



**Melton  
Borough  
Council**

# **DRAFT CORPORATE PROPERTY DISPOSAL POLICY**

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## 1.0 Introduction

### Scope & Purpose

The identification and disposal of surplus property, and the consequential reinvestment of capital receipts, has been and remains a central part of the Council's capital strategy and asset management planning process.

The availability of the Corporate Estate, and its consequential funding, also has an important impact on the Council's cash flow and borrowing requirements. In this context it is recognised that all Council property is a corporately owned resource, even though it may be occupied by a specific service.

When property assets become surplus and are no longer required for the day to day provision of services a number of options need to be considered, each of which are to be given equal and best value consideration;

- Effective and efficient management for their re-use within the Council or partner organisation or other public body;
- A relevant use by the Community;
- A disposal to help facilitate the capital programme's aims whilst minimising any ongoing maintenance and vacant property holding costs and the consequential revenue implications.

This policy and guidance document supports the Council's management of the disposal of Corporate Property Assets from the General Fund only that are surplus to its requirements and therefore the capital receipts that will be generated to contribute towards funding the Council's capital programme. Furthermore, the policy relates only to corporate property assets, including land and buildings, not any moveable assets, the policy explicitly excludes HRA assets and ICT assets.

For the purposes of this policy, a disposal of land means land and/or building(s). A disposal is either a freehold disposal by sale or exchange of land in perpetuity, or by the granting of a lease for a period greater than 7 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.

The purpose of this document is to make the Council's policies, guidance and procedures transparent and public. It is intended for use by Council officers and to inform developers and members of the public. The Policy should be read in conjunction with the Corporate Asset Management Plan, together with the Council's Acquisition Policy and Community Asset Transfer Policy, which are currently being developed.

This policy is only intended for Melton Borough Council disposals, it does not apply when the Council acts on behalf of other parties (eg a Council owned Company).

### **Best Value and Section 123 Local Government Act 1972**

It is important that each land and/or building disposal is treated on its own merits and nothing in this document will bind the Council to a particular course of action in

respect of a disposal. Alternative methods of disposal, not specifically mentioned in this policy, may be used where appropriate, subject to obtaining proper authority, (Appendix A). The Council's actions in disposing of land and/or buildings are subject to statutory provisions, in particular to the overriding duty on the Council under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of land and/or buildings. This duty is subject to certain exceptions that are set out in a government document, referred to in this policy as 'the General Disposal Consent' – refer Appendix C.

Any transfer of assets between General Fund and Housing Revenue Accounts will be done according to relevant statutory and financial requirements.

### **Community Transfers**

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 Borough 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, which is currently being developed.

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 as specified in this policy paper.

### **Links to other Corporate Policies, Strategies & Plans**

This policy has regard to the following Council documents and will reviewed should any of these be updated;

- Corporate Strategy
- Property Asset Management Plan
- Equalities Policy
- Medium Term Financial Strategy
- Counter Fraud & Corruption Policy
- Data Protection Policy
- Anti-Money Laundering Policy
- Community Asset Transfer Policy (being developed)
- Acquisitions Policy (being developed)

## 2.0 Policy

### Policy Statements

The Council will dispose of land and/or buildings in accordance with;

- Key Council Priorities;
- Statutory provisions;
- The policies and procedures recorded in its Constitution; and
- The Council's Disposal Procedure (refer Appendices D and E).

- 2.1 All dealings in the Council's property and land assets shall be conducted in accordance with the Local Government Act 1972 and other relevant legislation.
- 2.2 The Council will publish details of the land/property which it has declared surplus to requirements in compliance with the Local Government Transparency Code 2015.
- 2.3 Any person who may have an interest in making an offer to purchase, has the opportunity to do so in circumstances no less favourable than anybody else.
- 2.4 Each asset disposal is to be treated on its own merits and nothing in this Policy will bind the Council to a particular course of action in respect of a disposal. Alternative methods of disposal not specifically mentioned in this Policy may be used where appropriate, subject to obtaining the necessary authority.
- 2.5 Disposals will be undertaken in accordance with the Council's governance procedures, currently prior approval of Cabinet (or an Officer acting under the delegated authority) is required for any disposal of land or property. When agreeing to a disposal, the decision maker/s must:
  - satisfy itself that the land or property in question is surplus; and it makes no contribution to the delivery of the Council's services, strategic or corporate objectives; OR an alternative site or method of delivery has been identified which would be more cost effective in delivering the Council's services, strategic or corporate objectives;
  - it has no potential for strategic regeneration or redevelopment in the near future;
  - have due regard to the presumptions and priorities set out in Corporate Strategy & Asset Management Plan.
- 2.6 Before placing any property on the open market, a process of consultation is undertaken with our public sector partners and other community interest groups. The Council will also consult with the local member in accordance with practices summarised in the Appendix D.

2.7 The Council will endeavour to realise, within a reasonable timescale, all surplus land and property identified for disposal within its Corporate portfolio subject to the following criteria:

That the disposal supports the Corporate Strategy, which includes the key priorities of;

- Service excellence in all that we do
- Providing high quality council homes and landlord services
- Delivering sustainable and inclusive growth in Melton
- Protect our climate and enhance our rural, natural environment
- Ensuring the right conditions to support delivery
- Connected with and led by our community

2.8 The Council will review opportunities to enhance disposal receipts by investigating potential alternative uses and consult with partners to ensure any future enhancement of value is properly shared with the Council.

2.9 The terms of any transaction are supported by an independent RICS valuation where the property has not been fully exposed to the 'market', which must be less than 6 months old and where there has been no material change of circumstances since the valuation, based on the advice of a qualified RICS surveyor. Where, there is a 'special purchaser' and a sale is undertaken directly with a single party, the Council will seek to recover the costs of the independent valuation and its legal fees as part of the transaction. These costs to be underwritten by the prospective purchaser regardless of whether the matter proceeds to a conclusion.

2.10 Best financial consideration being obtained;  
unless social, environmental or economic benefits acceptable to Cabinet are provided in lieu

2.11 The method of disposal will be determined on a case by case basis by a qualified RICS surveyor.  
where a disposal is by way of a lease, the tenant will pay full market rent be on full repairing and insuring terms. If Cabinet consider that, for example, a community group would benefit from support this will be done by way of a grant not by a reduced rent.

2.12 When the Council sells or leases a property in its ownership, the Property Department will complete an Equality Impact Assessment (EIA) to ensure any impact or results from such disposal or letting does not unintentionally disadvantage or discriminate against any group or individual as identified in the Equality Act 2010 (Refer Appendix F).

2.13 The Council's most recent Property Asset Management Plan 2015-18 (currently being updated) identified the five key principles that will underpin our management of all property assets in the ownership of Melton Borough Council, which are outlined in Appendix A.

- 2.14 The Policy will cover all land and buildings held in the General Fund. The Policy is not intended for disposals from the Housing Revenue Account, for which a separate policy will be developed due to the differing statutory and regulatory requirements.
- 2.15 The Policy will be monitored by maintaining a disposal register which will list all assets agreed and approved for disposals by the relevant authority. Progress made on each item will be reported on annual basis to Senior Leadership Team and to members through the financial monitoring reports.



## Appendix A

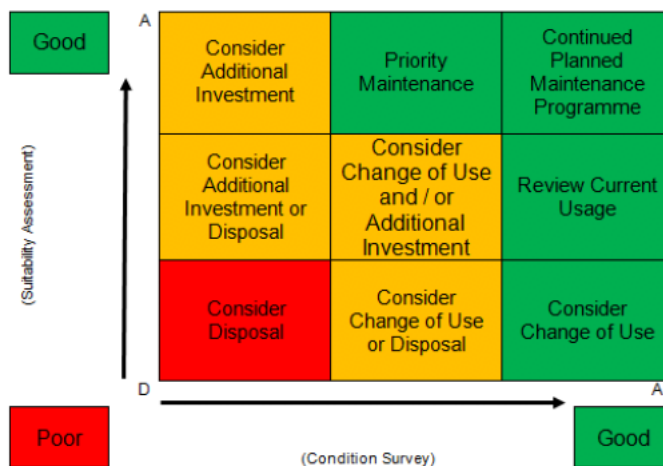
The appendix outlines how the policy links to the Asset Management Plan (2015-2018, currently being updated).

### Supporting the Council’s Asset Management Plan:

The guiding principle of the Council’s Asset Management Plan is to own assets which are “fit for purpose”, to provide the best physical environment for the council and its partners to best deliver services to its customers.

In a disposal context the Council will therefore seek opportunities to streamline its estate in order to be able to provide fit for purpose buildings to support service delivery. This means releasing buildings which are not fit for purpose and where the investment in improvement is not viable. The capital receipt from disposal can fund replacement or improvement to other properties and other capital assets or maximising the community use to support core priorities.

Whilst the Council may hold property for historic reasons, it should regularly check whether the holding is suitable for service delivery purposes. Good practice suggests that comparing suitability alongside condition and investment requirements will give a good indication whether property should be held or subject to disposal. For example, premises that are no longer suitable (or fit for purpose) and have a high maintenance backlog should be considered for disposal, a decision matrix is included below.



The other factors which may influence the categorisation of red, amber or green are shown below:

Green	<ul style="list-style-type: none"> <li>• Low priority for immediate action</li> <li>• May have scope for increased utilisation which could be achieved with minimum investment</li> </ul>
Amber	<ul style="list-style-type: none"> <li>• May require adaptation works to achieve better utilisation</li> </ul>
Red	<ul style="list-style-type: none"> <li>• A community building with the potential for community asset transfer</li> <li>• No longer required due to changes in service strategy</li> </ul>

The emerging Asset Management Plan will provide more detail on this aspect.

A further guiding principle of the Council's Asset Management Plan, is to maintain and keep assets in repair and provide an FM service to keep assets clean, comfortable and secure, for effective service delivery, and therefore the following are the aims of disposal consideration:

- Understand the evolving demands on property and review the service delivery model to identify poorly performing properties which are inadequate or surplus to service delivery needs.
- To reduce unnecessary maintenance spend by identifying and subsequently disposing of property no longer considered fit for purpose investing those receipts in our existing properties to increase the standard of our properties overall.
- To balance competing priorities for surplus assets.
- To investigate the potential increase of the disposal value by making targeted improvements.
- To hold an accurate and up to date record of surplus properties and expected capital receipts.
- To dispose of properties no longer required as effectively as possible

The Council's Asset Management Plan also refers to the aim to reduce carbon footprint, and therefore in a disposal context the following are identified as aims:

- To identify the least efficient properties.
- To ensure disposal properties are compliant with all existing and future energy requirements.
- The Council will dispose of the least efficient properties taking into account service needs.
- Where letting space, the Council will look to ensure Energy Performance Certificate ratings are at or above any mandatory levels.

The Council's Asset Management Plan refers to reshaping the local economy and regenerating the local community, and therefore in a disposal context the following are identified as aims:

- The Council will undertake option appraisals to ensure an assessment has been made so each disposal reflects 'best value' including the needs of the community and local economy.
- The Council will consider interim uses where this does not conflict with longer term disposal plans, is at nil cost to the council, in order to ensure best use of resources, reduce costs and where possible stimulate the local economy.

## Appendix B

### Summary of Disposal Types

The Council may consider one of the following options for the disposal of an interest in land:

- Freehold Transfer - Disposal of the freehold interest in land means the complete transfer of all rights and responsibilities of continuing to hold that property. Although 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 being secured.
- Leasehold Transfer – The grant of a lease, the term of which is to be determined, 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.
- Grant of Licence - A licence is the grant of a right by the licensor to the licensee to use the subject land in a certain prescribed manner. A licence differs from a lease in that the freeholder retains paramount control of the land and that a licence may be revoked at short or immediate notice.
- Grant of Easement – An easement (also known as a Deed of Grant) provides similar access rights for installing and maintaining infrastructure equipment, but for a one off payment and it provides permanent access. An easement can also be registered at the Land Registry in order to ensure that future owners of the land adhere to it.

The grant of a licence will remain the preferred route when considering interim uses, so there is no conflict with longer term disposal plans.

### Summary of Marketing Methods

The Council will usually use one of five means to dispose of land. Further guidance upon when it will be appropriate to use any particular means of disposal is contained in Appendix D below. The usual means of disposal are;

- Private Sale - 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.
- 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.
- Informal Negotiated Tender - a sale of land 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 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.

For further details in respect of any of the above please see Appendix D.

## Appendix C

### Meeting the requirement to obtain 'Best Value'

In this Policy and Guidance document:

- **"the General Disposal Consent"** means the 'Local Government Act 1972: General Disposal Consent (England) 2003'
- **"the Guidance"** means the 'Local Government Ombudsman's Guidance on Good Practice 5: Disposal of Land.' November 1995

### General Disposal Consent 2003

The General Disposal Consent makes provision for the Council to dispose of land at less than full market value, known as an 'under-value'. Specified circumstances must apply as follows;

1. The Council considers that the purpose for which the disposal is being made is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the whole or part of its area, or any person resident or present in its area.
2. The difference between the unrestricted or market value of the land to be disposed of and the consideration for the disposal does not exceed £2 million.

For example, land may be sold at an under-value for only affordable housing rather than all residential types, as long as the difference between the consideration obtained for development for affordable housing and the land's unrestricted value for all residential types is less than £2 million.

The Council must still comply with its duty to obtain best consideration for the restricted value. So, using the above example, the Council must ensure that it achieves the best consideration that may be reasonably obtained for land restricted to development for only affordable housing.

The Council must also comply with normal and prudent commercial practices including obtaining the view of a professionally qualified valuer as to the value with voluntary restrictions imposed. If the Council wishes to dispose of land for less than best consideration, and is not covered by the General Disposal Consent, the Council can resolve to do so, but will require the formal consent of the Secretary of State for Communities and Local Government. Such disposals can also be subject to a challenge that the Council is needlessly foregoing receipts and it is therefore essential that such disposals only take place in clear furtherance of Council priorities.

The Council will provide an assessment of Market Value for land and property to be sold or acquired. If an asset is to be disposed of at less than Market Value, a formal Valuation Report (prepared by a Third Party) shall be obtained to form part of the overall process of considering wider public benefits alongside the principal financial implications for the disposal. The market valuation will enable accurate accounting and reporting and provide independence.

Other Relevant Aspects:

If the Council intends to enter into a land transaction which forms some form of partnership, OJEU process may apply. In this instance, the matter should be referred to the Council's Legal Services and clarification obtained.

## Appendix D

### Guidance for undertaking Disposals

#### 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, which may or may not be based on the financial offer
- iv. Negotiation of bids to ensure best value

In this case, 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 the land and/or building 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. Examples here may include special purchaser situations.

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

- a. the land and/or building to be disposed of is relatively small in size 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 Melton 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 Lead Member for

Resources 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 relating to the disposal of property where Crichel Down Rules do apply.

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.

### **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.

The authority of the Director of Growth & Regeneration in consultation of the Portfolio Holder will be required, providing the reasons for a sale by public auction.

An auction reserve is used to ensure that a property is not sold below certain agreed levels. Prior to the sale it will therefore be necessary for the Director of Growth & Regeneration in consultation of the Portfolio Holder to determine the auction reserve to be applied in accordance with the scheme of delegated authorities for the Council. A Council Officer shall attend the auction to act on behalf of the Council.

The contract for sale or lease must be ready for exchange at 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.

### **Disposal by informal / negotiated tender**

A disposal by informal / negotiated 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 that either meet a given specification, or a request for proposals. 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 are 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 town 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 the relevant planning and transport authority to ensure that if the disposal is dependent upon a planning consent that there is reasonable prospect of that consent being approved.

### **Disposal by formal tender**

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

- a. the land ownership is not complex;
- b. 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; and
- d. the Council is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance.

Alternatively, this method can be considered where all matters to enable a tenderer to come to a firm price and raise funding for the purchase are in place and available as part of the tender package. For example, where the disposal of land is to a developer with an obligation to build industrial units for lease.

Other situations which may benefit from this type of sale are land or property sales which have attracted intense local interest from several local parties with a particular interest, or where late bids have, or are considered likely to be made.

This method can provide a well organised, transparent way of achieving completion when a timeframe is essential, however, is often more costly and a 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 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 advice of the relevant planning and highways authority will be sought.

Authority to use this method will be by the Director of Growth & Regeneration in consultation of the Portfolio Holder, reasons for justifying a sale by formal tender must be recorded in writing. The formal Tender Procedure to be adopted in such cases (subject to any amendments agreed by the Director of Growth & Regeneration in consultation of the Portfolio Holder) is set out in Appendix E. Any exceptions to this procedure must be authorised and recorded.

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 in the tender documents. The tender documents should include

a contract for sale or lease 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.

The Council will place a public advertisement stipulating the property for sale. Those who have expressed their interest will then be invited to submit their tender bids, in accordance with the tender procedure outlined. Details are included under Appendix E.

### **Exceptions**

Other methods of disposal may be used where circumstances warrant, eg exchange of land/‘land swap’.

In relation to exchange of land, the Council should seek Third Party independent valuation advice to ensure the exchange is equitable and is in the Council’s best interest. In relation to any Development Partnership/Agreement, consideration should be given to European Union Procurement Rules legislation. If a disposal involves works or services, then EU Procurement Rules may apply. Specialist advice should be obtained as to whether the disposal will be considered to involve procurement works and may be subject to the Public Contract Regulations 2015. If procurement rules do apply, then the disposal should be undertaken by a standalone OJEU procurement or an OJEU procured framework.

Works or services may for example include;

- A developer provides professional services to the contracting authority.
- There is a requirement to deliver a certain number of dwellings on a site by a certain time or to a certain standard.
- New facilities are provided for the contracting authority.

There is an obligation to provide infrastructure e.g. construct a road before development can begin.

### **Late bids and other considerations**

The Guidance from the Local Government Ombudsman recognises the problem caused to local authorities by 'late bids'. The Guidance says that difficulties are less likely if Councils ensure that exchange of contracts take place as quickly as possible after the decision to sell (or lease) is made. It suggests that local authorities should be allowed to sell at an agreed price within a reasonable period of reaching a 'subject to contract' agreement.

In the context of the methods of land disposal dealt with in this document, a late bid may occur;

- a. in the case of a private sale, after a sale or lease has been agreed, but before exchange of contracts
- b. in the case of a public auction, after the auction has been closed, but the reserved price not having been met
- c. in the case of a formal tender, after the closing date for tenders, but before acceptance by the Council of the successful tender
- d. in the case of an informal or negotiated tender, after receipt of bids, but before exchange of contracts or signing of a development agreement
- e. in the case of disposal by exchange, after a sale or lease has been agreed, but before exchange of contracts

Each 'late bid' must be considered in the context of the individual circumstances at the time. The Council's approach to 'late bids' will vary depending upon the method of land disposal used. In each case, its overriding duty will be to obtain the best consideration that it can reasonably obtain (subject to any exceptions in the General Disposal Consent). The Council's approach to late bids is as follows;

- a. The Council discourages the submission of late bids in all cases when it is disposing of land. It will attempt to minimise problems by aiming for early exchange of contracts.
- b. 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 Director of Growth & Regeneration in consultation of the Portfolio Holder should decide whether to consider late bids after taking advice from the Corporate Property & Asset Manager.
- c. Except as provided in " b" above, until the Council has entered a legally binding contract or agreement with another person it will consider late bids unless there are good commercial reasons for not doing so. This should be explained to any purchaser when a disposal of land by private sale or negotiated/informal tender is agreed.
- d. Consideration of a late bid does not mean that it will necessarily be accepted even if it is the 'highest' bid. The Council will take into account the likelihood of the late bid proceeding to completion in a timely manner and the possibility of late bids being used as a spoiling or delaying tactic.
- e. Subject to the above, the Council may, in appropriate circumstances, ask both the late bidder and other interested parties, to submit their best and final bids in a sealed envelope by a set deadline.
- f. A decision on whether to accept a late bid for a private sale, informal tender or by exchange are to be made either by the Director of Growth & Regeneration in consultation of the Portfolio Holder.
- g. Offering the preferred bidder a period of exclusivity can enable the purchaser to confidently proceed with the sale, through the removal of the threat of another purchaser making a late bid.

A last minute bid may be rejected for sound commercial reasons. For example, if there is no real certainty of it leading speedily to a contract or is suspected as a spoiling bid.

The Council will at all times bear in mind that the overriding duty, unless a specific decision has been made to take advantage of certain exceptions as mentioned in the

General Disposal Consent in order to further corporate objectives is to obtain best consideration.

In considering what amounts to 'monetary value' in terms of best consideration to be obtained, the creation of jobs or desirable social outcomes, although desirable, cannot be quantified by the Council.

Where land or property is sold at a restricted value in accordance with the General Disposal Consent or with the consent of the Ministry for Housing, Communities and Local Government, provision shall be incorporated into the contract and transfer requiring that any difference between the price paid and the full unrestricted value (as assessed by the Corporate Property & Asset Manager) shall be repaid to the Council should the land not be developed so as to provide for the non-monetary benefits which the Council sought to achieve. This refund of the effective land subsidy shall be referred to as "claw back".

The Courts and the Ombudsman have both accepted that Councils must be able to "draw a line" under the disposal process at some point and have further indicated that provided Councils follow due process, they will not interfere with decisions.

### **Achievement of best consideration where land or property has redevelopment potential**

Where in the opinion of the Corporate Property & Asset Manager land has potential for redevelopment which will enhance its disposal value, outline planning consent for such development will be obtained prior to disposal. Prior to any application property officers will consult with the appropriate planning and transport development control officers to ensure that any such application is likely to be approved and is in accordance with partner's core strategies.

Where the form of development which will maximise value cannot readily be identified it will be appropriate to market the land with bids invited subject to grant of planning consent for a specified form of development, on agreement by the Corporate Property & Asset Manager.

Contracts for the sale of land will include a restrictive covenant limiting development of the land to that specified in the outline planning consent or the form of development proposed in any bid made subject to the grant of planning consent.

Should any revised planning consent be obtained subsequent to a disposal which increases the value of the property sold, the Borough Council will not agree to waive or vary any covenant restricting the form of development without receipt of best consideration reflecting the increase in land value accruing. This uplift in land value may be by an "overage" provision or a mechanism for "claw back".

### **Timing**

The timing of any disposals shall take into consideration current market conditions and the background of the Council's budgetary requirements. Consideration shall also be given as to whether the land or property interest is likely to increase significantly in the future taking into consideration known changes in respect of

regional and local planning policy. In this event it may be appropriate to introduce restrictions or uplift/overage/ clawback provisions.

## **Valuations**

Valuations will be undertaken by a third-party independent consultant. At all times the Council shall be conscious of any potential conflicts of interest.

Any Valuation Reports shall be in accordance with the current RICS Guidance (presently the RICS Valuation – Global Standards 2017). The Valuer shall recognise the purpose of the disposal (or acquisition) and shall set out their current opinion of Market Value or Market Rent. The Council shall provide all necessary information to help inform the Valuer's decision, in particular with regard to Planning Policy, tenancies and any historic possible contamination issues or Title restrictions. This will help ensure that any assumptions made by the Valuer are limited and having a greater degree of accuracy to the actual valuation.

All valuations shall be undertaken by suitably qualified surveyors with appropriate knowledge and understanding of the asset (or liability). The Valuer shall at all times act with independence, integrity and objectivity.

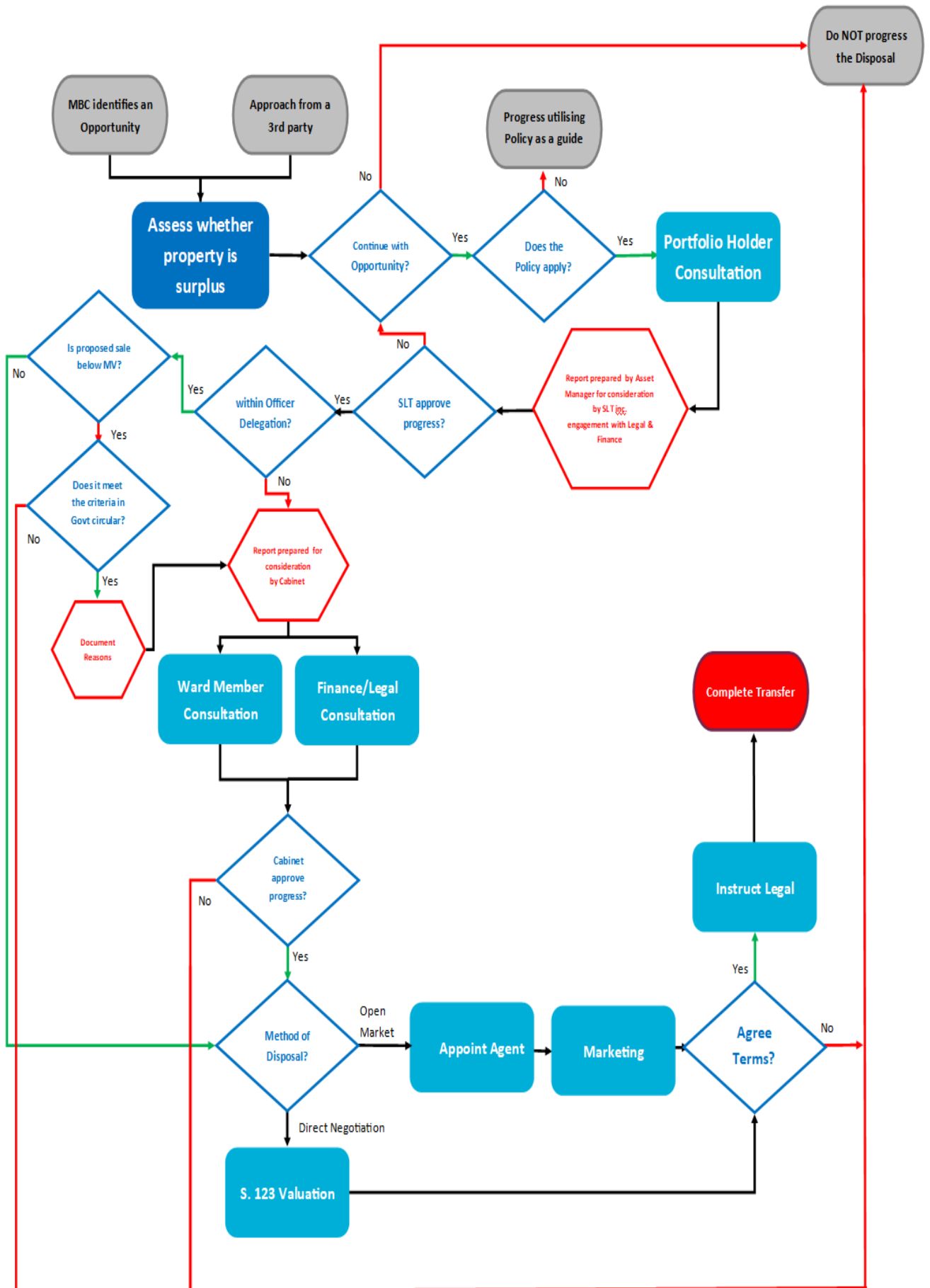
## **State Aid**

State aid will generally apply to entities engaged in economic activity (including individuals/sole traders). When considering State Aid, the Council has to ensure not to:

1. create an advantage i.e.:
  - put a recipient in a better position; or
  - being selective – favour one undertaking over another
2. Distorting to Competition:
  - Potentially or actually strengthening the position of the recipient in relation to its competitors (regardless of the scale of the potential distortion)  
(This is quite a low threshold)
3. Affect Trade Between Member States:
  - Most aid is capable of affecting trade in this way as most goods and services are traded between Member States; and
  - Even very small amounts of aid will be caught.

State Aid consideration must be made on all transactions and advice should be sought where there is uncertainty and or where the Council is seeking to apply an exemption. It will be necessary to consult with Legal and Finance in matters of State Aid to ensure full compliance.

**Disposal Policy Process (Flowchart):**



## Appendix E

### Formal Tender Procedure

- 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 and inviting 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 the Council's Procurement Standing Orders.
- c. Interested parties will then be provided with property particulars and details of the tender process.
- d. All tenders must be delivered in the envelope provided or in a sealed envelope addressed to the Director of Growth & Regeneration, bearing the words "Tender for ....." and the address of the land or property for sale, but without any name or mark indicating the sender. Applicants who wish to make their offers by post must do so by Recorded Delivery.
- e. No bid shall be accepted that is not specific, or made in reference to another bid, such as £100 over the highest bid.
- f. The Council will make it clear that it does not bind itself to accept the highest tender or indeed, any tender.
- g. Tender envelopes will remain unopened in the custody of the Director of Growth & Regeneration until the appointed time for opening.
- h. All tenders will be opened together after the Closing Date has expired by one senior officer nominated by the Director of Growth & Regeneration in consultation of the Portfolio Holder and another officer.
- i. The Director of Growth & Regeneration will maintain a record of tenders received.
- j. Any tenders received after the expiration of time for tendering, or which contravene any provision of the tendering conditions or instructions will only be opened with the authority of the Director of Growth & Regeneration in consultation of the Portfolio Holder.



## Appendix F

### Council Procedures

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 Part 3 (6) of the Constitution.
- The processes (as outlined in Appendices 3 and 4) followed by the Council in disposing of land and buildings to ensure that the Council meets its statutory obligation to achieve 'best value' as defined by the s. 123 of the Local Government Act 1972.
- Local Members are consulted on all property disposals at an early stage including when the land is in the process of being declared surplus. Therefore, engagement should be sought and encouraged at an early stage of the disposal process.
- The final decision to dispose of a property and on what terms will be as summarised in the table below;

Decision Authority	Delegated Officer
	General Fund
0 – 49,999	Director for Growth & Regeneration
50,000 +	Key Decision - Portfolio Holder

\*Where any Elected Member is involved in any Council disposal or acquisition, e.g. where they are the vendor or purchaser, the matter will be referred to Cabinet for a decision, regardless of the financial amount involved.

- Roles & Responsibilities

Responsibilities	Role
The person who is accountable for ensuring all disposals comply with this policy	Director for Growth & Regeneration
The person who is responsible for disposals under this policy	Corporate Property & Asset Manager

- The disposal will be undertaken in accordance with the Council's Anti-Money Laundering Policy.
- It should be noted 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 Crichel Down rules may apply.

## Appendix G

### Equality Impact Assessment

*(Form to be completed before the sale or letting of a Council Property is completed – and placed on Estates' File)*

The Council must have due regard to its Public Sector Equality Duty when making all decisions at member and officer level. An EIA is the best method by which the Council can determine the impact of a proposal on equalities, particularly for major decisions. However, the level of analysis remains proportionate to the relevance of the duty to the service or decision.

**Application:** all freehold sales and lettings of 3 years or more.

#### Purpose

- To ensure that all prospective purchasers or lessees are treated fairly and given equal opportunity to participate in the bidding process.
- To ensure no individual or group are intentionally or unintentionally prevented from participating in the bidding process on grounds of ethnicity, race, gender, age, sexual orientation or disability.
- If selling at auction, to make sure reasonable measures are taken to ensure the auction room is accessible to everyone, as far as is reasonably practicable.
- When selecting a bidder or lessee, to consider the impact, if any, the decision could have on the unsuccessful bidder or lessee, to ensure they are not intentionally or unintentionally disadvantaged by the Council's decision.

*Tick as appropriate*

No	Assessment	Yes	No	N/A
1.	Have all individuals or groups been treated on an equal basis without favour during the sale / letting process?			
2.	Was any individual or group prevented from participating in the sale / letting process on account of their ethnicity, race, gender, age, sexual orientation or disability?			
3.	In selecting your purchaser /lessee, are you aware of any impact your decision might have on any unsuccessful bidder or lessee which might result in their being disadvantaged?			
4.	If selling at auction, was the auction room reasonably accessible to all potential bidders, including those with a disability?			

If answering "No" to Q. 1 and Q 4, or "Yes" to Q. 2 and Q.3 – please complete a separate sheet giving reasons for your answer.

**Signed:** .....

**Date:** .....

**Estate Surveyor Name:** .....