



Part 5E

Land and Property Protocol

LAND AND PROPERTY PROTOCOL

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Part 5(e) Land and Property Protocol

1 GENERAL PROTOCOL

- The Corporate Property Board is to take a corporate approach to the management of property assets whether Council owned or within the ownership of One Public Estate partners. It will be the strategic decision-making group focusing on best use of the Council's land and property holdings, within the context of the corporate strategic framework, in particular the Council's Medium Term Property Strategy (MTPS).
- The Deputy Chief Executive, People and Place will have overall responsibility/authority for the Council's Corporate Land and Property Portfolio.
- The Director of Economy will be responsible for the management of all Council owned land and property assets as part of the Corporate Landlord function, in addition to delivery of all strategic regeneration projects.
- Directorates will be considered as tenants occupying corporate buildings. Services must therefore seek advice from the Corporate Landlord when considering future service delivery. This will ensure that all property implications are thoroughly understood and maximise the potential for corporate efficiencies / savings from both Placed Based and One Public Estate perspectives. This will enable Services to focus on service delivery.
- The Council's Community Asset Transfer Policy (as amended in March 2019) and the views of Ward Members are to be considered as part of any proposal to declare an asset within the Council's Land and Property Portfolio as being surplus to the Council's operational requirements.

2 CORPORATE PROPERTY BOARD

The main Terms of Reference for the Corporate Property Board are as follows:

It will comprise at least:

- The Leader of the Council
- The Deputy Leader and Cabinet Member for Finance and Corporate Services
- The Deputy Leader and Cabinet Member for Social Justice and Communities
- The Deputy Chief Executive for People and Place

- The Directors of Finance, Legal Services and Economy

The Corporate Property Board's function will be to evaluate business cases and make recommendations to the appropriate decision maker in relation to future property acquisitions aligned the principles of the Council's Commercial Property Investment Strategy.

A quorum of at least 3 members of Corporate Property Board will be required to consider the outline business case of potential investment opportunities, a minimum being one Elected Member, the Director of Finance and the Deputy Chief Executive People and Place. If the outline business case is approved, Corporate Property Board will authorise the Director of Economy to complete the purchase.

- (i) All land and property shall be treated as a corporate resource.
- (ii) The Corporate Property Board will act as the management and decision-making board for the Corporate Landlord, unless directed otherwise within this protocol.
- (iii) Service Directorates will be considered as tenants occupying corporate buildings.
- (iv) To ensure a corporate approach to meet targets to reduce the amount of office space held by the Council, all planned moves and relocations will be subject to review by the Corporate Property Board and approval to any such moves will be via either the Deputy Chief Executive People and Place or the Director of Economy.
- (v) Executive Directors and Directors will be required to account for assets used to deliver services and the Corporate Property Board will challenge existing and future occupation requirements.
- (vi) Service Directorates will be required to work with the Corporate Landlord via the Corporate Property Board in respect of proposals to invest in, acquire or dispose of property.
- (vii) The Corporate Property Board will regularly review the business case for the retention of Council assets. Each of the Council's assets or group of assets is to have a detailed Asset Management Plan and performance including security of income, income growth and costs will be reviewed annually. Decisions will be provided in respect of future capital investment and retention / disposal of assets.

Consequently, the Estates within the Council's Land and Property Portfolio, ie Service Delivery (Direct and Indirect), Income Generation,

Regeneration, Co-operative and Surplus as established as part of the MTPS, will be subject to continual change. As the Estates are rationalised, opportunities to achieve revenue savings / capital receipts and to reduce backlog maintenance expenditure / increase income will arise.

- (viii) Property occupation costs and utilisation will be monitored through the Asset Management process. Any assets considered surplus to the Council's requirements will, in the first instance, be reported to the Corporate Property Board.

3 GENERAL MANAGEMENT PRINCIPLES

The Council has adopted the following key management objectives and principles relating to its' Land and Property Portfolio:

- (i) Capital Receipts (see Definitions at Section 16)

Capital Receipts come from the sale of the Council's assets.

In general capital receipts arising from the disposal of housing assets and for which account is made in the Housing Revenue Account (HRA) are governed by the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003. In summary the regulations require that:

- Receipts arising from Right to Buy (and similar) sales may be retained to cover the cost of transacting the sales and to cover the debt on the properties sold, but a proportion of the remainder must be surrendered to central Government;
- Receipts arising from all other disposals may be retained in full provided they are spent on affordable housing, regeneration or the paying of housing debt.

Where the sale of an asset leads to the requirement to repay grant, the capital receipt will be utilised for this purpose. Once these liabilities have been established and provided for, capital receipts will be available to support the capital programme as a corporate resource.

- (ii) Land and property running costs, including those relating to carbon emissions, will be optimised to ensure expenditure associated with occupation is minimised, in accordance with the Council's Energy Policy.

- (iii) Land and property users have an obligation to significantly reduce running costs.

- (iv) The Council will maintain investment into its land and property assets, in accordance with the Building Maintenance Policy (as approved at EMT on 15 January 2015). The Corporate Landlord will report annually on the level of

investment required to maintain the portfolio / corporate estate to a minimum standard of repair and ensuring compliance with health and safety matters.

(v) Partner organisations including Oldham Integrated Care Organisation and others within the public and voluntary sectors will be encouraged to:

- a) adopt a collaborative approach to service delivery and
- b) share accommodation in order to reduce occupation costs wherever possible,

in accordance with the Council's Co-operative aspirations / objectives (including its' Community Asset Transfer Policy) and the principles of One Public Estate.

(vi) Future developments will incorporate the principles of whole life cycle costing. Capital and revenue programmes will make provision for investment into the Borough's property infrastructure. Provision will depend on the financial resources of the Council and will be determined through the capital and revenue budget planning processes. (See Definitions at Section 16: Capital Expenditure)

(vii) 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 must have a Building Research Establishment Environmental Assessment Method (BREEAM) rating of not less than good, and/or in accordance with the Council's Energy Policy.

(viii) All reports and Business Cases should incorporate Finance, Legal and Property comments plus any other relevant comments for example, Procurement and Human Resources) and the report author is to confirm that the Council's Land and Property Protocol has been complied with.

(ix) Due diligence will be undertaken including appropriate financial checks to establish whether a potential purchaser / lessee owes the Council any monies as a debt prior to acceptance of any offer for the sale or letting of a Council asset.

(x) The Council is committed to the principle of being a Corporate Landlord.

4 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. When preparing an acquisition, disposal or appropriation of land, officers 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.

Property comments will be required in respect of all reports which have land

and property implications.

5 DETAILED LAND AND PROPERTY PROTOCOL

5.1 Background Matters / General Principles

All land and property, whether held for Service Delivery (Direct or Indirect), Income Generation, Regeneration, Co-operative Use or as part of the Surplus portfolio, will be subject to regular review in accordance with individual Asset Management Plans and the MTPS.

Land owned by the Council acting in its capacity as a charitable trustee should **not** be subject to the regular review process and cannot be disposed of without the permission of the Charitable Trust Committee / The Charity Commission.

The Corporate Landlord will work with Directorates (via DMT's) to ensure that any potential change of direction in service delivery, which has an implication in terms of the Council's future property requirements will be advised at the earliest opportunity.

Any proposed changes will also be in accordance with the Council's Accommodation Strategy.

5.2 Disposal of Land (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 a disposal must be for the best consideration reasonably obtainable unless the consent of the relevant Secretary of State is obtained.

A disposal includes a lease of more than seven years or an assignment of a lease which has more than seven years to run.

Generally, best consideration will be achieved by offering the land for sale 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. In such cases, specific legal advice should be sought at the earliest opportunity.

The method and terms of sale will be subject to professional advice on a case by case basis having consideration of paragraph 5.3 below, the Disposals Protocol and Methods of Sale at Appendix B together with the following:

- All disposals and marketing exercises must be carried out observing the principles of transparency, proportionality and equal treatment.

- Techniques can be used to introduce an element of control and these include incorporating options / buy back provisions for the Council should development not be carried out. Buy back provisions should not include repurchasing at less than market value or on any terms which imply a penalty is being imposed for the development not being carried out or completed.
- Heads of Terms should be discussed with Legal Services prior to release.
- Provisions within an agreement can be included to give the Council the ability to approve (as landowner **not** as Local Planning Authority) planning applications before they are submitted.
- The Council is not able to enter into development agreements imposing obligations on buyers / developers to develop sites / carry out works or impose conditions as to how or when a development is carried out unless it has been properly procured.
- The Council can however require that developments are carried out in accordance with planning requirements and any permissions required / obtained, but this cannot include requiring a planning permission to be implemented – it can only condition what happens if a planning permission is implemented [including requiring (where appropriate and reasonable) that once the development is commenced by the carrying out of a material operation then in the interests of the amenity of neighbouring properties the development is brought to practical completion with a specified period (such period to be reasonable in all the circumstances) from the date of commencement (bearing in mind that any obligations relating to the development will be nonetheless difficult for the Council to enforce from a practical point of view save through the exercise or threat of exercise by the Council of a buy back option)].
- The preparation of documents for marketing and any evaluation / scoring mechanisms used must be agreed in advance with Legal Services and (in appropriate cases) Procurement.
- Soft market testing can be conducted where appropriate with advice and support from Legal Services / Procurement.
- Communication with potential bidders and buyers must be clear, consistent and create and maintain a level playing field. Information given out to bidders must be provided to all bidders and records must be kept of all communications.

- Proposals to dispose of high value and / or sensitive disposals and the appropriate route to market should be discussed and agreed in advance with Legal Services and Internal Audit.
- Where a high level of control is desired over specific outcomes on a particular site, then consideration must be given to disposal via a procurement exercise.
- Matters pertaining to best consideration, state aid, public open space and any school / playing field / academy issues need to be taken into account.

5.3 Application of the EU Public Procurement Regime

Certain disposals of land may fall within the definition of “works” contained within the scope of the Public Contracts Regulations 2015, which give effect to European Directive 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.

Care and advice needs to be taken prior to the Heads of Terms stage and advertisement so as to ensure the regulations are not inadvertently triggered for example: the exercise of a decisive influence over the type or design of the works; or works carried out from which the Council either derives an immediate economic benefit; or imposes a legally enforceable obligation to undertake the works (rather than allowing the other party the option of not carrying out or completing the works even if the consequence of that is the loss of the deal).

Officers of the Council should not discuss the details of an individual bid with a prospective bidder before the decision to award the Contract is made. Any discussions as to a potential bidder’s proposals for the site could prejudice the decision making for the award of the Contract. Therefore, any communications should be limited and restricted to writing and all communications should be made with the principles of proportionality, transparency and fairness borne in mind. If the Council wants to test the market for a site to understand its’ best value for money use, then Officers should look to undertake soft market testing, before advertising the site for sale.

This remains a complex area of law 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.

5.4 Disposals of land at less than Best Consideration

The presumption is that land will be sold for the best consideration reasonably obtainable. However, it is recognised that there will be circumstances where the Council will consider it appropriate to dispose of land at less than best consideration; for example to support the Council in achieving its ambitions as a Co-operative Council.

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.

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:

- (A) the difference between the unrestricted value of the land to be disposed of and the proposed disposal price does not exceed £2million; and**
- (B) the Council considers that the purpose for which the land in question is to be disposed is likely to contribute to the achievement of any one or more of the following objectives in respect of the whole or any part of its area or of all or any persons resident or present in its area:**
 - (i) the promotion or Improvement of the economic well-being;**
 - (ii) the promotion or Improvement of social well-being; and**
 - (iii) environmental 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. Land held for specific Housing purposes is subject to additional regulation and early legal advice should be sought in such instances.

Any such proposed disposal of land at less than best consideration will need to consider the possibility that the proposed transaction may result in the giving of unlawful State Aid (European Union Treaty article 87(1)).

In determining whether or not to dispose of land for less than best consideration, the Council should obtain a Red Book Valuation from a Chartered Surveyor (valuer) to determine the likely amount of the undervalue (i.e. the difference between unrestricted value of the land to be disposed of and the proposed disposal price). 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 Council's Corporate Plan, the Oldham Plan and Co-operative Council ambition and reasonably consider, via the Director of Finance, the extent, if any, to which the proposed disposal supports the aims and objectives therein.

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. The Council 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 Medium Term Property Strategy, the terms of the Council's Land and Property Protocols and the Council's fiduciary duty. Accordingly, all decisions will address the following issues:

- 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.
- 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.

Following review by the Corporate Property Board, any proposed transactions at less than best consideration shall be approved as follows:

- Where the undervalue is up to and including £100,000 by the Director of Economy.
- Where the undervalue is greater than £100,000 by Cabinet.

For the avoidance of doubt, the Academy Conversions process is excluded from this provision; as such disposals are within a statutory direction.

5.5 Freehold or Leasehold Disposal

For all property disposals considerations will be given to the appropriate tenure of the disposal, whether freehold or long leasehold. The decision will have regard to the benefits of retaining any residual controlling interest against the implications of such action which may for example give rise to on-going estate management responsibilities, maintenance obligations or result in continuing financial costs or charges for the Council either at the time of consideration or at some future date.

The most recent House of Commons Briefing Paper relating to Leasehold and Commonhold Reform (October 2019), outlines amongst other things the Government's intention to legislate and prohibit the creation of new long leasehold tenancies on houses. Consequently, where the disposal of land is intended for residential development purposes, then the Council is to sell its' freehold interest where it currently holds such an interest.

5.6 Lettings

No lettings should be carried out by Service Departments. All proposed lettings should be directed to the Director of Economy in order to protect the Council's interests and Health and Safety obligations.

The taking of or the granting, renewal, assignment, transfer, surrender, taking of surrenders, review, variation or termination of any leases, licences, easements or wayleaves at considerations, delegated as follows:

- For transactions of an Estate Management nature up to a maximum value of £250,000 will be within the delegated authority of the Head of Asset Management and Estates, in consultation with the Director of Economy, Director of Finance and Director of Legal Services and in consultation with the relevant Cabinet Member where the decision is a key decision.
- For transactions up to a maximum of £500,000 per annum or in return for a premium of up to £500,000 will be within the delegated authority of the Director of Economy in consultation with the Deputy Chief Executive, People and Place, Director of Finance and Director of Legal Services and in consultation with the relevant Cabinet Member where the decision is a key decision.
- For all transactions over £500,000 per annum or in return for a premium of over £500,000 shall be referred to Cabinet for approval.

Leases of over 7 years and assignments of leases with over 7 years to run, 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 outlined in the section on Disposal (Best Consideration) above.

Under this protocol, the terms of any proposed letting will be considered by reference to the asset category;

a) Income Generation and Regeneration Estates

- The lettings will be based on commercial terms at full market value provided that the Director of Economy may in consultation the Director of Finance and the Director of Legal Services authorise a short term let at below market value where this has commercial justification, for example, to cover running costs prior to redevelopment and the asset falls within the Regeneration Estate.
- Concessionary lettings within the Income Generation Estate are not permitted and should Directorates wish to support such an arrangement it will be required to ‘sponsor’/ fund the concessionary rent through alternative funding to the level of full market rent.
- Flexibility will be provided in respect of schemes / initiatives specifically directed at supporting businesses, provided that a full business case is in place and the views of the Director of Economy are sought regarding such schemes.
- Legal advice will be required before any concessionary rent is agreed to ensure the Council is not in breach of State Aid Regulations.

b) Service Delivery (Direct and Indirect) Estates:

Lettings to public sector tenants or commissioning partners delivering public sector services will be “at cost”.

c) Co-operative Estate:

Letting to community sector tenants may range from “at cost” to an agreed discounted fee ie potential a peppercorn rent dependent on the structure of the organisation, its’ relevance to the Council’s Social Value Framework and how it benefits the local community.

Legal advice should be sought before any concessionary rent is agreed to ensure the Council is not in breach of State Aid Regulations.

d) Surplus Estate:

Lettings will be based on commercial terms at full market value provided that the Director of Economy may in consultation the Director of Finance and the Director of Legal Services authorise a short term let at below market value where this is beneficial to the longer-term goal of disposing of the asset.

Tenants should not commence occupation of premises in advance of either legal completion of lease or having sufficient legal measures in place to protect the Council's interest.

Rent collection and treatment of arrears should be in accordance with the Council's Protocol for debt recovery.

5.7 Community Transfer

If it is considered that an asset is used for social, community and public purposes and the benefits of that service are deemed to outweigh the value of continuing ownership by the Council on behalf of all Council Tax payers, then the Council may consider the transfer of the asset to a community group. Any such transfer should be in accordance with the Council's Community Asset Transfer policy. See the link below.

https://www.oldham.gov.uk/info/200615/love_where_you_live/2269/community_use_of_council_land_property

If the surplus property has been registered as an "asset of community value", the Council has to ensure that there is opportunity for a Community Right to Bid prior to any disposal process commencing.

5.8 Decision Making

The disposal, acquisition or appropriation of land, including open space, is an executive decision. The Council's Constitution provides for executive decisions relating to land to be made as set out in this document.

A disposal of land that will either generate a capital receipt over £250,000, or result in loss/generation of income over £250,000 will be a key decision and will need to be publicised on the Key Decision Document prior to being submitted to the decision maker. (Full definition of 'Key Decision' within Constitution).

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

In order to improve transparency, all property acquisitions will be reported retrospectively to the Capital Investment Programme Board quarterly on a cumulative portfolio basis.

a) Transactions Subject to Cabinet Approval

1. All recommendations to dispose of land for less than the best consideration reasonably obtainable where the likely undervalue is greater than £100,000.
2. All recommendations to acquire individual plots of land, compulsorily or by agreement, or properties of any value that have not been approved within a scheme of development or regeneration project.
3. All recommendations to acquire by agreement, appropriate or dispose of land or property valued in excess of £500,000.

b) Transactions Delegated to the Deputy Chief Executive, People and Place, for Approval

Subject to paragraph 5.8 a) 3 the Deputy Chief Executive, People and Place, 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 between £250,000 and £500,000.

c) Transactions Delegated to the Director of Economic Development

Subject to paragraph 5.8 a) 3 the Director of Economy, 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 less than £250,000.

d) Transactions Delegated to the Head of Asset Management and Estates

Subject to paragraph 5.8 a) 3 the Head of Asset Management and Estates 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 less than £50,000. Any action taken under this authority will be reported to the Director of Economy, for information.

6 Commercial Property Investment Strategy

All land and property acquisitions for commercial investment will be reported to the Corporate Property Board, specifically those sought to generate a sustainable future income stream to support the Council's mainstream service delivery as part of its' Commercial Property Investment Strategy.

To ensure that good investments are not lost through delays in the decision-making process, it is recommended Cabinet remains the decision-making body, following recommendations from the Corporate Property Board (CPB).

The Board will comprise Directors of Finance, Legal and Economy, Deputy Chief Executive and Portfolio Holders for Finance and Corporate Services and the Leader of the Council. A quorum of at least 3 members of the Board will be required to conduct business, including finance, economy and Member representation.

The Director of Economy, in consultation with the Director of Legal Services, will have delegated authority to complete property purchases of up to £10m subject to the prior recommendations of CPB, after which authority will revert back to Cabinet, unless there is a need to make an emergency decision whereby the emergency decision clause in the Land and Property Protocol will apply.

The Director of Finance, in consultation with the Director of Legal Services, will have delegated authority to complete alternative investments of up to £25m subject to the prior recommendations of CPB, after which authority will revert back to Cabinet, unless there is a need to make an emergency decision whereby Treasury Management Protocols will apply.

Assets, Accommodation and Investment (AAI) Group will replace the Property Rationalisation Group to review and report on performance and risks to the work programme. This needs to include external stakeholders such as CCG / OPE and key internal functions such as the corporate estate, finance, legal and Unity partnership in order to act as one integrated team at Head of Service level;

Notwithstanding paragraph 5.8 c) above, the Director of Economy shall have delegated authority to complete property acquisitions up to a value of £10m subject to the prior decisions of the Corporate Property Board.

Cabinet shall approve all acquisitions in excess of £10m unless there is a need to make an emergency decision in which case the emergency provisions within this Protocol will take effect.

The Directors of Finance and Economy also have delegated authority to secure additional specialist external advisors as considered appropriate subject to compliance with the Council's Contract Procedure Rules.

7 Emergency Decisions

In circumstances where actions are required urgently, e.g. bidding at auction to acquire land and property of strategic significance, where the value of the transaction is greater than £500,000, the Deputy Chief Executive, People and Place in agreement with the Council Leader and in consultation with the Directors of Finance and Legal (or their duly authorised nominees) will have authority to take appropriate action. An Emergency Action will be reported to Cabinet for information at the next available opportunity.

8 Member Notification

The appropriate Cabinet Member and Ward Members will be notified in advance of all property transactions and their views will be recorded as part of the decision-making process.

The exceptions to this are the sale of individual residential ground rents in accordance with Leasehold Enfranchisement legislation, and decisions delegated to the Head of Strategic Assets and Facilities Management where Ward Members will be notified of day to day estate management matters seven days prior to implementation.

9 Delegated Decision Recording

With the exception of those referred to below, all delegated decisions will be reported in the standard short form format, which is available on the Council's Intranet. Following approval, such delegated decisions are also to be recorded on ModGov.

Other general estate management decisions delegated to the Head of Strategic Assets and Facilities Management will be recorded to the schedule template, a copy of which is attached.

10 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.

11 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 an appropriately qualified source.

Reports seeking to dispose of land at less than best consideration should in addition, address those matters set out in paragraph 5.4. above including the provision of a Red Book Valuation in respect of the amount of undervalue.

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.

12 Independent Valuations of Land/Property

With regard to those transactions for the disposal and acquisition of property that have not been exposed to the open market it is considered prudent to seek an independent valuation from a Chartered Surveyor (valuer) in accordance with the RICS Red Book .

13 Instructions to undertake property transactions

- For the avoidance of doubt, Legal Services will not accept instructions relating to property transactions from service directorates.
- Only transactions correctly approved as set out in paragraph 5.6 and 5.8 will be accepted.
- All instructions to Legal Services will be via the Council's property and asset management system (currently Concerto).

14 Office Moves

As part of its' Medium Term Property and Office Accommodation Strategies, the Council needs to use its' office space in a much more efficient and cost effective manner in order to contribute to annual revenue savings targets.

To achieve this, Corporate Landlord will have full control and oversight in co-ordinating and monitoring office moves across the Council's portfolio.

All Service Managers are to adhere to the Land and Property Protocol and note that all requests for accommodation or office moves within the portfolio

need to be referred to Corporate Landlord for written approval prior to any moves taking place.

Requests should include a business case or briefing paper outlining the following:

- (i) The reasons for the proposed move including an indicative timescale.
- (ii) Estimates for ICT works (including data and power requirements), any works associated with redecoration or alterations, removal costs and any other incidental costs.
- (iii) Use of existing or surplus office furniture from within the Council's portfolio should be considered at the outset. The purchase of new furniture will only be considered where the proposed move creates a more efficient and cost-effective use of the office space via for example the use of smaller desks.
- (iv) Where a "move request" is Service led as opposed to one proposed by the Corporate Landlord (for example to vacate a building for disposal) then the Service will need to confirm that it has sufficient budget resource to fund its' proposed move.

In the first instance all requests should be directed to the Head of Strategic Assets and Facilities Management for subsequent approval by either the Director of Economy or the Deputy Chief Executive People and Place.

The Director of Economy will be responsible for all office accommodation including relocations in accordance with the Council's Office Accommodation Strategy as part of the wider Corporate Landlord function.

Due to the significant long-term investment involved, express written approval from the Director of Economy is required before considering the installation of IT Hubs in Council property.

15 Service Review

The Corporate Landlord will work with Divisional Management Teams across Services to ensure that strategic and operational property requirements are addressed in line with the Medium Term Property Strategy, the Office Accommodation Strategy and Locality Asset Review.

16 Definitions

Capital Expenditure

Section 16 of the Local Government Act 2003 + Regulation 29A of the Capital Financing Regulations (England) 2003 define capital expenditure as;

1. Expenditure that results in the acquisition, construction, or enhancement of a Fixed Asset.
2. Expenditure where the Secretary of State has made a direction that it can be treated as capital expenditure e.g. exceptional items which would otherwise place an unreasonable strain on revenue budgets.

Capital Receipt

Section 9 (1) of the Local Government Act 2003

"a sum received by the authority in respect of the disposal by it of an interest in a capital asset"

Section 9 (2) defines a capital asset as:

"An asset is a capital asset if, at the time of the disposal, expenditure on the acquisition of the asset would be capital expenditure"

Capital receipts are restricted to use for

- Financing new capital investment
- Reducing borrowing under the Prudential Framework
- To pay a premium charged in relation to any amounts borrowed
- To meet any liability in respect of credit arrangements
- To meet disposal costs (not exceeding 4% of the receipt)

17 PROTOCOL ON DISPOSAL OF OPEN SPACE

17.1 General Principles

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.

As open space is not specifically dealt with in official copies on the Land Registry, the Council has developed an assessment matrix to assist in determining whether the asset is considered to be 'Open Space' and whether

any disposal should follow the Public Open Space disposal process as set in this protocol.

A copy of the assessment matrix is within Appendix A.

17.2 Decision Making

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 (in an appropriate publication) of the proposed disposal and allowing time for objections.

The second stage report will make recommendations for disposal or retention of the land having regard to any objections, which have been received to the proposed disposal. This report can be incorporated with the report seeking authority to dispose of the land and the terms recommended.

Consideration of the objections and the decision to dispose to be undertaken in accordance with the appropriate delegations set out in the Land and Property Protocol.

Where the land is put to the open market then any offers received will be subject to completion of a separate tender report in accordance with the delegated authority set out within this Protocol under paragraph 5.7 above.

In the event of a sale of land by private treaty for example to an adjoining householder for say garden use, then the Head of Strategic Assets and Facilities Management has authority to approve such transactions and recorded as such in accordance with paragraph 9.

Sufficient time should be allowed for the completion of the open space disposal procedure, utilising the appropriate delegations and considering any objections. Instructing officers should allow at least 6 weeks between receipt of instructions by Legal Services and the end of the period for objections.

17.3 Legal Procedures

Instructions to advertise a disposal of open space should be sent by the surveyor (via Concerto) to Legal Services (fao. Group Lawyer, - Corporate Group) giving the following information:

- cost code and purchase order number
- plans of the land
- measurements 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.
- (if applicable) confirmation of whether the purpose of the disposal is to be specified in the notice (and, if it is, the description of the purpose to be included in the notice). The default position will be that the purpose of the disposal will not be specified (as this is not required by law) unless Legal Services are instructed to the contrary.

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.

Notices will follow standard format, the use of the word 'disposal' will be fully explained and (only if the purpose is to be specified in the notice - see above) the purpose of the 'disposal' will be clarified.

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

17.4 Communication with Potential Purchasers

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.

17.5 Acquisition and Appropriation of 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.

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

Appendix A – Public Open Space Assessment Matrix

Introduction

In accordance with the Land and Property Protocol, it is important that the surveyor identifies at the earliest possible stage whether the land subject to a proposed disposal could be considered or deemed to be “open space” (often referred to as Public Open Space) as defined within Section 336(1) of the Town and Country Planning Act 1990, more particularly:

“Open space means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground.”

If this cannot be determined conclusively from information available to the surveyor then he / she should undertake a site visit and complete the assessment below. This is aimed at assisting the surveyor in determining whether the Council is required to advertise its’ intention to dispose of open space to fulfil its’ statutory obligation in accordance with the provisions of Section 123 Local Government Act 1972 and / or Section 233 Town and Country Planning Act 1990.

The surveyor is recommended to consider the questions raised in Table 1 and if applicable consider further those issues referred to in Table 2 as part of their assessment.

It is further recommended that the surveyor takes photographs of the site in question.

Table 1 Questions

The following table sets out a series of questions the surveyor should consider as part of his / her initial assessment of the land whilst carrying out a desktop exercise and site visit.

No	Questions	Yes / No	Course of Action
1	Is the land designated within the Local Plan (formerly Local Development Framework / Unitary Development Plan) as recreational open space?	Yes/No	If Yes - advertise
2	Is the land formally laid out and maintained as a garden or landscaped area by the Council’s Parks Service?	Yes/No	If Yes - advertise
3	Is the land formally laid out and maintained as a garden or landscaped area by a partner organisation on behalf of the Council?	Yes/No	If Yes - advertise

4	Does a desktop study reveal any evidence that the land was a former burial ground?	Yes/No	If Yes – advertise. NB: If so, also need to consider whether it is consecrated ground.
5	Is the land unfenced and accessible to the public?	Yes/No	If Yes – consider Table 2 issues. If No – note current use of the land, any evidence of site notices or use with permission.

Table 2 Issues

If following completion of the questions within Table 1 the answers are all ‘No’, then the surveyor is required to consider further the issues in Table 2.

No	Issues to Consider	Comments
1	Degree to which there is evidence of use for recreational purposes by members of the public. For example: dog-walking, trial / mountain biking, kick about area, etc.	
2	Degree to which there is clear evidence of wear or desire lines?	
3	Degree to which any lack of repair or maintenance to the boundary features (i.e. fences, walls, hedges, ditches or bunds) may offer an opportunity to access the land.	
4	Degree to which any access or use of the land might be considered as being unlawful or may constitute trespass?	
5	Degree to which there is evidence that the land is being used with permission?	
6	Degree to which there is evidence of a previous use on the site and when this may have ceased? For example, has the site been temporarily landscaped pending redevelopment e.g. housing clearance programmes – if so how long ago?	

Having completed the above, the surveyor is required to consider / assess the following risks:

Risk Factor	Low		High	
	1	2	3	4
Risk of Challenge i.e. The risk or likelihood of the Council being challenged as a result of a decision to dispose of the land without first undertaking a POS advertising procedure.				
Financial / Reputational Risk The possible effect from a financial / reputational /judicial review perspective of any such challenge.				
Sensitivity How contentious any such disposal may be.				

Scoring

Each of the above risk factors is to be scored between 1 and 4. Total Score for the subject site = Assessment and Options

Option 1

If the score is greater than 6, the subject land should be regarded as Public Open Space and as such is subject to a statutory advertising procedure to be undertaken in accordance with the Council’s Land and Property Protocol.

Option 2

If the score is 6 or less then the subject land should not be regarded as Public Open Space and as such is not subject to a statutory advertising procedure.

Decision

Having fully completed this Assessment, the surveyor has considered all pertinent information available to him / her and determined that Option 1 / Option 2 * should be followed in respect of the subject site.

Name of Surveyor: _____

Date: _____

*delete as appropriate

Appendix B – Disposals Protocol / Methods of Sale

a) Introduction

Land and Property transactions undertaken by Local Authorities often attract widespread public interest and consequently the Council needs to have a clear code of practice underpinned by procedural guidelines, which are adhered to by both Members and Officers when dealing with such matters.

This protocol applies to the disposal by way of sale or lease of an interest or interests in land and property including fixtures and fittings incidental thereto which has / have previously been agreed by either Corporate Property Board or via the Officer Scheme of Delegation as being surplus to the Council's operational requirements.

b) Summary of Marketing Methods

The Council will usually use one of the following methods to dispose of land and property:

1. **Private Treaty** - a sale of land negotiated with one or a small number of purchasers. The land may or may not have been marketed as available for sale. A binding legal agreement is created on 'exchange of contracts' between the Council and the purchaser.
2. **Public Auction** - a sale of land by open auction available to anyone. The sale will be advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer.
3. **Informal Tender** - a sale of land after a public advertisement that requests informal offers or bids that meet a given specification or set of objectives.

A binding legal agreement is not created until the exchange of contracts between the authority and the chosen bidder.

4. **Formal Tender** - a sale of land by a process of public advertisement and tenders submitted by a given date in accordance with a strict procedure. A binding legal agreement is created upon the acceptance of a tender by the Council.
5. **Exchange of Land** - a transaction involving the exchange of Council owned land with another land owner.

The land acquired by the Council will meet at least one of its corporate objectives and will be 'equal' in value to the land exchanged or there can be an equality payment made by either party.

6. **Development Partner / Agreement** – a private sector partner who has been established through appropriate means, to jointly deliver and benefit from redevelopment / regeneration schemes.

c) Further Guidance

1. Disposal by Private Treaty

The main characteristics of a sale by private treaty are:

- 1) The timescales for completion of the transaction are not fixed until exchange of contracts.
- 2) Offers are made Subject to Contract.
- 3) Offers are, or may, not all be received at the same.
- 4) It is usual for the asking price to be quoted.

The steps involved in a private treaty sale will usually include the following:

- i) Openly advertising the property for sale through an agency or direct advertising media.
- ii) Taking offers from interested parties.
- iii) Identifying preferred offers
- iv) Negotiation of bids to ensure best value.

The Council will normally consider the highest bid as representing the best consideration that can be reasonably obtained, subject to ensuring any conditions attached to bids are reflected in the final evaluation.

The process for disposal by private treaty can still include a closing date and be by way of sealed bids if considerable interest is anticipated.

If land is to be sold by private treaty without being marketed, then reasons justifying a private treaty sale must be recorded in writing. In some circumstances, the Council may seek an independent valuation to verify that 'best consideration' is being obtained. An example may include a sale to a special purchaser.

A private treaty sale without the asset being openly marketed may be justified where:

- a) land to be disposed of is relatively small in area and an adjoining

or closely located landowner(s) is (are) the only potential or likely purchaser(s).

- b) The nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained.
- c) The Council's corporate objectives and best consideration can best be achieved by a sale to a particular purchaser.
- d) The sale is to a non-profit making organisation and the role of that organisation is conducive to the improvement of public services and facilities available within the borough.
- e) The purchaser has a particular interest in purchasing the premises or a particular association with the premises and where open marketing of the premises may lead that particular purchaser to reduce the value of their offer for the premises or withdraw their interest in the premises altogether.
- f) The purchaser has a particular interest in purchasing the site or a particular association with the site and where in the opinion of the Corporate Property Board / Portfolio Member (Economy and Enterprise) open marketing of the site may cause undue hardship or unrest for that particular purchaser or where the sale of the premises to a party other than that particular individual would substantially and detrimentally affect the normal operation of the business associated with the premises.
- g) The disposal is as a result of the Right to Buy scheme.
- h) The Crichel Down Rules, which are commended but not binding on a local authority, apply and the Council has decided to sell the land to the person from whom it acquired the land. Specific procedures relate to the disposal of property where Crichel Down Rules apply. It is therefore recommended that legal advice is sought in such circumstances.

A legally binding agreement will not be reached until either contracts for the lease or sale of land are exchanged or a development agreement is signed.

a) 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.

b) 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 a special interest purchaser likely to pay above the market price.

This generally arises when an application is received from an 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 deemed to be surplus to requirements and has no development value or potential demand as an open market opportunity, then negotiations with the adjacent or neighbouring owner should be opened in order to achieve the most advantageous financial or economic outcome, for example if the land is 'landlocked' or is difficult or expensive to maintain.

Special circumstances may arise where an adjacent owner can gain advantage by combining land to give rise to a ransom, betterment or overage position. In such cases, it is necessary to establish both the market value and the value advantage to the proposed purchaser.

2. Disposal by Public Auction

Sale by public auction may be appropriate where there is no obvious potential purchaser and where speed and best price can be publicly demonstrated.

An auction reserve is used to ensure that a property is not sold below an agreed level of value and is usually within 10% of the auctioneer's guide price. The reserve may be adjusted upwards or downwards (but within the 10% threshold) depending on the level of interest following a period of marketing. The auctioneer usually advises on the level of the reserve.

Prior to the sale it will therefore be necessary for the appropriate Officer within the Council's Scheme of Delegation to confirm the auction reserve to be applied. It is recommended that an Officer attends the auction to act on behalf of the Council.

Legal Services are to ensure that an appropriate legal pack including a contract for sale or lease is ready in good time prior to the auction.

The binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed and exchanged. The contract usually specifies that legal completion is to occur within 20 working days, however the Council may choose to specify a longer period within the contract if necessary, provided that the contract also states that the parties may agree to complete on an earlier date.

3. Disposal by Informal Tender

A disposal by informal tender differs from a formal tender in that neither the Council nor the successful bidder is legally obliged to enter into a contract for the disposal of the land.

The informal process allows the Council to identify a preferred bidder with whom it may then negotiate further detailed terms or proposals for the development of the land concerned.

The Council may, as a part of the disposal process, still request best and final offers for a sale, or informal development proposals for land. This process is particularly useful for large or complex development or regeneration sites requiring development and where proposals need to be developed in co-operation with a specific or identified bidder in order to meet the Council's corporate objectives and achieve the best consideration that can be reasonably obtained.

Although not a formal tender, after the closing date, all bids should be recorded by the relevant case officer.

A binding legal agreement is not created until the exchange of contracts for sale or lease or the signing of a development agreement.

This method is suited to sales where there are uncertainties, particularly around Planning, and allows for use of conditional contracts, including clauses which can allow for further sums to become payable upon grant of planning permission at different points in the future.

It is therefore essential that officers considering disposal of property by informal or formal tender consult with Planning and Highways to ensure that if the disposal is dependent upon receipt of planning consent then there is reasonable prospect of that consent being approved.

4. Disposal by Formal Tender

A sale of land by formal tender may be appropriate where:

- a) The land ownership is not complex.

- b) The final form of legal documentation for contracts / transfer are in place together with statutory searches and replies to standard enquiries.
- c) There are no uncertainties as to grant of a planning consent.
- d) The Council is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance.

This method can provide a well organised, transparent way of achieving completion when a timeframe is essential. However, it is often more costly and a much longer lead-in period is required.

Formal tenders will not be appropriate where the land ownership position is complex or the development proposals for the land are insufficiently identified or otherwise incapable of being drawn up into a detailed specification at the pre-tender stage. This is particularly so where a detailed planning permission is required, such as a listed property or property in a Conservation Area. Therefore prior to the commencement of a formal tender process the advice of Planning and Highways should be sought.

With a formal tender process, a legally binding relationship is formed when the Council accepts a tender in writing. It is essential therefore, that every aspect of the disposal is specified within the tender documents. The tender documents should include a contract for sale or lease (which will have a form of transfer or lease annexed to it) which should be completed with the tenderer's details, the tender price, include a deposit cheque to preclude withdrawal of the tender prior to acceptance and be signed by the tenderer. It will be released unconditionally to the Council on submission of the tender.

Sale of land by formal tender will require a detailed specification to be drawn up. This needs to specify the land to be sold, any requirements to be met by the tenderer and any obligations that must be met.

5. Disposal by Exchange of Land

Disposal by exchange of land will be appropriate when it will achieve best consideration for the Council and is advantageous to the Council and other parties to exchange land in their respective ownerships.

The exchange will usually be equal in value. However, an inequality in land value may be compensated for by an equality payment or by other means where appropriate. In such circumstances the Council may seek an independent valuation to verify that 'best consideration' will be obtained.

This method could be advantageous where there is a requirement to deliver corporate or regeneration objectives via the use of Wellbeing powers.

6. Development Partner / Agreement

This is a complex transaction which may be subject to a procurement process that will not usually be appropriate unless circumstances such as those listed below apply:

- The Council wishes to retain a degree of control and influence over the type and pace of development that could not otherwise be achieved through exercise of its statutory powers (such as Planning).
- There is a reasonable expectation of improved future profits that the Council wishes to secure through overage or equity share arrangements.
- It is appropriate for the Council to make land or buildings available to a partner agency (such as a Registered Social Landlord) for the provision of core services at below market value.
- To allow a third party to bring forward a site for development by such as the securing of planning consent without the financial exposure of speculative site acquisition.

Such arrangements are highly complex and expert advice will be obtained to support the Council. Care will be taken to ensure compliance with procurement and / or State Aid Rules. Legal advice should be sought at the outset.

Other than settlement of principal terms covering such as purchase price, site area and the like, additional factors that need to be considered for development partnerships will normally include:

- (i) The provision of detailed information and plans of the proposed development.
- (ii) The timescale for completion of the development.
- (iii) Detailed funding arrangements and confirmation that these are in place.
- (iv) Evidence of end user commitment and the opportunity for Council to discuss that commitment directly with the end users in question.
- (v) Details of the developer's financial offer for the property.
- (vi) Developer's track record with similar developments.

- (vii) Any partnership record with other local authorities.
- (viii) Full details of any proposed joint venture opportunity.
- (ix) Details of any conditions precedent to which the proposal is subject.
- (x) Any wider / longer term regeneration benefits from the proposal. For example, employment or training opportunities during construction or from the proposed end user.
- (xi) Provision of any other off-site benefits or facilities.
- (xii) Potential for attraction of shoppers, visitors, users to the borough's facilities.
- (xiii) Capacity of the proposal for bringing other sites forward or opening up other development potential.
- (xiv) Potential for leverage of private or other public funds and grants.
- (xv) Capacity of the proposal to remove or reduce other Council financial liabilities.
- (xvi) Satisfaction of the Council's approved regeneration objectives.

d) Exceptions

Other methods of disposal may be used where circumstances warrant. A notable exception to the standard methods of disposal is the Council supporting Government policy in the transfer of maintained schools to Academies who self-determine on conversion.

The Council typically transfer the Council's land under a 125 year lease at a peppercorn rent in accordance with the Academies Act 2010. Whilst a long lease is preferable, the Department for Education (DfE) recognises that at times parties will seek to enter into local agreements.

The expectation is still however that all land and facilities used wholly or mainly for the purpose of the converting school will transfer and be made available for Academy use.

e) Tender Procedure

Officers are to adhere to the following when marketing land or property for sale by tender (whether via Informal Tender or Formal Tender):

- a) No tenders shall be invited unless Public Notice has been given in at least one local newspaper giving details of the property and the proposed transaction. It should also invite interested persons to apply to tender within a period of not less than 28 days.
- b) Where an agent has been appointed to act on the Council's behalf, their name and address will also be given, and they will be required to acknowledge and comply with this Protocol.
- c) Interested parties will be provided with property particulars and full details of the tender process.
- d) All tenders must be delivered in the envelope provided or in a sealed envelope addressed to the Borough Solicitor, bearing the words "Tender for....." the address of the land or property for sale, along with the closing date for submission of offers, but without any name or mark indicating the identity of the sender.
- e) All tenders delivered by hand ie to the Civic Centre Main Reception, will be issued with a receipt indicating the land or property in question and the time and date and time of its' delivery. A record is to be maintained.
- f) Applicants who wish to make an offer by post must do so by Recorded Delivery.
- g) All tenders received are to be passed to Legal Services.
- h) Tender envelopes will remain unopened and in the custody of the Legal Services until the appointed time for opening.
- i) All tenders will be opened together after the closing date has expired by an Officer nominated by the Borough Solicitor as well as the Case Officer for the sale land / property.
- j) The Borough Solicitor will maintain a record of all tenders received including any late bids.
- k) Tenders will not be accepted where they are not specific, or they are made in reference to another bid, for example "£100 over the highest bid".

- l) The Council will make it clear that it does not bind itself to accept the highest tender or indeed, any tender.
- m) Any tenders received after the tender closing date or where they contravene any provision of the tendering conditions or instructions will only be opened with the authority of the Borough Solicitor.

f) Late Bids

Where land is being disposed of by way of formal tender, bids received after the deadline for tenders, will be recorded as late, together with the time and date of receipt. The Borough Solicitor should decide whether to consider late bids in consultation with the Director of Economy in exceptional circumstances.

g) Online tendering

In consultation with Legal Services tenders can be run online through the Council's e-procurement portal.