



**Melton
Borough
Council**

HRA ASSET DISPOSAL POLICY

2024

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Introduction

The Council is a major owner of property assets which are held in the Housing Revenue Account (HRA). The majority of stock consists of housing, which is of generally sound structure and well maintained, but there are individual properties that require greater investment. In addition, there are some garage sites that are underused as well as areas of land that are no longer required.

The disposal of surplus HRA assets will raise capital receipts to enable the acquisition or development of additional council housing or the improvement of existing stock through capital expenditure.

The HRA Asset Disposal Policy 2024 sets out how the Council will meet its statutory responsibility in relation to the disposal of land and property assets. It also sets out the process for deciding on how assets will be declared surplus, and the various methodologies that can be employed for disposing of assets.

An up-to-date HRA Asset Disposal Policy is necessary for the Council to ensure that property decisions are made with clarity and transparency.

Links to other Strategies and Policies

The HRA Asset Disposal Policy 2024 will make a valuable contribution to the Council's Corporate Strategy which includes a commitment to 'providing high quality council homes and landlord services.' The disposal of surplus HRA assets will raise capital receipts and enable the delivery of high quality council housing.

The HRA Asset Disposal Policy also adheres to the following plans:

HRA Business Plan (2022-2052)

Asset Management Plan (2023-2028)

Affordable Housing Development Plan (2022-2026)

Policy Objectives

The purpose of the HRA Asset Disposal Policy is to:

- a) Facilitate the disposal of assets that are no longer meeting service need.
- b) Set out the operational protocol for the process relating to disposals of HRA land and buildings.
- c) Raise capital receipts for capital spend on existing housing.
- d) Provide an opportunity to purchase or build additional housing.

Legal Context

A wide range of legislation and case law applies to local authority land transactions. Set out below is a brief commentary on those provisions which most commonly apply to land held for housing purposes. It is important to note that this is not exhaustive and that in any case other provisions may apply. For that reason, legal advice should always be sought at the earliest opportunity to ensure that all implications can be identified.

The general power of disposal (Section 123 of the Local Government Act 1972) gives a local authority the power to dispose of property held by it in any manner it wishes, provided that the local authority achieves the best consideration that can reasonably be obtained.

If the Council wishes to dispose of property below market value, specific consent is required from the Secretary of State where the difference between market value and the sale price is £2 million or more.

If the land concerned is held under legislation relating to housing then there are further legal restrictions with regard to the disposal of the assets concerned.

Section 9 of the Housing Act 1985

- (1) A local housing authority may provide housing accommodation—
 - (a) by erecting houses, or converting buildings into houses, on land acquired by them for the purposes of this Part, or
 - (b) by acquiring houses.
- (2) The authority may alter, enlarge, repair or improve a house so erected, converted or acquired.
- (3) These powers may equally be exercised in relation to land acquired for the purpose—
 - (a) of disposing of houses provided, or to be provided, on the land, or
 - (b) of disposing of the land to a person who intends to provide housing accommodation on it.
- (4) A local housing authority may not under this Part provide a cottage with a garden of more than one acre.
- (5) Nothing in this Act shall be taken to require (or to have at any time required) a local housing authority itself to acquire or hold any houses or other land for the purposes of this Part.

Section 32 Housing Act 1985

According to this Act, the Council may not dispose of property held for housing purposes other than with the consent of the Secretary of State.

Local authorities have power, pursuant to sections 9 and 17 of the Housing Act 1985 to acquire land and buildings for housing, and also to dispose of such land and

buildings acquired for housing. Section 32 of the Housing Act 1985 has the effect that local authorities cannot dispose of land or buildings acquired for housing purposes without first obtaining consent of the Secretary of State. This is unless the property is sold under right-to-buy provisions.

Section 43 Housing Act 1985

Consent under section 43 of the Housing Act 1985 is required for the disposal of a dwelling which is held under powers other than Part II of the Housing Act 1985, and which is subject to a secure tenancy or a right to buy lease. Such properties are rare, but an example might be a house which was acquired under Highways Act powers for a road scheme which was subsequently cancelled.

Section 25 Local Government Act 1988

The Local Government Act 1988 gives local authorities the power to provide financial assistance relating to the acquisition, construction or management of any property as privately let housing where the Council will not be landlord. The Council will need to obtain the Secretary of State's consent under Section 25 Local Government Act 1988 to exercise this power.

However, there are general consents available for the use of these powers which avoid the need for a specific application. For example, if the assistance is for a Registered Social Landlord, provided the disposal or grant does not exceed £10 million.

Section 133 Housing Act 1988

A specific consent under section 133 may be required for onward sale of Right to Buy homes where it has been mentioned in the register of title.

Where consent for a disposal was originally required under section 32 or section 43 of the Housing Act 1985 the person acquiring the land or property needs the consent of the Secretary of State under section 133 of the Housing Act 1988 to dispose of it (unless the General Consents 2013 and General Consents correction slip 2013 applies).

Allotment Acts 1908 to 1950

For disposal of land held under these Acts, the Council must obtain the consent of the Secretary of State if the disposal is for other than use as allotments.

Charities Act 2011

This is relevant if the Council is a trustee of charitable land and property originally gifted to it under the terms of a trust deed. Here, the Council has additional responsibilities which arise from its role as trustee and will be subject to the disposal requirements set out in the Charities Act 2011.

Section 123(2A) and (2B) of the Local Government Act 1972 (LGA 1972)

This relates to the disposal of open land that is held by local authorities under a statutory trust. As part of the disposal procedure, a statutory notification is required whereby the relevant local authority must advertise its intention to dispose of open land subject to a statutory trust in the local newspaper for two consecutive weeks.

Any objections to the proposed disposal must be considered. If the local authority disposes of the land complying with this procedure, then the land is freed from any public trust.

Section 19 Housing Act 1985

This has to be considered when transferring assets from the HRA to the General Fund. Local authorities are required to seek consent from the Secretary of State to appropriate land which has housing on it.

Local authorities were already allowed, under section 122 of the Local Government Act 1972, to appropriate any land which is no longer required for the purpose for which it is held. However, Section 19 of the Housing Act 1985 makes additional provision and local authorities should apply for this consent if they wish to appropriate land which contains housing property.

Transfer of assets between the HRA and General Fund

The Council owns property assets in both the Housing Revenue Account (HRA) and General Fund (GF). The HRA is a ring-fenced account and as such stands separate from the General Fund. All Councils with more than 199 units of social rented stock are required to account for annual income and expenditure on those properties separately from the General Fund.

There are separate rules for the HRA and the GF. The Local Government Housing Act (LGHA) 1989 requires local authorities to maintain a statutory ring-fenced HRA. This is controlled by schedule 4 of the LGHA. Its purpose is to ensure that council tax payers do not subsidise services specifically for the benefit of tenants and that rent is not used to subsidise functions which are for the benefit of the wider local community. Any proposal that results in a transfer of resources from the HRA to the General Fund could be seen as breaking the ring-fence.

However, over the years circumstances have changed, and it may be necessary to move assets from the HRA to the General Fund or vice versa. Due to right-to-buy, many homes on council housing estates are no longer council owned and an increasing proportion of those living on these estates are no longer council tenants.

In November 2020 the Government published some guidance on the operation of the HRA ring fence. This guidance sets out what is, and what is not appropriate for inclusion in the HRA, with particular emphasis on 'grey area' items where a reasonable case can be made for inclusion in either the HRA or the General Fund.

The main consideration when deciding whether the costs and income associated with a particular property should be accounted for in the HRA is the power under which the Council is currently providing that property. Section 74 of the 1989 Act sets out that

the property must be accounted for in the HRA, by reference to the powers under which that property is held.

A property must be accounted for within the HRA if it is currently provided under Part II of the 1985 Act or any of the other powers specified in section 74 of the 1989 Act. The account also extends to any outstanding debts or receipts which arose when the property was so provided, and which are still outstanding following its disposal.

Equally, properties which may originally have been provided under one of the powers in section 74 of the 1989 Act (or their predecessor powers) may no longer fulfil their original purpose. In these circumstances, the authority should consider their removal from the HRA by appropriating the property to a different purpose. Examples of properties which might fall into this category are estate shops and other commercial premises, such as banks, post offices, workshops, public houses, industrial estates, and surgeries, where there is no longer any connection with the local authority's housing.

With regard to appropriation of land or buildings from the HRA to the GF or vice versa, appropriation does not involve a sale and purchase. No transfer of title takes place. The property simply moves from one council account to another – or rather it is accounted for in a ring-fenced account (the HRA) within the overall account (the General Fund). The General Fund 'pays' for the HRA property through an increase in the GF Capital Financing Requirement (CFR). The HRA would benefit from a corresponding decrease in its CFR. The CFR adjustments would be based on the market value for the property.

Local authorities have no general discretion to transfer sums out of the HRA, or to support the HRA with contributions from the General Fund. For any proposals to transfer assets, the Director for Corporate Services and the Chief Finance Officer must be consulted to ensure proper statutory processes are followed according to the constitution.

If assets are appropriated from the HRA into the General Fund, they are bound by the same legal rules as if they had been disposed of to an outside party. Local authorities are required to seek consent from the Secretary of State to appropriate land which has housing on it.

There are some sites that the Council is considering transferring from the HRA to the General Fund. Appropriation will be considered on a site by site basis with Cabinet approval.

We will need to check that properties are actually held in the HRA to ensure that the correct legal procedure is followed for disposal.

Procedure for obtaining consent from Secretary of State

Consent for disposing of surplus assets held in the HRA can be obtained from the Secretary of State by completing an [application](#) form and sending it to:

Henry Boye,

Local Authority Housing,
Ministry of Housing, Communities and Local Government,
3rd Floor, North West Quarter,
Fry Building,
2 Marsham Street,
London,
SW1P 4DF.

Asset disposal and statutory obligation

A local authority has no statutory obligation to dispose of assets, other than under the right-to-buy, and will do so at its own discretion and only when it considers that such disposal will be in the best interests of the Council.

The Council may refuse an application for purchase at its discretion. Applicants will be provided with an explanation of the reasons for refusal, except in cases where such information is considered to be commercially sensitive, or the provision of information would breach confidentiality.

Strategic Overview

Melton Borough Council owns and manages 1,787 dwellings (July 2024) including houses and flats. In addition, it owns garage sites and open land which is held in the HRA.

The majority of housing stock is generally of sound structure and well maintained. However, there are individual properties, such as those of non-standard construction, that require greater investment. The HRA also has garages and areas of land that are surplus to requirements and could be sold to raise capital receipts.

Types of Disposals

For the purposes of this policy, a disposal of property is considered to be a disposal if it consists of:

- a) A freehold transfer
- b) A grant of a lease term exceeding seven years. Leases of 7 years or less are not covered by this policy document as they do not meet the definition of a disposal as categorised by the Local Government Act 1972 s123.

Types of property to be considered for disposal within the policy are:

- 1) Individual vacant properties that require high levels of investment compared to the overall stock, or where properties are identified as low demand or where serious management issues are being experienced.
- 2) Sites where properties may provide wider redevelopment opportunities for additional affordable homes and/or better quality homes.

- 3) Garage sites with high voids, low demand and which are not financially viable to repair.
- 4) Land disposals:
 - a) small areas of land with no potential for development. This may include private roads which serve houses that have been sold under Right to Buy.
 - b) land where there is development potential that is not viable for the Council itself to develop, or ransom strips that would unlock a private development site.

Disposal Criteria

The need to invest in any council owned property to ensure that it continues to meet the desired standard for letting purposes will be carefully considered against the potential future rental stream for the property.

A financial appraisal, including net present value calculation, will be carried out to determine the viability of an asset. If the required investment, plus the cost of management and maintenance for the property, outweighs the anticipated rental, the property will be actively considered for disposal.

The process for identifying surplus or underperforming property may arise in any of the following ways:

- Ongoing review of performance/condition surveys of HRA properties.
- Service Plans and Service Reviews
- Regeneration schemes
- Approaches from third parties e.g. developers, adjoining owners.
- Requests from community groups or public bodies.
- A site by site asset rationalisation exercise using the asset register and land mapping.

Declaring an Asset Surplus

Land/property will be deemed surplus to the Council's requirements where:

(a) it makes no contribution to the delivery of the Council's services, strategic or corporate objectives;

(b) an alternative site has been identified which would be more cost effective in delivering the Council's services, strategic or corporate objectives;

(c) it has no potential for strategic or regeneration/redevelopment purposes in the near future;

(d) it will not contribute to the provision of a sustainable pattern of development;

(e) it makes no contribution to protecting and enhancing the natural, built and historic environment.

Land and buildings identified as being surplus will follow the disposal procedure set out below.

Process for Disposal

Preparation

The stages of preparation for disposal will include the following:

- (i) **Internal Circulation**
To give Services an opportunity to comment or express an interest.
- (ii) **Legal Consultation**
To report fully on the Council's title and any rights or obligations which might affect it. Where it is intended to include covenants or conditions, legal advice will be obtained prior to negotiations. Restrictive covenants and overage clauses will be incorporated into sale contracts where appropriate, to ensure best value is achieved.
- (iii) **Define Development Potential**
Appraisal of potential disposal property will consider the means by which maximum sale proceeds can be generated. The Council will review opportunities to enhance disposal receipts by investigating potential alternative uses and obtaining planning consent where appropriate.
- (iv) **Obtain Approval**
After taking account of legal considerations, approval to dispose of surplus assets will be made through the Cabinet or Officer Delegated Decision process.

Disposal Method

Any asset disposal should comply with the Council's Financial Procedure rules.

The Council may consider any one of the following options for the disposal of an HRA asset.

- **Freehold Transfer**
Disposal of the freehold interest in land means the complete transfer of all rights and responsibilities of continuing to hold that property.
- **Leasehold Transfer**

The grant of a lease, where the Council wishes to retain control of a surplus 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.

Valuation

A valuation of the asset will be made prior to disposal. This will be carried out by an independent chartered surveyor in accordance with a RICS valuation.

Means of Disposal

The Council may use any of the following means for the disposal of surplus HRA assets.

- **Private Treaty**

The main characteristics of a sale by private treaty are:

- It is usual for the asking price to be quoted.
- Offers are made subject to contract.
- Offers are, or may not, all be received at the same time.
- Timescales for completion are not fixed until exchange of contracts.

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

- Openly advertising the property through an agency.
- Taking offers from interested parties.
- Negotiation of bids to ensure best value.

A sale of an asset may also be achieved without openly marketing the property. This may be appropriate where:

- The property to be disposed of is relatively small in size and an adjoining landowner is the only potential or likely purchaser.
- Where an unsolicited offer is received from a party for an asset, it may be appropriate to negotiate and agree terms with that one party.
- The Council's corporate objectives and best consideration can best be achieved by a sale to a particular purchaser.

A binding legal agreement for the sale of an asset by private treaty is created on exchange of contracts between the Council and the purchaser.

- **Public Auction**

A 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**

A 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 Council and the chosen bidder.

- **Formal Tender**

A 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.

Proceeds of HRA Asset Disposals

The sale of an HRA asset will result in a capital receipt. Further examples of capital receipts are right-to-buy sales receipts and contributions to renovation works from leaseholders. Capital contributions can be made via grants from Homes England. Capital expenditure can also be funded through borrowing, subject to affordability.

Proceeds from the sale of surplus HRA assets can be used to build or acquire other council homes or fund other items in the capital programme to spend on existing council homes. The receipts can also be used to repay debt. Capital receipts cannot be used to fund revenue expenditure in the HRA.