



JOINT DISPOSALS & ACQUISITIONS POLICY

March 2017



We speak your language

Polish

Mówimy Twoim językiem

French

Nous parlons votre langue

Spanish

Hablamos su idioma

Slovak

Rozprávame Vaším jazykom

Chinese

我们会说你的语言

If you require this publication
in **large print**

or another format please call

Bolsover District Council on

01246 242424 or

North East Derbyshire District

Council on **01246 231111**

CONTROL SHEET FOR [policy title here]

Policy Details	Comments / Confirmation (To be updated as the document progresses)
Policy title	JOINT DISPOSALS & ACQUISITIONS POLICY
Current status – i.e. first draft, version 2 or final version	
Policy author (post title only)	Commercial Property & Developments Manager
Location of policy (whilst in development) – i.e. L-drive, shared drive	S Drive
Relevant Cabinet Member (if applicable)	
Equality Impact Assessment approval date	
Partnership involvement (if applicable)	
Final policy approval route i.e. Joint Strategic Alliance Committee, Cabinet/Executive/Council	
Date policy approved	
Date policy due for review (maximum three years)	
Date policy forwarded to Improvement (to include on Intranet and Internet if applicable to the public)	

RECOMMENDED STRUCTURE OF POLICY

1. Introduction

The policy provides detailed guidance of the process which should be followed for disposal of surplus/under-used Council owned land/property. For ease of reference, Annex 1 contains a flowchart which outlines the process of disposal. The policy is split in to and deals with disposals and acquisitions in turn.

For the avoidance of doubt this policy does not apply to acquisitions through Compulsory Purchase Order (CPO). If a CPO is anticipated, advice from the Council's legal section should be obtained.

- 1.1 Government advice recommends that local authorities have a document describing their strategy, policy and guidance for disposing of land/property.
- 1.2 The purpose of this document is to make the Council's approach transparent and open. It is intended for use by Council Officers, its partners and to inform developers and members of the public.
- 1.3 It is important that each land 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 land disposal. Alternative methods of disposal, not specifically mentioned in this document, may be used where appropriate, subject to obtaining the necessary authority, in line with the constitution.
- 1.4 The Council's actions in disposing of land 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. This duty is subject to certain exceptions that are set out in the 'Local Government Act 1972: General Disposal Consent (England) 2003'.

Where there are wider public benefits, consistent with the principles of Best Value, disposing bodies may consider disposal of assets at less than Market Value taking into account wider value considerations such as economic, environmental and social value factors.

Where an asset is being disposed at less than Market Value, a market valuation is needed as part of the process of considering the wider public benefits alongside any financial implications. A market valuation will enable accurate accounting and reporting.

Where less than Market Value is proposed, the ['Circular 06/03: Local Government Act 1972 general disposal consent \(England\) 2003 disposal of land for less than the best consideration that can reasonably be obtained'](#) should be referred to with particular attention to paragraphs 14 (State Aid) and 17 (Valuation).

- 1.5 This document sets out, in sequence, the general procedure to be adopted in connection with the disposal of surplus/under-used land/property.

1.6 It should be noted that this document does not provide guidance on budgetary issues such as sources of funding or how any capital receipts are utilised. If proposals for capital receipts (e.g. investing receipts into defective housing stock, etc) are recommended, these should be detailed in the appropriate report.

1.7 The Council's Asset Management Group (AMG), facilitated by the Property and Estates team, will consider and make recommendations concerning all Council property/land transactions prior to disposal. This may be either by making recommendations to Council committees or recommending approval through existing delegated powers. The group is made up of key departmental heads and appropriate Portfolio Holders. Where AMG makes a recommendation to the relevant committee, the recommendation from AMG should be included in any report.

2. Scope

This document is in accordance with Government guidelines and details Bolsover District Council and North East Derbyshire District Council's policies relating to the disposal of land and property. For the purpose of this document, a disposal of land means any freehold disposal (General Fund or Housing Revenue Account), by sale or exchange, of Council owned land or buildings and any disposal by the granting of a lease for a period greater than 7 years. Leases of 7 years or less are not covered by this document.

3. Principles

The principles of the policy is to ensure transparency and compliance 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.

4. Definition of Surplus/Under-used property/land

4.1 A site (or part of the site) is deemed to be surplus to the Council's requirements if:

- (a) it makes no contribution to the delivery of the Council's services or strategic objectives, nor generates any income, and
- (b) it has potential for future regeneration/redevelopment purposes and/or surplus to the Councils operational requirements or an alternative site can be identified.
- (c) an alternative site has been identified which would achieve more cost effective service delivery.

4.2 A site (or part of the site) is deemed to be under-utilised if either:

- (a) the income being generated from the site is below that which could be achieved from:
 - (i) an alternative use
 - (ii) disposing of the site and investing the income
 - (iii) intensifying the exiting use, or

(b) part of the site is vacant and is likely to remain vacant for the foreseeable future.

(c) The site is unviable due to long-term repair and maintenance liabilities.

5 Site Identification

5.1 Sites for possible disposal may be identified in the following ways:

- (a) Through Local Plan designation
- (b) Through service Departments declaring specific sites as being surplus to requirements or uneconomical*
- (c) Through continually reviewing Council owned assets to ensure the asset is facilitating service delivery or generating an appropriate income.
- (d) Through approaches by third parties.

(*where an **under-utilised** asset is generating an income, a Cost/Benefit analysis should be carried out by the appropriate Assistant Director, in consultation with AMG, to establish whether it is in the Councils best interests to dispose of the site)

6 Site Investigations

- 6.1 Once a potential site has been identified, the lead department will consult with AMG, Property & Estates, Legal Services, and Planning Services to establish whether there are any development constraints on the site or restrictions to disposal such as designation as Public Open Space, Housing legislation, etc.
- 6.2 Early notification (before AMG) should be given to ensure local members are aware of the intent to dispose of the site. This is not consultation but more advanced notice that activity (officer visits, surveys, etc), may raise questions from the local community. Formal member consultation will take place ~~prior~~ later in the process.

It is recommended that an email containing the wording below is sent to local members and the relevant portfolio holder:

"I write to inform you that officers are considering options with regards the future use of (Description of land and address if available). Officers and possibly contractors may visit site during this time to fully understand the site details. This is not consultation at this stage, your opinion on any officer recommendations will be sought prior to any decision"

- 6.3 Limited survey works (e.g. services, desktop site investigation) and desk studies into previous land use history will also be carried out where appropriate to inform the proposed use.

7 Valuations

7.1 In all circumstances, the valuation of sites will be undertaken by the Council's Valuer. However, independent valuation advice by a Royal Institute of Chartered Surveyors (RICS) registered Valuer, should be obtained in the following circumstances:

- Where a disposal is in respect of a major or complex site

- Where the Council has a commercial interest the purchaser (e.g. housing companies, development companies, arms length management organisations (ALMO's), etc)
- Where a member or senior officer has an interest in the purchaser or property (e.g. Councillor making a Right to Buy (RTB) application)
- Where the site is considered for disposal at less than best consideration.

8 Method of Disposal

- 8.1 The Commercial Property and Developments Manger advised by the Councils Valuer will recommend to AMG the most appropriate method of disposal e.g. auction, Private Treaty etc.
- 8.2 Unless a “special purchaser” has been identified i.e. one who is prepared to pay a premium for the site (over and above market value), all potential purchasers are to be given an opportunity to tender/submit an offer, according to the method of disposal recommended. Where AMG decide to pursue a sale with a single party, a Valuation report to confirm best consideration must be obtained.
- 8.3 Where the disposal is by way of a long lease, the Assistant Director of Finance & Revenues and Benefits will be consulted to assess the implications regarding VAT, Capital Accounting and Treasury Management.
- 8.4 The Council will usually use one of the disposal methods identified below as appropriate. Further guidance upon when it will be appropriate to use any particular means of disposal is contained in Annex 1. The 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 public auction available to anyone. The sale will be publicly advertised in advance. The auctioneer creates a binding legal agreement upon the acceptance of a bid.
 - **Formal Tender** – a sale of land by a process of public advertisement and submission of tenders by a given date in accordance with a strict procedure. The Council creates a binding legal agreement upon the acceptance of a tender.
 - **Exchange of Land** – a transaction involving the exchange of Council owned land with another land owner. The land acquired by the Council will meet at least one of its corporate objectives and will be of ‘equal’ value (land and cash) to the land exchanged.
 - **Informal Negotiated Tender** – a sale of land after a public advertisement that requests informal offers or bids that meet a given need. The Council may then negotiate further or more detailed terms with one or more individuals submitting the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts between the authority and the chosen bidder.

- **Development Partner/Agreement** – a private sector partner who have been established through appropriate means, to jointly deliver and benefit from redevelopment/regeneration schemes.

8.5 European Union (EU) procurement rules list public bodies which are “contracting authorities”. Government Departments are contracting authorities and subject to EU procurement legislation. If a disposal involves works or services then EU procurement rules may apply. The department leading the disposal should seek professional advice as to whether the disposal will be considered to involve a procurement of Works and may be subject to the Public Contract Regulations 2015.

Works or services may for example include where:

- A developer provides professional services to the contracting authority.
- There is a requirement to deliver a certain number of dwellings on a site by 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).

If procurement rules apply then the disposal should be undertaken via a stand-alone OJEU procurement or an OJEU procured framework such as the Homes and Communities Agency’s “Delivery Partner Panel” (DPP2 or later versions) - see section 4.3.4.

For advice on whether EU procurement rules apply, departments should the shared procurement unit.

8.6 Since 2016 the Council engaged with both Sheffield City Region and D2N2 Local Enterprise Partnership’s (LEP’s) on the ‘One Public Estate’ programmes. Through this work land swaps, disposals, and any other such property transactions will be considered to promote growth in the region through a collaborative approach to public owned land.

9 Investment Prior to Disposal

9.1 Investment prior to disposal (or de-risking) can help to provide more certainty for potential purchasers for a property and deliver an increased receipt. This is particularly the case when releasing land for housing delivery. The case for investment prior to disposal should be considered as early as possible and clearly set out during the decision making process.

De-Risking activity prior to disposal could include:

- Planning: pre-application engagement offers significant potential to improve both the efficiency and effectiveness of a Departments planning application. The approach should be tailored to the nature and potential of the proposed development and the issues to be addressed.
- Planning: preparing a development brief, securing a planning allocation or securing outline planning approval. Any decision on planning investment will be influenced by the size of the land offered to the market.
- Technical: producing technical reports and surveys such as ecology, topography and ground investigations.

- Prior works: works such as remediation, decontamination and demolition.
- Legal: the resolution of title issues.
- Infrastructure: providing physical or social infrastructure (e.g. roads or community facilities).

The level of investment should be appropriate to the size and nature of the site and be driven by the key disposal objectives. Consideration should also be given to whether investment will reduce the conditionality of bids and increase the certainty of receipt. The final decision to invest should be based on a robust analysis of the 'return on investment' of a range of options and a clear understanding of the site's viability. Where appropriate staff costs, legal costs, marketing costs, consultants costs etc. associated with any potential disposal of an asset (even where such costs do not lead to an actual disposal) will be re-charged to the cost centre where the Capital Receipt is, or would be, placed.

10 Timing

10.1 The timing of any marketing/disposals will be considered against the background of the Council's budgetary requirements, together with the current state of the property market. Before recommending that a disposal is to proceed, the following factors should be taken into consideration:

- The Council's requirement for capital income (receipts) to fund its Approved Capital Programme.
- Current property market conditions
- Potential for the site value to increase in the future
- Regional Planning Guidance and the Local Plan (or other such Planning Policy documents) – this will influence decisions on the disposal (and acquisition) of land, as well as the future use of individual sites.

11 Approval for Disposal

11.1 The Executive Director of Operations (in conjunction with any other relevant Assistant Director) and following presentation and consideration at AMG, will prepare a report for the next Executive(BDC)/Cabinet(NEDDC) unless the disposal can be dealt with under delegated authority. The report will recommend the most appropriate method for marketing and disposing of the property, the AMG recommendation, Valuation advice, written responses to member consultation and the terms of the agreement. If the disposal falls within existing delegations, and AMG deems it appropriate **not** to refer the matter to the Executive/Cabinet, the relevant consultations will be undertaken and a Delegated Decision (Officer recommendation with approval through a delegated process) signed by the relevant officer.

11.2 Prior to the disposal of open space and housing land, legal advice should be sought on approvals and the need to be advertise, to enabling comments received to be considered, **before** a decision is made.

11.3 Where there is a disposal of a small development plot suitable for residential development, the Council should have regard to the demand for custom and self build (as defined in the Self-build and Custom House building Act 2015) by reviewing the register of interest which is maintained by the Planning Policy section.

- 11.4 Following a recommendation from AMG to dispose of a site and before a decision is made to dispose; local ward Members should be given the opportunity to comment on the proposals in writing via email. If the local members comment on the disposal, their comments should be included in the committee report.

12 Negotiations

- 12.1 The capital receipt from any disposal is to be maximised unless there are over-riding factors identified in the Corporate Plan that take precedence over the receipt of capital income (see also 10.2 below). Consideration should be given to any opportunities for realising latent value, perhaps through a merger of interests or by obtaining planning consent for a change of use.
- 12.3 Where a property is being sold with the benefit of the best planning permission reasonably obtainable, or market conditions or other factors indicate that it would be beneficial to do so, Departments should consider making provision to share in development profit through overage or clawback clauses.

‘Overage’ means claiming back an element of improved development value where, for example, there is a general uplift in the market, or where the market value of the end development is not known at the time of sale.

‘Clawback’ refers to claims for all or part of windfall gains resulting from, for example, the purchaser obtaining planning permission for a change of use, or a greater volume of development than anticipated by the planning permission obtained prior to disposal.

Examples where these might be used, include:

- Where it is difficult to gauge the commercial potential of a property.
- Where a particular type of purchaser may have a better chance of obtaining consent for a development than the Department.
- Where a developer can improve upon a planning permission obtained by the disposing department.
- The disposal of a listed building.

- 12.2 Where AMG consider that a site should be disposed of at a price below open market value, the matter is to be reported to the Executive/Cabinet for approval, prior to the disposal. A disposal of land at a price below open market value may require the consent of the Secretary of State under the provisions of the Local Government Act 1972. The [‘Circular 06/03: Local Government Act 1972 general disposal consent \(England\) 2003 disposal of land for less than the best consideration that can reasonably be obtained’](#) should be referred to with particular attention to paragraphs 14 (State Aid) and 17 (Valuation).
- 12.3 If possible during negotiations, a timescale for the development of any land will be agreed with the prospective purchaser. If the land is not developed in this timescale then the Council will have the opportunity to repurchase the land at the original sale price or the current market value whichever is the lower. This is to prevent

purchasers 'land banking' and benefiting from any future increases in land values. This may not be possible on large regeneration schemes where significant upfront investment from the buyer is required to enable development (e.g. planning consent, archaeology, etc).

13 Instructions

- 13.1 Consultation with legal services will be undertaken both prior to any proposed disposal or acquisition and throughout the process of completing the transaction. Once a potential purchaser has been identified and all the terms of the disposal have been agreed (or earlier if appropriate), Property & Estates will instruct Legal Services to prepare the relevant legal documentation.

14 Completion

- 14.1 Once the disposal has been completed, Legal Services will advise the Joint Executive Director of Operations, Assistant Director Property & Estates, relevant Members and such others as are appropriate.

15 Method for Acquisition of Land and Property

15.1 This part of the strategy sets out, in sequence, the procedure to be adopted in connection with the acquisition of land and property.

16 Reasons for the acquisition of Land or Property

16.1 Unless there are exceptional circumstances, the Council will only acquire land or property for the following reasons:

- to enable the provision of more effective Council services and deliver wider corporate aims
- economic development
- revenue income generation
- strategic acquisition for regeneration or redevelopment purposes.

17 Market Research

17.1 Once a need to acquire property has been identified by the interested department, market research will be carried out by the relevant Assistant Director, in consultation with the Assistant Director Property & Estates, to establish whether suitable land or property is available on the market to fulfil this need.

17.2 Where a number of potentially suitable properties exist in the marketplace, robust comparisons will be made to establish which is the most suitable for the Council's needs. Criteria against which such decisions will be made include: -

- Price
- Condition of property (Inc lifetime costs)
- Availability (in terms of timing)
- Nature of tenure being offered (freehold or leasehold)
- Locational advantages (where a strategic acquisition is under consideration)
- Return on investment (where a revenue generating asset is being considered).

18 Site investigations

18.1 Once a potential site has been identified, the lead department will consult with AMG, Property & Estates, Legal Services, and Planning Services to establish whether there are any development constraints on the site or restrictions to the proposed use.

18.2 Early notification (before AMG) should be given to ensure local members are aware of the intent to acquire the site. This is not consultation, more advanced notice that activity (officer visits, surveys, etc), may raise questions from the local community.

18.3 Limited survey works (e.g. services, desktop site investigation) and desk studies into previous land use history will also be carried out where appropriate to inform the proposed use.

19 Financial Appraisal

19.1 When a suitable property has been identified, a financial appraisal will be carried out to establish the financial/budgetary implications of acquiring the property at the negotiated asking price. The advice of the Assistant Director of Finance & Revenues and Benefits will be sought regarding current rates of interest on capital invested, to enable the opportunity cost of the acquisition to be fully assessed. The financial appraisal will take into account the following matters:

- The capital cost of acquisition
- Any revenue, or potential revenue, generated from the property, both short and long term
- Availability of external funding sources
- Possibility of joint ventures
- The cost, in asset management terms, of owning the property, including:-
 - immediate maintenance/refurbishment requirements
 - demolition costs, if appropriate
 - ongoing maintenance/life cycle costings
 - national non-domestic rates
 - insurance.
- The overall effect of the expenditure on the Council's budgetary position.
- State Aid compliance and best consideration should also be addressed.

20 Independent Valuation

20.1 In all circumstances, the valuation of sites will be undertaken by the Council's Valuer. However, independent valuation advice by a RICS registered Valuer, should be obtained in the following circumstances:

- Where an acquisition is in respect of a major or complex site
- Where the Council have an interest the seller (e.g. housing companies, development companies, ALMO's, etc)
- Where a member or senior officer has an interest in the seller or property
- Where the site is considered for purchase at above best consideration.

Where such advice suggests that the market value of the property is below the negotiated price and there are overriding factors which justify the purchase, a report shall be prepared for the Executive/Cabinet by the relevant Assistant Director, in consultation with the Executive Director of Operations, seeking approval to continue with the proposed acquisition.

20.2 Where the acquisition is to be by way of a long lease, the Assistant Director of Finance & Revenues and will be specifically consulted to assess the implications regarding VAT, Capital Controls and Treasury Management.

21 Negotiation

21.1 Once the principle of an acquisition has been agreed, detailed negotiations will be commenced with the vendor by the Council's Valuer in consultation with the relevant Assistant Director. Where the sale is by auction or tender, bids will be formulated as appropriate.

22 Approval

- 22.1 Any offer to the vendor will be made “*subject to contract, Council approval*. Where a survey of the premises/site has not been possible prior to an offer “*Subject to survey*” may also be appropriate. A report will be prepared for the next Executive/Cabinet, by the relevant Assistant Director in consultation with the Executive Director of Operations, recommending acceptance of the acquisition and detailing the broad terms.
- 22.2 Where circumstances dictate that an urgent decision is required (and where resources have not been set aside and the principle of the acquisition has not already been agreed) the Leader of the Council and the Joint Chief Executive will be consulted as to whether the use of the Chief Executive’s delegated powers is possible/appropriate after taking advice on the financial and any legal implications arising. Any decisions made in accordance with this condition will be ‘Key Decisions’ (as defined in the Council’s constitution) and must be reported in accordance with the relevant procedures.

23 Instructions

- 23.1 Once Executive/Cabinet approval has been received, and any surveys satisfactorily carried out (or earlier if appropriate), Legal Services will be instructed to complete the documentation associated with the acquisition. The instruction should include the Heads of Terms (HOTs) agreed between the Council and the vendor.

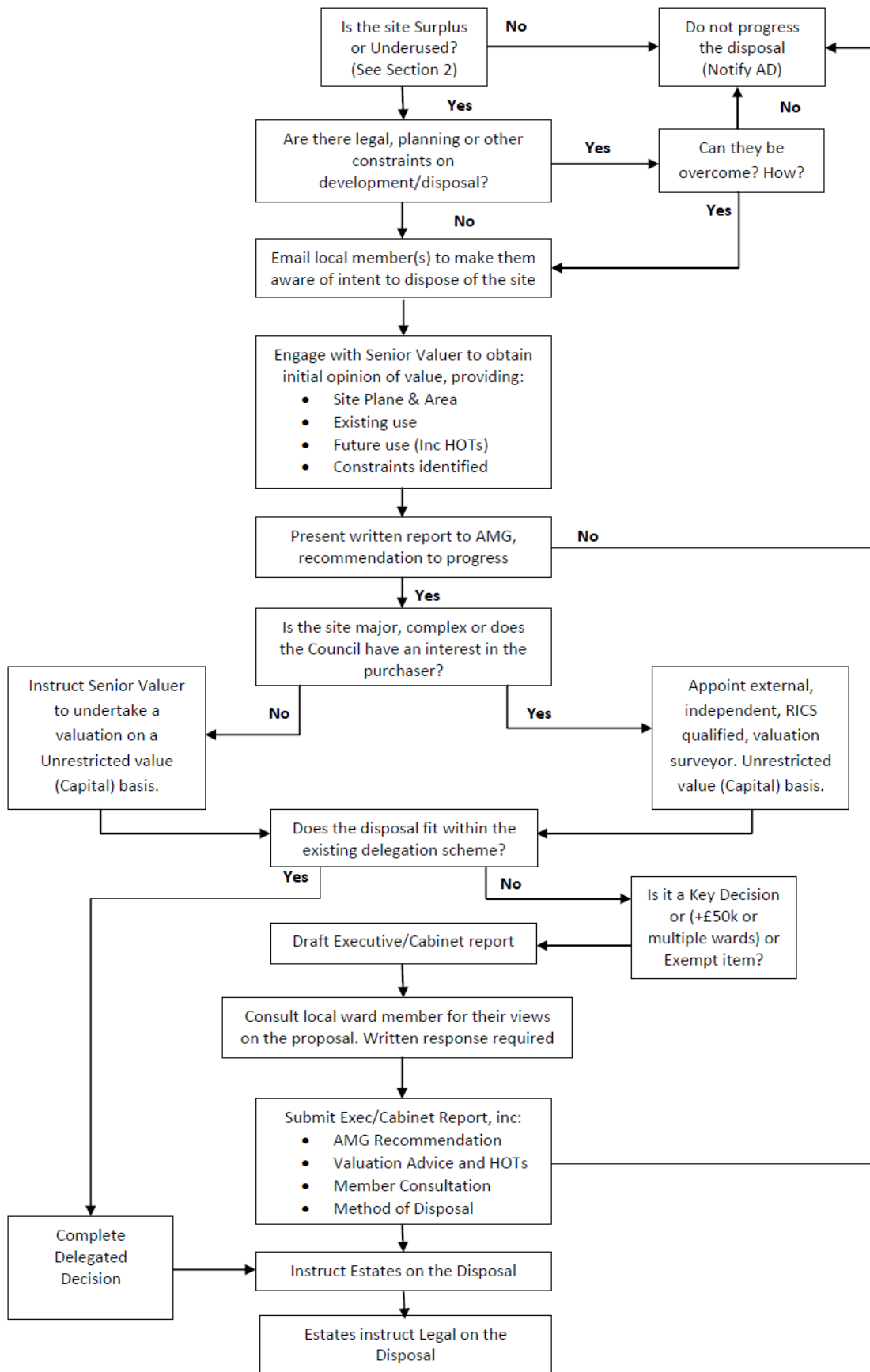
24 Completion

- 24.1 Once the disposal has been completed, Legal Services will advise the Joint Executive Director of Operations, Assistant Director Property & Estates, relevant Members and such others as are appropriate.

25 Responsibility for Implementation

- 25.1 All parts of the Council, including any arms length organisations, who are proceeding with the disposal and acquisition of Council owned assets are responsible for the implementation of this policy.

Annex 1 – Disposal General Flowchart



ANNEX 2 - DESCRIPTION OF LAND DISPOSAL METHODS

DISPOSAL BY PRIVATE SALE

- 1.1 A disposal by Private Sale may take place after a period during which the land is put on the market including advertising and generally making known that it is available for sale. In this case, the Council will be able to consider the highest bid as representing the best consideration that can be reasonably obtained.
- 1.2 If land is to be sold by Private Sale without being marketed, then the reasons justifying a private sale must be recorded in writing. In some circumstances the Council may seek an additional independent valuation to verify that 'best consideration' is being obtained.

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

- (a) the land to be disposed of is relatively small in size and an adjoining or closely located landowner is the only potential or likely purchaser.
 - (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 land is part of a larger area of land that is proposed for development, redevelopment or regeneration where the nature and complexity of the proposed development of the overall site is such that the Council's corporate objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area.
- 1.3 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

- 2.1 Sale by public auction may be appropriate where there is no obvious potential purchaser and where speed and the best price can be obtained by auction.
- 2.2 The authority from the Council's Executive/Cabinet must record in writing
 - (a) the reasons justifying a sale by public auction;
 - (b) delegated powers to agree the reserve price, if any, for the auction;
 - (c) the authority for a Council officer, if required, to attend the auction and to act on behalf of the Council on the sale.
- 2.3 The contract for sale or lease must be ready for exchange at the auction.
- 2.4 A 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 on behalf of the Council and exchanged with the purchaser.

DISPOSAL BY FORMAL TENDER

NB: Disposal by this method is not straightforward and careful consideration as to why it is necessary to use this method should be recorded. This should only be considered if no other disposal options are available.

- 3.1 A sale of land by formal tender may be appropriate where the land ownership is not complex and the Council is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance. For example; the disposal of land to a developer with an obligation to build industrial units for lease, or the conservation of a listed building. In such instances, a process of formal tender may be appropriate in gaining best consideration.
- 3.2 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.
- 3.3 The reasons justifying a sale by formal tender must be recorded in the Executive/Cabinet report. The Council's rules for tender offers contained in the Contract Procedure Rules contained within the Council's constitution will be followed.
- 3.4 The nature of the formal tender process is that a legally binding relationship is formed when the Council accepts a tender in writing by exchanging contracts. 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 and be signed by the tenderer. It will be released unconditionally to the Council on submission of the tender. If the tender is acceptable the Council will complete and sign its part of the contract, date both parts and send its signed contract to the buyer, at which point a binding contract will be created
- 3.5 Sale of land by formal tender will require a detailed specification to be drawn up. This will specify the land to be sold, any requirements to be met by the tenderer and any obligations that must be met.
- 3.6 The Council will place a public advertisement seeking expressions of interest and publicise the selection criteria by which it will assess tenders. Those individuals selected will then be invited to submit their tender bids.
- 3.7 Legal Services will always be consulted before tender the Council seeks to dispose of land by formal tender

DISPOSAL BY EXCHANGE OF LAND

- 4.1 Disposal by exchange of land will be appropriate when it is advantageous to the Council and other parties to exchange land in their ownerships and will achieve best consideration through equal value (Land and cash) for the Authority.
- 4.2 A binding legal agreement will be created when a contract is exchanged.
- 4.3 The exchange will usually be equal in value. However, an inequality in land value may be compensated for by other means where appropriate. For example, where

the Council in exchange for a larger piece of land receives a smaller piece of land but the recipient of the larger plot agrees to build industrial units on the Council's smaller area to equalise the consideration. In such circumstances the Council may seek an independent valuation to verify that 'best consideration' will be obtained.

DISPOSAL BY INFORMAL/NEGOTIATED TENDER

- 5.1 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/negotiated tender process allows the Council to identify one preferred bidder with whom it may then negotiate further detailed terms or proposals for the development of the land concerned.
- 5.2 The Council uses a public advertisement to request informal development proposals for land that meet a given specification. This process is particularly useful for large or complex development or regeneration sites requiring development and where the proposals may need to be developed in co-operation with the preferred bidder to meet the Council's corporate objectives and to achieve the best consideration that can be reasonably obtained.
- 5.3 The Council's rules for tender offers contained in the Contract Procedure Rules, contained within the Council's constitution, will be followed in respect of the receipt of tenders. Any exceptions to that process must be authorised and recorded in accordance with these rules.
- 5.4 A binding legal agreement is not created until the exchange of contracts for sale or lease or the signing of a development agreement.

DEVELOPMENT PARTNER/AGREEMENT

A private sector partner who have been procured through appropriate means to jointly deliver and benefit from redevelopment/regeneration schemes. Examples of such Public/Private partnerships can be found in the RICS/Local Partnerships Paper 'Local Asset Backed Vehicles - A success story or unproven concept?' which can be found on the link below:

<http://www.localpartnerships.org.uk/images/PDFs/2012/LocalAssetBackedVehicles.pdf>

EXCEPTIONS

- 6.1 Other methods of disposal may be used where circumstances warrant them.

LATE BIDS AND OTHER CONSIDERATIONS

- 7.1 Guidance from the Local Government Ombudsman recognises the problem caused to local authorities by 'late bids'. The Guidance states 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.
- 7.2 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 selection 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.

7.3 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 best consideration that it can reasonably obtain (subject to any exceptions in the General Disposal Consent, see 1.4). 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) Late bids cannot be considered where land is being disposed of by public auction after a successful bid has been accepted.
- (c) Except as provided herein, 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 used as a spoiling or delaying tactic.
- (e) Subject to the above, the Council may, in appropriate circumstances, as both the late bidder and the person to whom the land was previously to have been sold, invite both parties to submit their last 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 Executive/Cabinet or delegated powers.

7.4 A last minute bid may be rejected for sound commercial reasons. These may include a consideration regarding the certainty of the transaction reaching conclusion, or if there are legitimate grounds for suspecting a spoiling bid.

- 7.5 The Council will not take into account any issues or views regarding what is commonly referred to as “gazumping” – the overriding duty, with certain exceptions as mentioned in the General Disposal Consent, is to obtain best consideration.
- 7.6 In considering what amounts to ‘monetary value’ in terms of best consideration to be obtained, the creation of jobs or desirable social outcomes, will be considered by the Council as part of its general powers of wellbeing under the Local Government Act 2000

ANNEX 3 – SMALL LAND SALES (E.G. GARDEN LAND)

One to One Sales e.g. garden land.

On an approach from an interested party the Council will:

1. Send holding reply.
2. Carry out consultation exercise with other departments (particularly Housing/ALMO where Housing Revenue Account land is involved) and AMG.
3. Respond to applicant detailing what the decision making process is and when a decision will be made.
4. If sale is supported by AMG, send out heads of terms on without prejudice and subject to contract basis and await the applicant to confirm acceptance of terms in writing.
5. Assuming the value is below £50k (Hence, small land sales), complete a Delegated Decision supporting the proposed disposal, assuming it sits within the delegation scheme.
6. Notify applicant of the decision, confirm HOTs and request details of Solicitor.
7. Instruct Legal based upon the HOTs to draft a sale agreement.
8. Prior to completion undertake a measured survey referring to the title plan and GIS mapping and peg out site if necessary.
9. Complete sale and notify the Finance Department and other Departments within the Council and amend their records.