

4 Current Position

4.1 The amended Protocols are regarded as being sufficiently robust to provide a firm foundation for developing a framework within which the organisation will ensure a consistent, professional approach to how the Council manages its corporate property portfolio, ensuring that it is utilised most efficiently and effectively as one of its key resources moving into the future.

4.2 The main principles established within the Protocols are as follows;

- All land and property is treated as a corporate resource and all transactions are undertaken via the Corporate Asset Management Team.
- Capital receipts will not be earmarked and capital spending will have regard to the priorities in the Capital Programme, subject to specific exceptions such as requirements of grant regimes.
- Land and property running costs will be optimised to ensure expenditure associated with occupation is minimised.

- The Council will keep under review the business case to retain non-operational assets and the state will be subject to annual review.
- Land and property will only be held to support service delivery, and Executive Directors will be required to account for assets used to deliver services and the Corporate Property Board will challenge ownership requirements on a regular basis.

5 Options/Alternatives

- 5.1 If a corporate asset management function/service is not fully supported and endorsed by the organisation, it will not succeed in delivering potential significant revenue savings and capital receipts generation.

Robust Protocols are required to ensure consistency in approach and best practice with regard to all the council's property transactions.

6 Preferred Option

- 6.1 The Protocols are fully endorsed and are reviewed on an annual basis, in line with the Asset Management Plan and Corporate Property Strategy.

7 Consultation

- 7.1 Officers in Legal and Finance have been consulted.

8 Financial Implications

- 8.1 The proposed revised Property Protocols provide the basis for ensuring the most efficient utilisation of the Council's property portfolio. This will, amongst other benefits, produce both revenue savings from reduced property occupation costs and additional capital receipts from the disposal of non-efficient assets which are deemed to be surplus to the Council's requirements.

- 8.2 Capital receipts generated will, with the exception of any specific grant funding regime requirements, represent additional general capital resources which will be available for utilisation in line with the Council's capital programme priorities. Capital receipts generated from the disposal of grant funded assets will need to adhere to the relevant grant regulations and will either be available to fund additional capital expenditure in line with the grant regime or will need to be repaid to the grant body.

- 8.3 It should be noted that an element of both the revenue savings and additional capital resources may be allocated to the Property Efficiency Team (PET) which is currently being established following Cabinet approval on 31 March 2010 (EDRS 10030162). Any such allocations will either be included in relevant EDRS reports or will need to be the subject of separate EDRS reports.

- 8.4 Any capital investment identified to ensure the most efficient utilisation of the portfolio will either need to be submitted in line with the Council's Capital Strategy process or will be funded from the £6M Invest to Save – Managing Surplus Property allocation (EDRS 10020099).
- 8.5 Revenue savings generated may, in certain circumstances, be initially offset by the costs incurred whilst surplus assets are held pending disposal and any disposal costs. These costs will include, but are not limited to, security, necessary utility services, public open space advertising, marketing costs, professional fees and related disposal disbursements.
- 8.6 In order to offset the overall cost to the Council of proposed disposals of assets it is suggested that the negotiations include for payments in addition to the land value in respect of the Council's legal and surveyors fees. These payments for legal and surveyors' fees would represent revenue income to the Performance, Service and Capacity and Economy, Place and Skills directorates respectively.
- 8.7 As detailed in Section 4.1 of the proposed protocol the costs pending disposal of assets not required for service use and the subsequent net cost of disposal will be the responsibility of the previous occupying service directorate. The anticipated cost of these will need to be factored into the relevant Directorate service budget when surplus assets are identified. However, any costs following a decision by the Corporate Property Board to retain assets will be the responsibility of the Corporate Asset Management Team within the Economy, Place and Skills Directorate.
- 8.8 In respect of decisions to vacate premises leased by the Council any costs incurred, such as landlord dilapidation charges or advance works to minimise such charges, will also need to be factored into the relevant occupying service budget when the decision to vacate is made.
- 8.9 The proposed protocol identifies the delegation of decisions in respect of various aspects of the property portfolio management. Where reports are required they will need to identify the recurring revenue savings, together with the one off revenue expenditure, capital expenditure and income disposal implications to enable the cost benefit of each disposal to be considered.

(Phillip Crossley)

9 Legal Services Comments

- 9.1 There are no specific legal implications of this report. However, legal and other relevant advice should be sought before making further recommendations in respect of any specific dealings with land or buildings in which the Council has an interest to ensure that the Council is able to deal with the land in the manner to be recommended (Pat Tucker)

10 Human Resources Comments

- 10.1 N/a

11 **Risk Assessments**

11.1 Implementation of robust Property Protocols throughout the organisation will ensure that appropriate, timely professional property advice is sought which will mitigate the risk of the Council entering into property agreements which are financially disadvantageous, such as 20 year leases of office accommodation without break clauses, underwriting of significant sums, commitment to unachievable/unsustainable rental levels etc.

12 **IT Implications**

12.1 Colleagues in IT have been consulted.

13 **Property Implications**

13.1 As covered within the report.

14 **Procurement Implications**

14.1 None

15 **Environmental and Health & Safety Implications**

15.1 None directly from the report.

16 **Community Cohesion Implications [including Crime & Disorder Implications in accordance with Section 17 of the Act] and Equalities Implications**

16.1 None directly from the report.

17 **Forward Plan Reference**

17.1 EPS-50-09

18 **Key Decision**

18.1 Yes

19 **Background Papers**

19.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act :

File Ref : AM/CC

Name of File : Property Protocols

Records held in Economy Place & Skills Directorate, Oldham Business Centre, Cromwell Street, Oldham
Officer Name : Cath Conroy
Contact No : ext. 4424

20 **Appendices**

20.1 Property Protocols

Signed _____ Cabinet Member [specify whom]	Dated _____
Signed _____ Executive Director	Dated _____

e) LAND AND PROPERTY PROTOCOL
OLDHAM COUNCIL
ASSET MANAGEMENT WORKING ARRANGEMENTS AND PROPERTY
PROTOCOLS

1.0 GENERAL

This Protocol forms part of the Council's Constitution.

Appropriate internal professional advice, should be sought at an early stage of any proposed land transaction. Advice should always be sought where the transaction will form part of a large or complex project or programme, or where it is proposed to enter into a development agreement or major Section 106 agreement. This is to ensure that all legal, financial, property and other implications of the transaction are identified prior to a report being prepared for decision.

2.0 POWERS OF ACQUISITION, APPROPRIATION, HOLDING AND DISPOSAL OF LAND

The Council is empowered to acquire, hold, appropriate and dispose of land for its statutory purposes, by a variety of statutes. An officer who is preparing an acquisition, disposal or appropriation of land must ensure that the transaction is undertaken using the appropriate powers of the Council for that land and having regard to all legal requirements, including statutory guidance.

Directorates will be required to work through the Corporate Property Board in respect of proposals to acquire, appropriate or dispose of land. Land acquisitions, appropriations and disposals should be identified through the Asset Management Plan (AMP) process and be subject to scrutiny by the Corporate Property Board. The Capital Strategy should also reflect proposals to dispose of, or acquire land and property.

For all land, only the Corporate Property Officer will be authorised to take action to acquire, appropriate or dispose of operational and non-operational property.

3.0 GENERAL MANAGEMENT PRINCIPLES

The Council has adopted the following key management objectives and principles:

All land and property with the exception of the Council housing portfolio, which is managed by First Choice Homes will be treated as a corporate resource. (This will be reviewed post Housing Stock Transfer)

Capital receipts will not be earmarked and capital spending will have regard to priorities in the capital programme, subject to specific exceptions such as requirements of grant regimes.

Land and property running costs will be optimised to ensure expenditure associated with occupation is minimised.

Land and property users have an obligation to significantly reduce running costs.

The Council will keep under review the business case to retain non-operational assets and the estate will be subject to annual review.

Land and property will only be held to support service delivery – this may include being held to generate income to secure services subject to a business case being demonstrated or, for regeneration purposes as part of a wider regeneration initiative.

Executive Directors will be required to account for assets used to deliver services and the Corporate Property Board (CPB) will challenge ownership requirements on a regular basis.

The Council will maintain investment into its land and property infrastructure subject to available resources.

Partner organisations and particularly those in the public sector will be encouraged to adopt a joined up approach to service delivery and to share accommodation to reduce costs.

Investment planning will take into account whole life costing. Capital and revenue programmes will make provision for investment into the Borough's property infrastructure.

New buildings will be sustainable, based on whole life cycle costing and not initial capital outlay.

All new buildings and those subject to significant refurbishment works will have a Building Research Establishment Environmental Assessment Method (BREEAM) rating of not less than good.

Land and property occupation costs and property utilisation will be monitored through the AMP process.

The establishment of a new Corporate Asset Management Team (CAMT) –introduces the concept of the Council as corporate landlord. The CAMT will act as the landlord's agent and directorates will be considered as tenants occupying corporate buildings. The Corporate Property Board will include representation at Executive or Assistant Executive Director level to ensure the Group has a strategic focus. The Unity Partnership will operate as property consultants to the Council dealing with valuations, sales, feasibility studies and the management of building contracts.

- Any land and property declared surplus by FCHO will be referred to the CAMT for sale.

Corporate budget provision will be made to facilitate a timely disposal strategy to include all necessary pre-sales activities.

4.0 THE LAND AND PROPERTY PROTOCOL

4.1 Disposal of Land (Best Consideration)

All land and property whether held for service use or as part of the non-operational portfolio should be subject to annual review and if not required for service delivery or, where a case cannot be made to hold non-operational property, should be declared surplus to enable the Corporate Asset Management Team to dispose of the land/buildings.

With effect from the 1 April 2010, the procedure will be for service directorates to give the earliest possible notice to the CAMT that land/buildings are no longer required for service use. This action will enable the CAMT to make arrangements for the property to be used by other Council directorates or, to enable the property to be sold. All costs relating to land and property held for service use will continue to be the responsibility of the service directorate until it is disposed of. The service directorate will also be responsible for all net costs associated with

the disposal process. However, should a case for retention be approved by CPB, then CAMT will take responsibility with appropriate funding provision.

It is a general legal requirement that local authorities must obtain the best consideration reasonably obtainable when disposing of land, unless the consent of the relevant secretary of state is obtained. A disposal includes a lease of more than 7 years or an assignment of a lease, which has more than 7 years to run.

It is a principle of this protocol that all disposals of Council land will seek to secure the best consideration that can be reasonably obtained.

Normally this will require open market sales of land and property, advertised appropriately and leases of land at market value. Any proposed sale that is not based on an open market disposal must be the subject of an EDRS report to justify an alternative disposal route.

In certain circumstances, the law provides that authorities may dispose of land at less than best consideration. This requires the consent of the relevant secretary of state, unless a General Disposal Consent (issued by the relevant secretary of state from time to time) may be relied on. Any decision to dispose of land at less than best consideration may only be made subject to seeking the consent of the relevant secretary of state where required.

In considering the disposal of land at less than best consideration, advice must be sought at an early stage about the possibility that the proposed transaction may result in the giving of unlawful State Aid (European Union Treaty article 87(1)), in order to consider what action is appropriate to avoid this.

4.2 Disposals of land at less than Best Consideration

The Local Government Act 1972 Section 123 provides that the Council may dispose of land in any manner it sees fit subject to the constraint that except in the case of leases for less than seven years, a disposal must be for the best consideration reasonably obtainable. Generally, best consideration will be achieved by offering the land for sale subject to open competition. Section 123 applies to land held for most of the Council's statutory functions subject to certain exceptions such as disposal of land held for housing purposes, which are governed by the Housing Acts and for planning purposes which are governed by planning legislation.

It is expected that land will be sold for the best consideration reasonably obtainable. However, it is to be recognised that there will be circumstances where a local authority will consider it appropriate to dispose of land at less than best consideration. Any proposed sale that is not based on an open market disposal must be the subject of an EDRS report.

When considering disposing of land at an undervalue, members and officers must remain aware of the Council's fiduciary duty to Council Tax payers.

The General Disposal Consent (England) 2003 provides a general consent removing the requirement for the Council to seek specific approval from the Secretary of State for a wide range of disposals at less than best consideration.

The Council have been granted consent in circumstances where the under value does not exceed £2million and where the Council considers that the disposal is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the whole or any part of the area (the general power of well being).

It must be considered in each case whether a specific proposal to dispose of land at less than best consideration meets these criteria or continues to require

specific consent under Section 123 of the Local Government Act 1972, or other legislation.

In determining whether or not to dispose of land for less than best consideration, the Council should obtain the view of a professionally qualified Chartered Surveyor (valuer) to determine the likely amount of the undervalue. Legal advice should also be obtained on the question of whether the disposal is capable of falling within the terms of the specific consent. In certain cases, it may be prudent to consult the District Auditor in relation to any action that is proposed.

In considering the application of the well being criteria under the General Disposal Consent, the Council must have regard to the Community Strategy and reasonably consider the extent, if any, to which the proposed disposal supports the aims and objectives in the Strategy.

The Cabinet must demonstrate that it has acted reasonably in approving undervalue transactions in order to be in a position to respond to any potential challenge. Regard must therefore be had to the Corporate Property Strategy, the terms of the Council's Land and Property Protocols and the Council's fiduciary duty.

In considering the financial considerations of any disposal at any undervalue, there must be evidence that the outcome will be equally beneficial as compared to a disposal at market value.

As a general principle, disposal of land at less than best consideration, should take place on an exceptional basis and should not be regarded as the rule.

Local authorities are state aided authorities for the purposes of the European Commission's State Aid Rules. Disposal of land at less than best consideration effectively involves subsidising the purchaser, developer and/or occupier of the land. The Council must therefore ensure that the nature and amount of any subsidy complies with the State Aid Rules and failure to do so would render the provision of any aid unlawful.

Any proposal to dispose of land at less than best consideration should in the first instance be referred to the Corporate Property Board for consideration of a business case and options appraisal.

When any proposed sale is for less than best consideration, the matter must be referred to Cabinet for a decision and in reporting to Cabinet, it is advisable that the following requirements are fulfilled:-

Confirmation that the disposal will contribute positively to the Council's priorities.

A statement that the benefits that the Council will derive from the proposed disposal cannot be achieved unless the sale takes place at undervalue and confirming that no reasonable alternative means of funding are available to the purchaser.

Details of the proposed terms of the transaction which will ensure that the disposal will contribute to the achievement or improvement of the social, economic and environmental well being of the area.

4.3 Lettings

All lettings must be arranged through the Corporate Asset Management Team . Grant of leases/licences, rent reviews and lease renewals (up to £250,000) will be within the Corporate Property Officer's delegated authority. Any further delegations will be documented on EDRS.

Certain leases and assignments are defined in law as disposals. This means that the general requirement to dispose at the best consideration reasonably obtainable will apply to them. Any proposal to dispose at less than best consideration should be dealt with as indicated in the section on Disposal (Best Consideration) above.

Under this protocol, all lettings will be based on market rents and typically this means the rent that a private sector organisation would be likely to charge for a similar facility. For example a private nursery operating from school premises. Concessionary lettings will not be allowed and directorates will be required to 'sponsor' concessionary arrangements by grant funding to secure full market value rents.

4.4 Application of the EU Public Procurement Regime

Certain disposals of land may fall within the definition of "works" contained in the Public Contracts Regulations 2006, which give effect to European law on public procurement. This will need to be considered, for example, where the Council is providing land within a development scheme or is imposing obligations on a developer in order to meet its regeneration objectives, whether through the use of a Section 106 agreement or development agreement. This remains a developing area of law (at the end of 2009) and legal advice should be sought at an early stage to determine whether any proposed disposal to a developer should be advertised under the Public Contracts Regulations.

4.5 Open Space

Acquisitions (including compulsory acquisitions) and appropriations of open space to other purposes must apply the appropriate legal powers and duties for the purposes for which the open space is being acquired.

4.6 Decision Making

Acquisition, appropriation and disposal of land is an executive function. Decisions may therefore be made by the Cabinet, a Cabinet Committee, or an officer of the Council. This protocol sets out who can make decisions on property transactions.

4.7 Transactions which require the approval of Cabinet

All recommendations to dispose of land of any value for less than the best consideration reasonably obtainable.

All recommendations to compulsorily acquire individual plots of land or properties of any value that have not been approved within a scheme of development or regeneration project.

All recommendations to promote a scheme of development or to undertake a major regeneration project that include proposals to acquire land by agreement and/or using compulsory purchase powers.

All recommendations to acquire by agreement, appropriate or dispose of land valued at more than £250,000 (including individual plots of land included within a development scheme or regeneration project approved by Cabinet).

4.8 Transactions which may be approved by the relevant Executive Director

Subject to paragraph 4.7, the Executive Director, Economy, Skills & Places (the Council's Corporate Property Officer) is authorised, (in consultation with the relevant Cabinet Member where the decision is a key decision), to approve property acquisitions, appropriations and disposals of land valued at £250,000 or less.

4.9 Compulsory Acquisition of Land

Cabinet approval is required for any acquisition of land (or programme of acquisition) where it is proposed to use the Council's powers of compulsory acquisition. Any approval to acquire the same land by agreement should be sought from Cabinet at the same time as the approval to use compulsory powers.

4.10 Content of Reports

Cabinet reports seeking consent to dispose of or acquire land should include details of the interest held, appropriate site plans and valuation information provided by either, the Unity Partnership, the District Valuer, the Assistant Executive Director Property and Asset Management or other appropriate independent advisor.

Reports seeking to dispose of land at less than best consideration should in addition, address those matters set out in paragraph 4.2.

Reports should demonstrate that all relevant legal issues have been considered and addressed and that there is no legal barrier to prevent a decision from being taken.

Where approval is sought for a development scheme or regeneration project, a plan showing the individual properties whose acquisition it is proposed to seek under the scheme or project must be included in the report which seeks approval for the scheme.

4.11 Independent Valuations of Land/Property

With regard to those transactions for the disposal of property that have not been exposed to the open market an independent valuation will be obtained in the following instances:

Transactions involving the Council's Joint Venture Companies.

Those transactions involving property of a specialist nature.

Any other transaction, which the Council would consider it prudent to obtain independent advice.

Disposals at less than best consideration reasonably obtainable.

4.12 Open Space

Decisions to dispose of open space must be made in two stages. The first stage report is to recommend disposal of the land in principle, subject to the advertising of the proposed disposal and allowing time for objections.

The second report will make recommendations for disposal or retention of the land having regard to any objections, which have been received to the proposed disposal.

4.13 Instructions to undertake property transactions

All property instructions from directorates in respect of the Council's property estate must be referred through the CAMT and specifically all property acquisitions and disposals will be dealt with by the CAMT. Legal Services will not accept instructions from other directorates

4.14 Office Moves

To bring a degree of corporate control over office moves and the acquisition of external leases, all office moves and the acquisition of new accommodation must be supported by the CAMT and approved by the Council's Corporate Property Officer.

Moves will only be authorised if there is a sound business case. The Business Case must have regard to all costs, including ICT charges. Specifically the Council will be endeavouring to reduce the amount of leasehold accommodation currently held to provide services.

To ensure a corporate approach to the delivery of the target to reduce the amount of office space held by the Council by 25% over a 5-year period, all planned moves and relocations will be subject to review by the CPB and authorisation to relocate will be through the Corporate Property Officer.

4.15 Service Review

The relevant Assistant Executive Director and the Group Manager Asset Management will establish regular service meetings with individual directorate teams to ensure that operational requirements are addressed. Reference will be made to all costs of occupation including ICT charges.

Member Notification

Properties that are identified as being surplus to requirements should be referred to the Cabinet with a recommendation that they are declared surplus to requirements and the Ward Members should be notified before Cabinet considers the report.

DEFINITIONS

In this protocol:

“Land” includes land which has buildings built upon it.

“The Council” means Oldham Metropolitan Borough Council. It does not refer to the Full Council as a decision making body.

“Housing land” means land acquired or held for the purposes of local authority housing.

“Lettings” – where possible the Council will enter into leasing with rent charges rather than license arrangements.

PROTOCOL ON DISPOSAL OF OPEN SPACE

Identify Open Space at an Early Stage

The key issue is to make sure that open space (sometimes referred to as public open space) is identified at the earliest possible stage of the disposal process.

Title Investigation

Where the Council is considering disposal of land a title investigation should be sought from Legal Services prior to seeking a decision on disposal of the land. A title investigation is necessary even where the land is registered since official copies of entries on the Land Registry refer to, but do not contain, all relevant details relating to the land that may affect its disposal. Open space is not specifically dealt with on official copies but may be included in the Council's own records.

However, the Council's records may not be conclusive as to whether the land is open space and it is often through discussion between Legal Services and the surveyor that open space is identified. Therefore, a site visit is likely to be needed

to determine conclusively whether or not the land should be dealt with as open space.

Site Visit

The surveyor making the site visit to the land should consider whether the land falls within the definition of open space contained in the Town and Country Planning Act 1990 (TCPA) and the Open Spaces Act 1906 (see below) If he/she considers that the definition may apply, then a Standard Form of the Risk Assessment should be completed,,**the Risk Assessment must be incorporated into any report authorising a disposal** If considered appropriate the procedure for disposal contained in Section 123 of the Local Government Act 1972 or in Section 233 of the TCPA 1990 should be followed.

Advertisement of Open Space

Instructions to advertise a disposal of open space should be sent by the surveyor (email or paper copy) to Legal Services (fao Group Lawyer, -**Corporate Group** in the form of a memorandum giving the following information:

- cost code
- 4 plans of the land
- measurements of the land
- intended use of the land
- a copy of the decision to advertise the land

name of the person/directorate to receive objections. This should be the instructing officer or other person in the instructing directorate.

any other relevant information.

The instructions will be allocated to an officer in Legal Services who will draft the notice and arrange for it to be placed in a local newspaper for two (2) consecutive weeks.

Twenty Eight (28) days will be allowed from the date of the final advertisement for objections to be made to the relevant Executive Director. 28 days is generally considered to be a reasonable minimum length of time for objections.

Decision Making

The disposal of land, including open space, is an executive decision. **The Land and Property Protocol** in the Council's Constitution provides for executive decisions relating to land to be made by Cabinet or by an Executive Director depending on the value of the land.

A disposal of land that will bring in significant income to the Council will be a key decision and will need to be publicised on the Forward Plan prior to being submitted to the decision maker.

A decision to dispose of open space must not be taken until the disposal has been advertised and the time for making objections has expired.

Consideration of the objections and the decision to dispose of the open space should be referred to Cabinet or to the relevant Executive Director, in accordance with the Land and Property Protocol.

All decisions may be referred to Cabinet if Leadership, or the Executive Director in consultation with the relevant Cabinet Member, consider that a delegated decision should be referred to Cabinet.

Communication with Developers

In communicating with potential purchasers of open space, care must be taken to ensure that officers and/or members do not give the impression, either deliberately or inadvertently, that the need to advertise open space and consider objections is merely an administrative process which will be "rubber stamped".

The decision is a public law decision and must be made in accordance with the principles of public law. In particular it must be reasonable to dispose of the land having considered objections and there must be no pre-determination of the decision. Potential purchasers should understand that the Council is not able to make any commitment to enter into a contract for sale unless and until a proper decision to dispose of the land has been taken.

Timescale

The length of time that should be allowed for completion of the open space disposal procedure will vary depending on whether Cabinet or an Executive Director will consider the objections and make the decision as to disposal.

Instructing officers should allow at least 9 weeks between receipt of instructions by Legal Services and the end of the period for objections. Add on to this the time required to prepare and submit a report for decision.

Legal advice should be sought before any proposed departure from this protocol.