



# **MELTON BOROUGH COUNCIL**

## **LAND ACQUISITION AND DISPOSAL POLICY**

**SEPTEMBER 2013**

*'Making a Difference'*

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# **MELTON BOROUGH COUNCIL: LAND ACQUISITION AND DISPOSAL POLICY**

## **1. Introduction**

The Land Acquisition and Disposal Policy aims to provide clear framework and guidance, in conjunction with the Capital Programme & Asset Management Plan for land disposals and acquisitions undertaken by the council.

Where property assets are not meeting the Councils objectives then a process of rationalization and disposal may be appropriate. Assets that are surplus to requirements will be identified, regularly reviewed and actively marketed. This will help reduce unnecessary revenue costs and generate receipts in order to provide funds for reinvestment in priorities.

This Policy will help to ensure that all transactions, large or small, that relate to property proceed smoothly and in a way that demonstrates transparency and propriety.

## **2. Objectives of the policy**

To complement the Asset Management Plan and Capital Programme and enable a framework for the acquisition and disposal of assets for furthering the Councils objectives for operational, socio-economic or investment purposes.

The policy will help free up latent capital value tied up in potentially surplus assets and unlock regeneration opportunities. Also maximize proceeds or land use benefit for the benefit of the Council and its community.

### **Definition of an acquisition or disposal that falls within this policy**

The transfer of the freehold or a leasehold interest for a period of greater than 7 years to or from a third party.

## **3. Relationship to the Council's other Strategies, Plans and Policies**

The Land Acquisition and Disposal Policy directly contributes to the promotion and achievement of the Council's targets and objectives and links into the Council's performance framework. The project management framework may be followed for larger projects.

Examples of transactions that will benefit from the implementation of the Policy include disposals of land to facilitate housing developments of both affordable and private nature, acquisitions to provide amenity facilities such as i.e. public parks, play areas, community schemes etc or disposals to facilitate the improvement of community facilities provided by others. Such transactions can assist in achieving key corporate objectives.

Procurement actions will be considered, if during the course of a transaction to which this Policy relates any procurement issues arise, the Council's Procurement Strategy must also be complied with and advice sought from the Welland Procurement Unit, Solicitor to the Council and Head of Central Services as appropriate.

Specific reference will be made to the Council's Financial Procedure Rules, in particular those parts covering acquisitions and disposals. The policy has been

formulated with due regard for the Councils charging policy.

#### **4. General Guidance**

The Council's Corporate Property Officer (CPO) is within Central Services and will be consulted on all acquisitions and disposals.

1. This policy supplements and provides a framework for the use of the powers delegated to committees and officers as set out in the constitution.
2. Regard must always be given to the Council's Corporate Priorities Objectives, Capital Strategy, the Asset Management Plan and the statutory powers and frameworks with which the Council must comply. Particular reference is made to the Council's Financial Procedure Rules.
3. Property means land, buildings and rights and interests in the same. If in doubt as to whether you are dealing with property and therefore whether the Policy must be complied with please contact the CPO (Corporate Property Officer) or the Solicitor to the Council for advice.
4. This Policy relates to all acquisitions and disposals of property whether of the freehold or leasehold estate or of lesser interests such as easements, wayleaves or other rights. If in doubt please contact the Solicitor to the Council for advice.
5. If assistance or advice is required on any aspect of the Policy or any transaction please contact the Strategic Director( CAM), Solicitor to the Council or CPO immediately for advice, particularly before embarking on a potential acquisition or disposal. Failure to comply with the Policy can cause delays, embarrassment for the Council, unnecessary expenditure for both the Council and other parties and in the extreme could mean that the Council is acting ultra vires.
6. If at any stage of the acquisition or disposal process anything arises that has to be considered or overcome before the matter progresses further the matter will be referred to the Programme Board or Management Team for smaller disposals In the first instance, guidance should be sought from the Corporate Director (CAM), Solicitor to the Council, Head of Central Services or the CPO.
7. Where reference is made in this Policy to the Heads of Service or the CPO it also includes the officers to whom they have delegated the responsibility for dealing with aspects of this Policy.
8. There will always be tensions between the various priorities in accessing the resources that are available as a result of land disposals. A careful balance between maximisation of land disposal values, community use and council priorities must be struck and clear methodologies adopted to achieve those aims.
9. Where considering whether to dispose of or acquire assets due consideration should be given to market conditions and the associated implications.

#### **5. Valuations**

Valuations will be carried out by the CPO or other suitably qualified officers where necessary aided by external valuers. This also helps the Council to demonstrate good practice and propriety in its property dealings.

## Disposals

The Council should obtain best consideration by the most appropriate method of disposal. Consideration does not necessarily need to be financial. There should be regular liaison between stakeholders between a property being declared surplus and the completion of a disposal. Consideration must also be given to the confidentiality of a disposal particularly prior to exchange of contracts.

## 6. Urgency

Where the Chief Executive or in her absence one of the Strategic Directors (KA/CAM), in consultation with the Chairman of the appropriate Committee and appropriate Group Leaders agree that a situation of urgency has occurred, a departure from this Policy may be made to provide a degree of flexibility when necessary. The departure and the reasons for the departure will be notified to the Chairmen of the relevant Committees and Leaders of the other parties in conjunction with the CPO.

Situations where departures are requested are expected to be rare and should be avoided so far as possible by careful planning and adherence to this Policy. Lack of planning will not necessarily justify treating a matter as urgent and therefore permitting a departure from this Policy.

## 7. Exceptions

This Policy need not be complied with in connection with the following transactions:

- (a) the letting of industrial and commercial units that the Council holds solely for such purposes provided that the lettings are at the relevant market valuation. This relates to the power delegated to the Head of Service. Where necessary the Head of Service (or the officer to whom responsibility has been delegated) will consult and will, where appropriate, address any issues raised by that process;
- (b) the acquisition by the Council of public open spaces pursuant to planning agreements;
- (c) the grant of consents to statutory undertakers to enter on Council owned land and property in order to execute works. This relates to the power delegated to the Head of Central Services but the power must be exercised in consultation with the Solicitor to the Council;
- (d) the grant of licences to occupy Council owned land and property where the licence does not exceed one year and no security of tenure will be granted. In the absence of any power delegated to a Head of Service to authorise the grant of such licences the Solicitor to the Council will apply the principles of the Policy so far as is necessary to ensure propriety and transparency in the transaction. Guidance on the application of the principles of the Policy will be given by the Solicitor to the Council in consultation with the CPO.
- (e) the acquisition of leases of properties for occupation by homeless families in discharge of the Council's statutory duty (currently under section 193 of the Housing Act, 1996), provided at the time of the acquisition of such leases there is a current decision to operate such a scheme.

- (f) for low value disposals where the consideration is less than £50,000 at the discretion of the Chief Executive or Strategic Director in consultation with the Head of Central Services, Solicitor to the Council and the CPO or their representative.
- (g) Lease or licence disposals for the purposes of sharing office accommodation.

## **8. Disposals**

This Policy applies where the Council wishes to dispose of an estate or interest in property that it owns. The disposal may arise either where:

1. The Council has identified that it has property that is surplus to its requirements or
2. Where the Council has received expressions of interest from prospective purchasers of property that it owns.

In all circumstances where the land property has not already been identified as 'surplus to requirements' and reported to committee, a report to committee will be required (for disposals within delegations these can be retrospective). As a general rule the fees relating to disposal including legal and valuation costs will be paid for by the persons acquiring the land.

The procedure that will be followed for the disposal of property is:

1. At the very outset of any proposed disposal and before any negotiations are entered into, particularly in relation to proposed disposals to enable housing development, the Head of Service leading the proposed disposal will discuss the matter with the CPO and a legal representative as nominated by the Solicitor to the Council dealing with the property to ensure early consideration of matters such as:
  - (a) the Asset Management Plan;
  - (b) alignment with the Council's Objectives;
  - (c) statutory powers available for disposal;
  - (d) planning advice and whether the Council should obtain planning permission or planning statements prior to marketing and any other potential changes prior to disposal;
  - (e) the financial implications of disposal;
  - (f) whether any grant funding will have to be repaid. The Head of Service leading the disposal will contact the funding body, if necessary, to obtain confirmation on this point; and
  - (g) any other implications of the disposal, e.g. precedents may be set.
  - (h) any covenants that the Council may wish to place on the land.
  - (i) any potential objections or applications, legal challenges which might delay or obstruct the disposal.
  - (j) the potential market of the property and that value associated with its disposal (e.g. to a Housing Association)
2. The CPO will arrange for the Solicitor to the Council to check the Council's title deeds to establish whether there are any restrictions affecting the title that would prevent or otherwise interfere with the proposed disposal, including the need to obtain consents from third parties or the need to offer the property back to the

person that the Council acquired it from. The Solicitor to the Council will give the CPO and the relevant Head of Service a brief report on the title and any perceived problems.

3. The CPO and a legal representative dealing with property work will be consulted by the Head of Service leading the proposed disposal on how best to deal with the disposal, such as whether to proceed by way of private treaty or tender, and whether there is any scope, in appropriate cases, for the disposal to be at a reduced consideration in accordance with the powers available to the Council and the Disposal Consents issued by Central Government from time to time. The application of any covenants or form of disposal will be given careful consideration in order to protect the Council's interests. Any such disposal for less than market value must be with the authority of the Chief Executive, Strategic Directors (CM/KA), CPO and Solicitor to the Council and Members.
4. Only once the preceding steps have been satisfactorily completed will the CPO provide the Head of Service leading the proposed disposal with the appropriate pro forma Instruction Sheet for completion. This must not be overlooked or disregarded as, apart from ensuring that complete and accurate instructions will be given to the Solicitor to the Council to enable the conveyancing formalities to be completed, it will also act as a safeguard in ensuring, so far as possible, that consideration is given to all relevant matters at an early stage in the transaction. If assistance is required in completing or understanding any part of the Instruction Sheet please contact the Solicitor to the Council, or the CPO for advice. The completed Instruction Sheet will be provided to the CPO at the earliest opportunity.
5. The CPO in consultation with the Head of Service leading the disposal shall arrange a consultation with CMT and other Heads of Service, usually by way of a brief report to the Management Team or by referral to the Programme Board. The consultation shall cover:
  - (a) a brief outline of the history of the site including the powers under which it was acquired and the powers for which it is currently held;
  - (b) the reasons for disposal;
  - (c) how the disposal fits in with the Asset Management Plan, Capital Strategy and the Council's Objectives;
  - (d) the statutory powers for disposal;
  - (e) the estimated financial implications;
  - (f) suggestions on the preferred method of disposal including whether freehold or leasehold. Where there is more than one interested party sale by tender or auction will often be the most appropriate method of disposal so as to maximise the value of the Council's property;
  - (g) other implications, by reference to the implications headings on the pro forma for reports to Members;
  - (h) whether the Council will have to repay any grant funding that it received to acquire and improve the property;
  - (i) the planning status of the property
  - (j) confirmation that there is no perceived future use of the site and
  - (k) any recommended restrictions/covenants.
6. If the matter is to be referred to Committee for a decision (e.g. it is not already on the disposal register). Members may be consulted as this will not affect their ability to make a decision on the matter given that they will be consulted in the capacity in which they will be asked to make a decision. At this stage the CPO will also consult other appropriate bodies such as the relevant Ward Councillors

or Parish Council and any other key stake-holders.

7. Once the disposal has been investigated, the consultation responses have been received and the completed Instruction Sheet has been provided to the CPO, the CPO in consultation with a legal services representative will prepare a report for consideration by Management Team/Programme Board for approval and onward referral to Committee, as appropriate, for a decision to be made on whether to dispose. Apart from addressing the usual formalities, the report must cover:
  - (a) the reasons for the disposal;
  - (b) how the disposal will fit in with the Council's Objectives and the Asset Management Plan;
  - (c) the statutory powers that are being relied upon;
  - (d) any restrictions affecting the title and details of any consents that might be required;
  - (e) the financial implications of the disposal including the anticipated value of the property, the fees involved and whether the disposal will give rise to the repayment of grant funding;
  - (f) whether there is scope for the Council to dispose of the property at an undervalue and if so what consent the Council will be relying upon;
  - (g) what terms and conditions the Council might want to impose such as restrictive covenants or the obtaining of nomination rights;
  - (h) suggestions on the preferred method of disposal, such as tender or private treaty;
  - (i) the planning position as advised by the Head of Regulatory Services during the consultation stage, updated with such further information as the CPO has obtained following the consultation;
  - (j) such other relevant information as may required to enable Officers and Members to make a reasoned decision; and
  - (k) a recommendation, if it is appropriate to make a recommendation, that the disposal of the property is approved in principle subject to contract, valuation, the obtaining of planning permission by the purchaser if required, the obtaining of any necessary consents and the payment of the Council's legal and valuation fees . Authorisation should also be sought for Officers to incur expenditure in relation to further negotiations and valuations that might be required to progress the transaction.

8. Once authority to dispose in principle is given the CPO, in consultation with one of legal representatives dealing with property work, will check value of the property for the Council. In circumstances where it is not appropriate for the valuer to act for the Council, the CPO will instruct a suitably qualified independent valuer. The instructions for valuation must be comprehensive and will include all relevant information including the Council's power to dispose, the proposed terms, the planning position and appropriate plans. Initially the valuer will usually only be asked to value the property but if necessary the valuer can be instructed to carry out negotiations on the Council's behalf.

The valuation will usually be for the best price that the Council might expect to receive given the terms and conditions of sale but in all cases must be in accordance with guidance and statutory requirements on which the Solicitor to the Council will be able to advise

Even if a property is being sold for a nominal sum a market value will need to be assessed so that the undervalue can be quantified.

9. Once the valuation has been received the CPO will pass to the Solicitor to the



Council, in accordance with the Protocol for Instructing the Legal Section, the completed Instruction Sheet, the valuation, a copy of each of the reports and resolutions and such other relevant papers as are in the possession of the CPO.

10. If the property is being sold subject to the obtaining of planning permission, it is the responsibility of the purchaser to submit the required application.
11. The Solicitor to the Council will attend to the legal formalities, including the tendering process if such process is required, and will notify the interested Officers and Members once the transaction has been completed. At the same time the Solicitor to the Council will ensure that the CPO is given details of the disposal in accordance with the standard procedures employed by the Legal Section and the relevant documentation will be passed to the Solicitor to the Council for lodging in the strong room.
12. Please note that the Purchasers are to pay the Councils reasonable costs. A pro forma is attached at Appendix 1 for when a party makes an application to the Council to investigate a prospective sale/purchase.

## **9. Acquisitions**

This part of the Policy applies where the Council wishes to acquire an estate or interest in property to facilitate or for the purpose of carrying out its functions. The acquisition may arise either where the Council has identified the property that it wishes to acquire or where the owner of the property has offered that property to the Council.

The procedure that will be followed for the acquisition of property is:

1. If the Council receives an offer of property it will be referred to the CPO immediately. It is very important that no indication is given as to whether the Council might take up the offer and even more important that no assurances are given as to what the Council might do.
2. The CPO will consider how the property might help meet the Council's objectives and will also consider the offer in relation to the Capital Strategy Asset Management Plan and Corporate Priorities. The CPO will then consult all Heads of Service, usually by way of a brief report to the Management Team or by referral to the Programme Board, to obtain their views on whether the offer should be pursued. The consultation will cover, inter alia, the offer that has been made and how acquiring the property might assist the Council in achieving its Objectives and how it relates to the Asset Management Plan. Nothing further will be done until the comments of all of the Heads of Service are received.
3. If the offer is not to be pursued the CPO will write to the person that made the offer to advise them of the Council's decision.
4. If the offer is to be pursued the remainder of the procedure for the acquisition of property will be followed.
5. The Head of Service responsible for the Service for which the acquisition is being made will discuss the proposed acquisition with the CPO and if necessary one of the Council's legal representatives to ensure early consideration of matters such as:
  - (a) the Asset Management Plan;

- (b) the Council's Objectives;
  - (c) statutory powers available for acquisition;
  - (d) the likely costs of acquisition, other than the value of the real property which will be assessed by a valuer; and
  - (e) the implications of the acquisition, by reference to the implications headings on the pro forma for reports to members.
6. The CPO will provide the Head of Service with the appropriate pro forma Instruction Sheet for completion. This must not be overlooked or disregarded as, apart from ensuring that complete and accurate instructions will be given to the Solicitor to the Council to enable the conveyancing formalities to be completed, it will also act as a safeguard in ensuring, so far as possible, that consideration is given to all relevant matters at an early stage in the transaction. If assistance is required in completing or understanding any part of the Instruction Sheet please contact the Solicitor to the Council, or the CPO for advice. The completed Instruction Sheet will be provided to the CPO at the earliest opportunity.
7. The CPO, in conjunction with the relevant Heads of Service where necessary, will carry out a preliminary investigation into the acquisition with the owner of the property. Such investigation will be subject to contract, valuation, survey if appropriate, agreement on terms and the obtaining of the necessary authority.
8. Once the acquisition has been investigated, the views of the consultees have been received, if appropriate, and the completed Instruction Sheet has been provided to the CPO, the CPO in consultation with a legal representative dealing with property work will prepare a report for consideration by Policy Finance and Administration (PFA) or other Committee, as appropriate, for a decision to be made on whether to acquire. Apart from addressing the usual formalities, the report must cover:
- (a) the reasons for the acquisition;
  - (b) how the acquisition will fit in with the Council's Objectives, Capital Strategy and the Asset Management Plan;
  - (c) the statutory powers that are being relied upon, including whether the Council can compulsorily purchase under those powers. This is extremely important as if the matter later proceeds to compulsory purchase and incorrect powers have been stated the Council's ability to compulsorily purchase may be prejudiced;
  - (d) the financial implications of the acquisition including the anticipated cost of the property, the fees involved, the ongoing maintenance liabilities and running costs associated with the property, the budget available and whether the acquisition will be made with the benefit of grant funding;
  - (e) the comments of the lead Officer for the grant funding and the Solicitor to the Council on the conditions attached to the grant, if the acquisition is grant funded;
  - (f) the planning position as advised by the Head of Regulatory Services during the consultation stage, updated with such further information as the CPO has obtained following the consultation and whether planning permission has been applied for or granted for the proposed end use;
  - (g) such other relevant information as may be required to enable the Committee, to make a reasoned decision
  - (h) a recommendation, if it is appropriate to make a recommendation, that the acquisition of the property is approved in principle subject to contract, valuation, satisfactory survey and the obtaining of planning permission if required and
  - (i) Authorisation should also be sought for Officers to incur expenditure in

relation to further negotiations, valuations, surveys and the like that might be required to progress the transaction.

9. Once authority to acquire in principle is given by PFA, the relevant Head of Service, in consultation with the CPO, will arrange a survey of the property, including the location and condition of the property (to include boundaries), and will ascertain from the utility providers details of services passing through or in the vicinity of the property that might affect the proposed development or use of the property. In addition, when considered necessary or desirable, the relevant Head of Service will ensure that appropriate contamination and mining investigations are undertaken. All necessary consents must be obtained from the property owner and if necessary the Legal Section should be asked to assist in the checking and negotiating any terms imposed on such consents. The results of such surveys and investigations must be carefully considered to ensure that it is appropriate for the Council to proceed with the acquisition. If additional costs are anticipated then these should be reported to the Committee before proceeding further.
10. Following the surveys and investigations, the CPO, in consultation with a legal representative dealing with property work, will value the property for the Council. In circumstances where it is not appropriate for the CPO to act for the Council, the CPO will instruct a suitably qualified independent valuer. The instructions for valuation must be comprehensive and will include all relevant information including the Council's power to acquire, the negotiated terms, the planning position, the Council's proposals, appropriate plans and the results of the surveys and investigations. Initially the valuer will usually only be asked to value the property but if necessary the valuer can be instructed to carry out negotiations on the Council's behalf.
11. Once the valuation has been received or the negotiations have been concluded within the budgets allowed the acquisition can proceed. The exception being if the valuation identifies any reason why the property should not be acquired or the Council's position should be reconsidered in which case the advice of the Solicitor to the Council should be sought.
12. Once this is confirmed the CPO will pass to the Solicitor to the Council, in accordance with the Protocol for Instructing the Legal Section, the completed Instruction Sheet, the valuation, a copy of each of the reports and resolutions and such other relevant papers as are in the possession of the CPO.
13. If planning permission is required for the Council's proposals this must be obtained before completion of the transaction. Unless otherwise stated and explained.
14. The Solicitor to the Council will attend to the legal formalities and will notify the interested Officers once the transaction has been completed. At the same time the Solicitor to the Council will ensure that the CPO is given details of the acquisition in accordance with the standard procedures employed by the Legal Section so that the Council's records can be updated and the relevant documentation will be lodged in the strong room.
15. If the Council is unable to acquire by agreement with the owner of the property consideration will then be given to the exercise by the Council of the statutory procedure for compulsory purchase. This must not be done without the input of the Solicitor to the Council.