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Lewes District Council



Working in partnership with **Eastbourne Homes**

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Version Control

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1.0	November 2023	Minor amendments to text
2.0	December 2024	Updated text to include additional text on diversification
3.0	January 2025	Updated text to include additional reference to Devolution

Property Disposal and Transfer Policy

Introduction

This policy applies to the disposal, transfer and diversification of interests in any non- residential property by Eastbourne Borough Council (EBC). It sets out procedures that are open, transparent and consistent, to ensure maximum benefit for the Council. Within this framework the policy will ensure the Council achieves best value, acts within the appropriate legal framework, and performs in a demonstrably fair and open manner.

Whilst this policy outlines the guiding principles and procedures, it does not bind the Council to a particular course of action. As such, alternative methods of disposal, transfer and diversification not specifically mentioned in this policy may be used where appropriate, subject to the relevant internal governance and approval.

Property and Development (PD)

PD will lead on all commercial property disposals and transfers on behalf of EBC. The service will:

- Work within the guidelines of the Property Disposal and Transfer Policy and relevant delegated authority at all times;
- Seek transfer and diversification opportunities that will further the corporate aims and objectives of EBC and reduce future costs and liabilities;
- Work with third parties to support the diversification of delivery models;
- Ensure the local property market and relevant external influences are monitored for market risk;
- Use accurate building performance information to feed into the asset disposal, transfer and diversification process and identification of surplus properties;
- Hold an accurate and up to date record of surplus properties and expected capital receipts;
- Dispose, transfer and diversify the Council of its risk and liabilities, taking into account service needs, community, social, cultural, economic and environmental benefits;
- Work strategically with partners to review opportunities to enhance disposal receipts, learn from our common experience and share best practice;
- Work strategically with partners to reduce our carbon footprint.

Assurance Review

In common with many Councils, EBC's finances were severely impacted by the Covid pandemic and the government allowed the Council additional borrowing capacity. A number of reviews of the Council's finances have taken place (Assurance Reviews) and this has resulted in recommendations coming forward, including that the Council should progress disposals to generate finances and diversify its delivery models where possible.

Following these recommendations, the Council is maintaining a list of key assets on a disposal consideration list. Usually, property will only be disposed of where it has been identified as surplus to requirements and can generate a capital receipt. Alternative delivery models will also be considered where assets are underperforming, or where a community organisation involved with the asset has registered an interest in a transfer.

Devolution and Local Government Reform

In December 2024, the Government launched an English Devolution White Paper which set out the government's ambition for a programme of "generational devolution", shifting power, permanently, away from Whitehall and into local hands via Devolution and Local Government Reorganisation (LGR). This could mean the formation of a Strategic Authority with an elected mayor, and the creation of a new unitary council in the Eastbourne area. The property implications of this reorganisation will need to be considered in any future disposal plans.

Definition of surplus assets for disposal

A property may be determined as surplus for disposal following a property review and options appraisal if some or all of the following criteria apply:

- It is not anticipated to be required under future Devolution plans;
- It does not meet the aspirations or key aims of the Corporate Property and Assets Strategy;
- It does not have combined social, cultural, environmental and economic benefits;
- It makes no contribution to the delivery of the Council's services and is unlikely to be required for service delivery in the future;
- It is no longer appropriate for service provision;
- It has no potential for future strategic or regeneration/ redevelopment purposes (including affordable housing);
- The net income generated from the site is below that which could be achieved from disposing of the site and investing the capital receipt/ proceeds;
- The land or property is not adjacent to a larger area of land or property in the ownership of the Council where a strategic reason may apply for retaining the asset.

Methods of Disposal, Transfer and Diversification

Freehold Disposal

This is the complete transfer of all rights and responsibilities of continuing to hold that property. The transfer may be subject to certain claw back or overage restrictions that seek to secure further payments in the event of excess development profits (see Due Diligence section for further information).

Leasehold Disposal

The grant of a long lease (usually over 25 years), where the Council wishes to retain some control of an asset, or where the income stream is assessed to be of greater value than the foregone capital receipt that may be achieved through its sale, or where the Council decides to receive a premium for a long leasehold interest and reduced revenue return for strategic purposes.

Community Asset Transfer (CAT)

The role of local authorities is changing, partly in response to the current financial climate, but also the recognition that local authorities are not always best placed to deliver community services or own community buildings. The Council has a desire to ensure that community assets are owned, managed and run in a way that best meets the needs of the communities they serve and provides the best future prospects for that asset, where a future is viable and desirable.

CAT is the transfer of management and/or ownership of property to a community organisation where there is an identified social, economic or environmental benefit; sometimes, but not exclusively, the transfer may be at undervalue justified by that benefit – this could be via a freehold/leasehold disposal, short lease or licence.

Community-based organisations can sometimes be better placed than local authorities at securing investment through sources such as the National Lottery, crowdfunding, sponsorship and legacies. Having control over their assets can enable these organisations to become more self-sufficient, secure and sustainable whilst also ensuring the long-term community benefit of assets. Consideration of CAT might be appropriate in instances involving Development Trusts, Community Interest Companies for example.

Diversification

The Council is also aware that it is not necessarily best placed to run specialist services – for instance Theatres and leisure provision – it is therefore also seeking to diversify delivery models of previously council operated assets where appropriate, working with third parties to maximise benefits for residents and visitors.

The Council should plan to dispose of all surplus land or property identified for disposal within its portfolio subject to the following criteria:

- That the disposal does not have a negative impact on the Council Medium Term Financial Plan (MTFP);
- Terms to be approved by an independent valuer where appropriate;
- Best financial consideration to be obtained unless social, environmental or economic benefits are evidenced;
- The method of disposal determined on a case by case basis;
- Any long leasehold disposal transfers all liabilities to the tenant;
- Prior to final disposal, short term intermediate use should be considered where possible to ensure that disposal can be progressed when viable.

Due Diligence

Due diligence will be carried out prior to consideration of a disposal, to include consideration of:

- Best consideration;
- Existing lease arrangements regarding the property (to include minimum length of the unexpired lease terms, covenant strengths, legal encumbrances, 3rd party rights);
- Asset maintenance liability and building condition true lifecycle costs;
- Future planning, and/or regeneration potential and impacts on enhanced disposal receipts;
- Community, social, cultural, economic and environmental benefits and risks;
- Crichel Down Rules, Subsidy, and Contract Procedure Rules;
- Potential for including restrictive covenants and overage clauses;
- In addition, for property taken through the CAT process, future management and use of the property and the relevant organisation's skills, governance and financial arrangements.

Best consideration and advertising disposal – section 123 Local Government Act 1972

Local Authorities have an overriding duty under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of property, subject to certain exceptions set out in the Local Government Act 1972: General Disposal Consent 2003. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State where the disposal:

- will help the Council to secure the promotion of the improvement of the economic, or environmental well-being of its area; and

- where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2,000,000 or less.

The Council must still comply with its duty to obtain best consideration for the restricted value and comply with normal and prudent commercial practices, including obtaining the view from a professionally qualified and independent Chartered Surveyor.

There are further procedural requirements to be complied with on disposal of open space land. A local authority is required to advertise its "intention" in a local newspaper for two consecutive weeks and to consider objections. The advertising process should be undertaken before any final decision is made on the disposal so that proper consideration is given to the responses that are received.

Crichel Down Rules

The Rules apply in certain circumstances where land that is to be disposed of was previously acquired by or under threat of compulsion. Where the Rules apply, former owners will, as a general rule, be given a first opportunity to re-purchase the land previously in their ownership.

Contract Procedure Rules

Subject to certain exceptions, the Council's Contract Procedure Rules say that no freehold sale of land, where the value exceeds £50,000, shall be made, except after auction or the invitation of tenders or expressions of interest following appropriate public advertisement, unless authorised by Cabinet.

Restrictive covenants and overage

Consideration may be given to:

- Imposing restrictive covenants in freehold transfers limiting the future use of the properties.
- Including overage clauses in freehold transfers enabling the Council to share in any future increase in value in the properties realised after the properties have been sold. This would enable the Council to share in any uplift in value if planning permission is granted to develop the properties for something much more valuable, e.g. residential use. The precise terms of the overage, including the percentage share and duration of the overage rights, would have to be settled after taking professional advice.

An Equality and Fairness Impact Assessment will be undertaken for each disposal, or where relevant, group of property disposals to assess community, social, cultural, economic and environmental benefits and risks.

PA will enter into detailed discussions on behalf of the Council only when Cabinet has agreed to a proposal or there is agreement through the relevant delegated authority.

Types of marketing

There are a number of ways in which a property can be marketed including, but not limited to:

Private Sale/Transfer: Sale/transfer of property negotiated with one or a small number of purchasers/community organisations. A binding legal agreement is created on 'exchange of contracts' between the Councils and the purchaser/transferee.

Public Auction: Sale of property 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.

Informal Negotiated Tender: Sale of property after a public advertisement that requests informal offers or bids that meet a given specification or set of objectives. The Council may then negotiate further or more detailed terms with one or more individuals submitting the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts between the authority and the chosen bidder.

Formal Tender: Sale of property 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.

Exchange of Property: A transaction involving the exchange of Council owned property 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 property exchanged or there can be an equality payment made by either party.

Decision Making

Authority for disposal of assets generally sits with Cabinet, although relevant officers may be able to operate under delegated authority where appropriate.

The following procedures relate to the disposal of land:-

- Approvals for declaring land surplus to the Council's requirements, and authorising its disposal will be obtained in accordance with procedures set out in the Council's Constitution;
- Strategic Property Board is consulted on all property disposals at an early stage including when the land is in the process of being declared surplus.
- Where delegated by Cabinet, the final decision to dispose of a property and at what terms will be at the discretion of the relevant Lead Member as

advised by the Director of Regeneration and Planning in accordance with the scheme of delegation.

- Where a property has been previously acquired through or under the threat of compulsory purchase means and is now surplus to Council requirements, consideration of the Criche Down rules may apply.