

PROPERTY DISPOSALS POLICY

EXECUTIVE MEMBER: Councillor Gillian Troughton
LEAD OFFICER: Darienne Law
REPORT AUTHOR: Barbara Vernon

WHAT BENEFITS WILL THESE PROPOSALS BRING TO COPELAND RESIDENTS?

By ensuring the Council's Policies are up to date, the Council's objectives linked to the Corporate Plan can be achieved, ensuring residents receive efficient and effective value for money services.

WHY HAS THIS REPORT COME TO THE EXECUTIVE?

Executive are asked to agree a new policy document governing property disposals. The new policy is to replace the out-dated policy currently in place governing property tenure and disposals and rental concessions. Executive are also asked to rectify an anomaly in the current decision making process relating to the potential demolition of Council owned assets.

RECOMMENDATIONS:

- a. That the attached Property Disposals Policy is agreed and replaces the policy documents entitled;
Property Tenure and Disposal Policy Statement dated 8/2/11, and
Reductions in Rental Payments Policy Statement dated 8/2/11
- b. That a recommendation be made to Council that decisions regarding demolition of non-operational assets are delegated to the Head of Corporate Resources in consultation with the Portfolio Holder, and the Head of Nuclear, Energy and Planning, and that Contract Procedure Rules be updated to reflect the delegated powers.
- c. That the actions referred to in paragraph 2.4 be approved.

1. INTRODUCTION

1.1 The Council has recently undergone a significant change to its priorities and objectives, not only as a result of the on-going requirement to make budget savings, but also because of emerging legislation. The Localism Act has informed new policies covering, amongst other things, Community Asset Transfers, Community Right to Challenge, and Community Right to Bid.

1.2 The Council's current policy documents entitled 'Property Tenure and Disposal Policy Statement' and 'Reductions in Rental Concessions Policy Statement' are now out-date with new practices adopted to regularise the disposal of property by freehold or leasehold transfer.

1.3 The Council's current policy relating to Community Asset Transfer regularises property previously categorised as 'community'. However disposals not governed by this policy have been superseded by practices influenced by legislation, auditor recommendations, changing priorities and best practice.

2. PROPOSALS

2.1 A new policy document has been drafted which supersedes the out-dated practices, and is attached to this report as Appendix A.

2.2 The attached policy merges two previous policies on Property Disposals and Rental Reductions. This policy regularises all matters related to property disposals whether by freehold transfer or the grant of a leasehold interest.

2.3 The policy also highlights anomalies in the decision making process. This relates particularly to the decision to demolish an asset as this is currently is not covered within the Council's Constitution. It is therefore recommended that decisions regarding the demolition of non-operational assets be delegated to the Head of Corporate Resources in consultation with the Portfolio Holder, and the Head of Nuclear, Energy and Planning, and that Contract Procedure Rules be updated to reflect the delegated powers.

2.4 The anomaly in this decision making process has been highlighted by the closure and requirement to demolish the James Street Public Conveniences. The Council's public conveniences that were run directly by the Council were closed as part of the Council's 2013/14 budget setting process. It was agreed that James Street Public Conveniences were closed and that a Community Asset Transfer of the premises sought. After discussions with third parties it transpires that there is no potential for a CAT of the public conveniences and, the decision to demolish the property requires ratification. It is therefore recommended that Executive agree to the decision to demolish the public conveniences.

3. ALTERNATIVE OPTIONS TO BE CONSIDERED

None

4. CONCLUSIONS

4.1 The attached policy reflects current best practice and conforms to Contract Procedure Rules, the current Asset Management Plan 2011-15 and the update to this document of 2013, and the Council's Corporate Plan objectives, whilst encompassing recent Audit Commission recommendations and best practice.

5. RESOURCE IMPLICATIONS

5.1 The updated policy will ensure more effective and efficient use of current staffing resources.

6. STATUTORY OFFICER COMMENTS

S151 Officer comments are; As an authority we need to adapt to changing environment and rationalise our asset holding so that when assets are no longer fit for purpose as operational buildings or investment properties we can dispose of whilst ensuring we receive best value for our assets to support our future capital programme.

Monitoring Officer comments are; The policy translates the law into practice. In law best price must be achieved for all freehold disposals or leasehold disposals for a period of more than 7 years. The only exception to this is where economic, environmental or social well being will be derived and the concession is less than £2m in value. More than that requires specific consent from the Secretary of State. In respect of paragraphs 2.3 and 2.4 the constitution is silent on demolition and the approval of this policy is an opportunity to address that omission.

EIA Comment: The Council continues to be mindful of its equalities duties when managing its property portfolio.

Policy Framework Comment: The updated policy seeks to embrace best practice and ensure that the policy aligns with the Council's revised Corporate Plan 2013-15.

7. HOW WILL THE PROPOSALS BE PROJECT MANAGED AND HOW ARE THE RISKS GOING TO BE MANAGED?

7.1 The Estates & Valuations Manager will oversee all property disposals to ensure policy is implemented.

8. WHAT MEASURABLE OUTCOMES OR OUTPUTS WILL ARISE FROM THIS REPORT?

8.1 Both freehold and leasehold property disposals will be regularised enabling best practice to be adopted which meets auditor recommendations.

List of Appendices

Appendix A - Property Disposals Policy

List of Background Documents:

Property Tenure and Disposals Policy Statement

Reduction in Rental Payments Policy Statement

Community Asset Transfer Policy

Asset Management Plan

Contract Procedure Rules

Asset Register



COPELAND BOROUGH COUNCIL

PROPERTY DISPOSALS POLICY

Current Document Status					
Version	one	Approving body	Executive		
Date	October 2013	Date of formal approval			
Responsible officer	Barbara Vernon, Estates & Valuations Manager	Review date	Insert date review must be completed		
Location	Insert file location or web address where document can be accessed				
VERSION HISTORY					
Date	Version	Author/Editor	Comments		
8/2/11	Property Tenure and Disposal Policy Statement	Chris Lloyd	This policy combines and replaces the two policies adopted in 2011		
12/6/11	Reductions in Rental Payment Policy Statement	Chris Lloyd			
Equality Impact Assessment Record					
Date	Type of assessment conducted	Stage/level completed (where applicable)	Summary of actions taken decisions made	Completed by	Impact Assessment review date
Insert Date	Initial/Full	Complete	NFA	Insert officer name	Insert date
Responsible officer	Insert name and job title	Review date	Insert date review must be completed		
Corporate Quality Assessment Record					
Date	Insert date				
Completed by	Insert name(s)				

Document retention	
Document retention period	Policy should be reviewed every three years

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PROPERTY DISPOSALS POLICY

1.0 INTRODUCTION

1.1 Copeland Borough Council owns land and property for a variety of reasons. The value of the Council's portfolio is currently in the region of £45m. The land and property owned is categorised as:

- Operational – where it supports Council services
- Investment – where it produces an income that can be used to support Council activities or is held for capital appreciation, or both
- Surplus – where it is not required for operational purposes, nor is it capable of generating a satisfactory level of income

1.2 In accordance with the Local Government Act 1972, the Council is committed to obtaining best value in all its property transactions, meaning that the basis for lettings or sale of a freehold should be consistent and be at market value unless certain criteria are met to enable the disposal to be transacted at less than best value. Contract Procedure Rule 32.8 governs disposals at less than best value.

1.3 In the past, reductions to rental payments have been made on an individual case by case basis where incoming or existing tenants have either asked for assistance with payments, supported by lack of demand for the property should the property become vacant, or have made a case for providing community support or benefit and where wellbeing is supported. This has taken place over many years without consideration to other benefits received, for example grants from the Council, and with little documented process. With the passage of time this has resulted in inconsistencies. Some of these inconsistencies are now regularised by the Community Asset Transfer Policy (adopted in January 2013).

Comment [CB1]: Barbara – I thought rent reductions were made because either of lack of market or because of well being support and not simply because the Tenant could not afford a rent which would not be a legitimate reason unless supported by lack of demand during a tenancy. Needs rewriting I think.

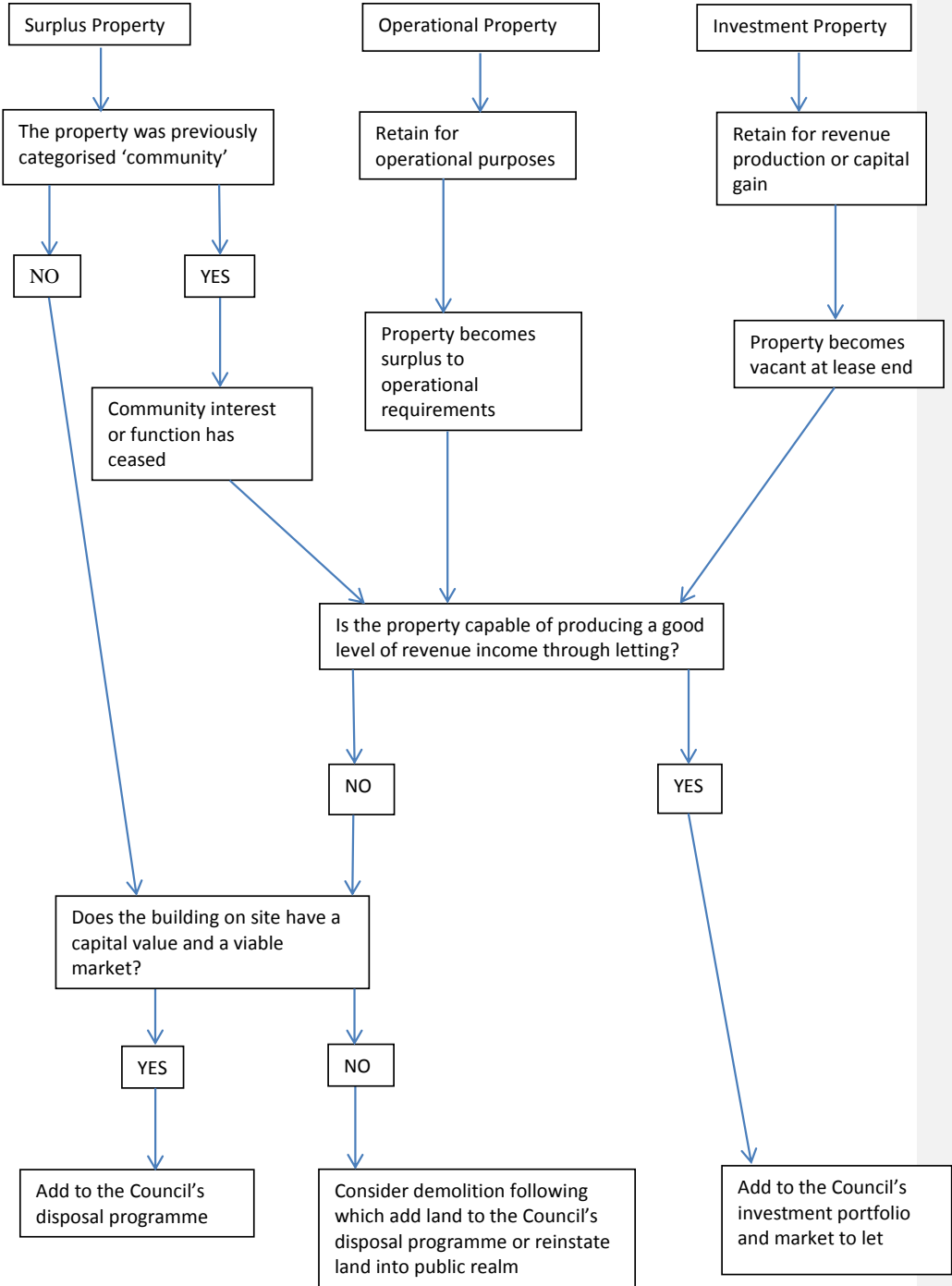
1.4 The aim of the Property Disposal Policy is to regularise the way in which the disposal by sale or letting of surplus and investment properties are managed that are not governed by the Community Asset Transfer Policy.

2.0 MANAGING OUR ASSETS

2.1 The effective management of the Council's assets is outlined in the Council's adopted Asset Management Plan 2011-15 together with the 2013 update to that document. The Asset Management Plan is informed by the Council's Corporate Plan and ensures asset management is aligned with the Council's objectives and priorities.

2.2 The diagram below gives an overview of how our assets are currently managed.

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2.3 The way in which we manage vacant properties has highlighted a current inconsistency in the decision making process particularly around the potential demolition of assets where there is no capital value or potential revenue stream. The decision to demolish assets will be made by the relevant Head of Service in consultation with the Portfolio Holder, the Head of Corporate Resources and the Head of Nuclear, Development Control and Planning.

3.0 FREEHOLD DISPOSALS

3.1 The Council's disposals programme contains the details of all surplus properties available for sale. The programme is updated on a regular basis and takes into consideration factors such as current market conditions and the Council's capital programme.

3.2 The Council's freehold surplus properties are marketed on a considered basis. To gain maximum price the Council will generally dispose of land and property when conditions are favourable and at a rate that would not saturate the local market and depress prices but will obtain best market price.

3.3 In prolonged depressed market conditions a market test may be carried out to ascertain the market conditions at any particular point in time. This will involve putting to the open market a selection of properties to ascertain levels of interest, ie whether there are potential buyers and the prices those buyers are willing to pay for property. This test will inform the disposal programme going forward.

3.4 Consideration also needs to be given to the finite amount of land the Council owns, and to what extent the Local Development Framework will change opportunities in the future.

3.5 When an ad hoc request is received to sell a property not already within the disposals programme, the following considerations will be made:

3.5.1. in the case of land:

- a. the disposal of the land parcel improves the Council's land boundaries,
- b. the disposal is in the best interests of the Council and reduces maintenance costs or other liabilities,
- c. the disposal will achieve a level of capital receipt that justifies the level of resources required to achieve that receipt
- d. the land has no potential future use, and
- e. the request is for the Council to sell the whole of its piece of land, unless any retained land has a future use.

3.5.2 in the case of buildings;

- a. the property has been declared 'surplus' and is non-operational

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- b. the disposal is in the best interests of the Council and reduces maintenance costs or other liabilities.
- c. the disposal will achieve a level of capital receipt that justifies the level of resources required to achieve that receipt

3.6 Disposals can be made by either formal or informal open market competitive tender in the form of a sealed bid, by auction or by direct negotiation with prospective buyers. At all times, the Council must achieve best value by maximising disposal proceeds wherever possible.

3.7 The way in which property is disposed of is governed by Contract Procedure Rule 32 'Land Transactions' (attached as Appendix A). The four methods of disposal are;

3.7.1 Formal tender, governed by Contract Procedure Rule 32.10. This method is used when certainty over the disposal and the terms of that disposal are required from the outset. This restricts subsequent negotiation and is rarely used.

3.7.2 Informal tender is less restrictive and the procedure for this method is now documented in the Council's Procedure Note 'Disposal of Property by Informal Tender' (attached as Appendix B). This is the usual method of disposal.

3.7.3 Auction is a method of disposal that is rarely used and needs careful consideration before being employed (see Contract Procedure Rule 32.7).

3.7.4 Direct negotiation needs careful consideration. The types of property that may be transacted directly are, for example;

- a. a piece of land that would only be of interest to the applicant (eg a piece of land adjacent to a property that will only add value to that property as an extended garden or to house an extension to their dwelling). This transaction is a 'special purchaser' transaction and will achieve over and above the market value of the property by dealing directly with the applicant.
- b. a property that has been marketed by formal or informal tender but has received no interest by the closing date and a subsequent interest is received.
- c. a property that has been marketed by informal tender where it was considered the level of bid was insufficient to meet best value and where direct negotiation may increase the level of bid to an acceptable level.

3.7.5 A strict user clause, a claw back provision or an appropriate covenant regulating future development may be used in the transfer but needs to be considered carefully and will depend on the circumstances of the applicant, the property

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concerned and the opinion of the Council's Valuer. In most cases, however, full development value will be sought.

4.0 LETTINGS

4.1 Disposal by letting is to be based on market value in the first instance, with reasons/principles for reductions clearly defined in order to demonstrate best value. This applies to both land and buildings.

4.2 Any adjustment to rent will be made based on the value of the benefit to the Council, as assessed by the Council's Valuer. The following will be considered;

- a. Where premises have been vacant for a lengthy period or are likely to incur significant cost if they become vacant,
- b. When an incoming tenant proposes to undertake improvement works to the building or land,
- c. When the Council's costs will be reduced upon occupation of the building.

4.3 The Council's Valuer will consider;

- a. Any grants which may have been separately awarded to tenants by the Council and the purpose of those grants,
- b. the value of any improvements to the building or land and the effect on its condition/life/amenity,
- c. other potential opportunities such as freehold disposal or asset transfer in place of continuing with the rental and offering a concession.

4.4 In all cases the agreed lease terms will be reviewed at end of the lease period, and occupation renewals agreed to reflect any change in circumstances of the Council as landlord and the tenant as occupier.

5.0 Other Types of Agreements

5.1 Partnership agreements, leases linked to service level agreements or management agreements may be granted in appropriate circumstances. The terms of these types of agreement will be negotiated in consultation with the relevant Head of Service, the Section 151 Officer and the Legal Services Manager prior to obtaining the relevant level of Authority to the transaction.

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5.2 In measuring the level of rental reductions relating to these types of arrangements, the Council's Valuer must ensure that Council objectives have been met, and that the Council wishes to provide the service/function through an agent or partner. In most circumstances an appropriate business plan will be required from the applicant.

Comment [CB2]: Not sure what this has to do with other types of agreements

5.3 The resultant reduction will therefore be commensurate with the service provided and will be supported by;

- a. Identification of the benefits to the Council and the community where appropriate,
- b. an agreed service specification with agreed targets,
- c. monitoring by the Service Section at agreed intervals,
- d. re-assessment at lease renewal or at specified review dates,
- e. the potential to break any lease and/or management agreement when performance is unsatisfactory.

5.4 Where a rent reduction has been granted, prior permission shall be sought from the Council by a tenant for any activities to be undertaken on a business basis. This is to be agreed on the basis that any business pays to the Council costs equivalent to those which it would incur in the market place for the accommodation and facilities. Such activities should not prejudice or affect any of the Council's objectives or the community activities in the building or on the land.

5.5 Local Asset Backed Vehicles may be considered where large scale development projects would benefit from such an agreement. The terms of this type of agreement will be negotiated in consultation with the relevant Head of Service, the Section 151 Officer and the Legal Services Manager prior to obtaining the relevant level of Authority to the transaction.

6.0 VALUATIONS

6.1 At the commencement of the disposal process, a formal documented valuation based on the proposed terms of the disposal is required to be undertaken by the Council's Valuer to ascertain;

- a. Whether best value has been achieved for the proposed transaction, or
- b. the level of undervalue connected to the disposal, and
- c. the appropriate authorities required to agree the terms of the transaction.

6.2 Where a disposal at less than best consideration is anticipated the valuation shall include an assessment of the expected economic, social and environmental well-being which will derive from the disposal. The valuation will then inform the level and detail of the request for authority governed by Contract Procedure Rule 32 'Land Transactions'.

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7.0 FEES AND CHARGES

7.1 All property transactions have cost implications for the Council in both Officer time and, in some cases, external charges where, for example, agents undertake the work due to lack of in-house resources or where certain external specialisms are required.

7.2 In certain circumstances it may be appropriate to waive the recovery of fees and charges. This will, in the main, be to charitable or community organisations or where land is being transacted for large residential or mixed use developments. The following is a guide to fee recovery, however individual circumstances may dictate the waiving of fees in particular or unusual circumstances. The decision to waive fees in circumstances not outlined below will be taken by the Council's Valuer in consultation with the Legal Services Manager.

Comment [CB3]: See CB5

7.2.1 The recovery of fees and charges may be waived;

- a. where the land transaction is governed by the Council's Community Asset Transfer Policy,
- b. for freehold disposals, lettings or licences for one-off uses to charitable or community organisations (not governed by CAT), where the end use is for non-profit making purposes,
- c. for freehold disposals of property where the capital receipt achieved is £10,000 or more,
- d. for some partnership/management agreements at the discretion of the Council's Valuer in consultation with the relevant Head of Service.

Comment [CB4]: Eh? Why £10,000. Beyond me why a housing developer should not be required to pay fees

7.2.2 The recovery of fees and charges will be imposed;

- a. for freehold disposals, lettings or licences for one-off uses to commercial, charitable or community organisations where the end use is for business or profit making purposes,
- b. for freehold disposals of property which has been declared surplus and where the capital receipt achieved is less than £10,000,
- c. where an external agent is employed to negotiate the transaction,
- c. for access, easements and wayleave agreements to utility companies, or other commercial organisations,
- d. for agreements for the use of land to residential occupiers.

7.2.3 In commercial or residential transactions where fee recovery applies, a cap on the level of fees and charges recovered may be agreed at the discretion of the Council's Valuer in consultation with the Legal Services Manager.

