



LEAD MEMBER FOR RESOURCES

DECISIONS to be made by the Lead Cabinet Member for Resources,
Councillor David Elkin

THURSDAY, 24 SEPTEMBER 2015 AT 1.00 PM

CC2, COUNTY HALL, LEWES

AGENDA

- 1 Decisions made by the Lead Cabinet Member on 14 July 2015 (*Pages 3 - 4*)
- 2 Disclosure of Interests
Disclosure by all Members present of personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct
- 3 Urgent items
Notification of any items which the Lead Member considers urgent and proposes to take at the appropriate part of the agenda.
- 4 Notice of Motion: Meanwhile use of vacant council property (*Pages 5 - 28*)
Report by the Chief Operating Officer
- 5 Local Government Association (LGA) Municipal Bonds Agency Participation (*Pages 29 - 32*)
Report by the Chief Operating Officer
- 6 Any other non-exempt items previously notified under agenda item 4
- 7 Exclusion of Public and Press
To consider excluding the public and press from the meeting for the remaining agenda item on the grounds that if the public and press were present there would be disclosure to them of exempt information as specified in paragraph 3 of Part 1 of the Local Government Act 1972 (as amended), namely information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 8 Amendment to Leases at (1) Gilda Crescent, Polegate (2) St Anthony's, 508 Seaside, Eastbourne & (3) Warwick House, Seaford (*Pages 33 - 34*)
Report by the Chief Operating Officer
- 9 Any exempt urgent items previously notified under agenda item 3

PHILIP BAKER
Assistant Chief Executive
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16 September 2015

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LEAD MEMBER FOR RESOURCES

DECISIONS made by the Lead Member for Resources, Councillor David Elkin, on 14 July 2015 at County Hall, Lewes

Councillors Keeley and Pursglove spoke on item 6 (see minute 10)

7 MINUTES

7.1 Councillor Elkin approved as a correct record minutes of the meeting held on 16 June 2015.

8 REPORTS

8.1 Reports referred to in the minutes below are contained in the minute book.

9 EXCLUSION OF PUBLIC AND PRESS

9.1 RESOLVED to exclude the public and press from the meeting for the remaining agenda items on the grounds that if the public and press were present there would be disclosure to them of exempt information as specified in paragraph 3 of Part 1 of the Local Government Act 1972 (as amended), namely information relating to the financial or business affairs of any particular person (including the authority holding that information).

10 BEXHILL HASTINGS LAND TRANSACTIONS

10.1 The Lead Member considered a report by the Chief Operating Officer.

DECISIONS

10.2 RESOLVED to (1) approve the purchase of land outside of the Bexhill and Hastings Link Road (BHLR) Compulsory Purchase Order (CPO) under S53 of the Land Compensation Act 1973;

(2) approve the disposal of land purchased outside of the CPO to the adjoining landowner in order to reduce the monetary compensation that would otherwise be payable;

(3) approve the disposal of CPO land as part of the Compensation offer to an adjoining land owner in order to reduce the monetary compensation that would otherwise be payable; and

(4) delegate authority to the Chief Operating Officer to agree the terms of disposal in line with best consideration as defined by S.123 of the Local Government Act 1972.

Reasons

10.3 The transfers in connection with the Bexhill and Hastings Link Road, are in order to reduce maintenance liabilities and reduce the risk of a requirement for the Council to purchase further property.

Committee: **Lead Cabinet Member for Resources**

Date: **24 September 2015**

Title of Report: **Meanwhile Use of vacant Council Property**

By: **Chief Operating Officer**

Purpose of Report: **To note a motion for the Council to adopt a policy of encouraging Meanwhile Use of vacant Council property where suitable**

RECOMMENDATION: The Lead Member is recommended to:

- 1) **Recommend to County Council to agree the motion as set out in paragraph 1.1.**
 - 2) **Agree the revision of the Disposal Policy, as detailed in paragraph 2.8 of the report, subject to the motion being agreed by County Council.**
-

1. Background

1.1 The following Notice of Motion has been submitted by Councillors Lambert and Hodges:

East Sussex County Council has a substantial asset portfolio. In common with other local authorities, as austerity bites and services are delivered in different ways, this portfolio is inevitably shrinking. However this does not have to mean a shrinking of ambition or energy. The meanwhile use of assets for community benefit can unlock and use the resilience and commitment of local communities to help people help themselves.

This Notice of Motion calls on East Sussex County Council to develop a meanwhile policy for all its redundant assets to enable these to be used productively by the local community to stimulate the local economy, energize and channel local ambition and prevent decline in the built environment.

1.2 In line with the County Council's practice, the matter has been referred by the Chairman to the Lead Cabinet Member for Resources for consideration to provide information and inform debate on the Motion. The Lead Member's recommendation will be reported to the Council at its meeting on 20 October 2015.

2. Supporting information

2.1 Vacant property can incur costs through empty business rates, maintenance and ensuring insurance policy compliance. In addition, vacant properties offer little to local economies and present a risk through vandalism. A condition of any Meanwhile Use of a Council property will be that occupation will not be at the Council's cost.

2.2 Meanwhile use is a recognised method of enabling best use of resources while reducing costs for both the building landlord and the community or voluntary group using it. The Council's existing Disposal Policy (see Appendix 1) does enable meanwhile use; however, there is no specific mention to interim uses of property which would assist in cost reduction, stimulate local economies and make best use of resources. It will therefore be necessary to update the Disposal Policy to reflect the criteria set out in paragraphs 2.3 to 2.6 below.

2.3 The meanwhile use of Council property will be limited to vacant sites where the occupation does not interfere with the Council's Property Strategy.

2.4 Any meanwhile use of Council property will still be subject to the Council's Disposal Policy and scheme of delegated authorities.

2.5 Any meanwhile use will compliment and not hinder the SPACES Programme.

2.6 It will be the responsibility of any interested Voluntary and Community Sector (VCS) organisation to produce a business case for a specified building. The Council will not prepare business cases and will not offer up premises under this policy.

2.7 An update to the Disposal Policy would include wording to the effect:

“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 local economies”.

This would be an additional pledge under 'Principle 4 – Work in Partnership & empower our communities'.

3. Conclusion and Reason for Recommendations

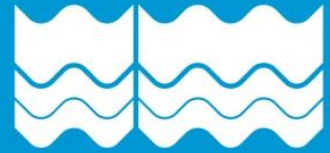
3.1 The Lead Member is recommended to recommend that the County Council agree the motion made by Councillor Lambert, and to delegate the subsequent updating of the existing Council Disposal Policy as described in paragraph 2.7 above to the Chief Operating Officer.

KEVIN FOSTER
Chief Operating Officer

Contact Officer: Christopher Reed MRICS, Asset Investment & Regeneration Manager, 01273
336 237

Local Members: All

Background Documents:
None



Property Disposals Policy

June 2014

H

Property Policies Pack 2014 update

Policy name: Disposals Policy

Policy Reference in the Pack: H

Date created: June 2013

Sent for Review: 12/06/2014

Deadline for update: 15/07/2014

Name of Responsible Property Manager: Paul McLafferty/Roger Simmons

Have any changes been made? Yes/No

If Yes:

Name of Officer reviewing	Paragraph name or Page umber	Nature of changes made
Sue Holt	Various	Various updates & changes

Signed Off by: Roger Simms

Date:

Next Update due: June 2015

Link to Agile Policy: Yes/No

Sign Off: Neil Ashworth

Please indicate below your name that you have reviewed.								
Roger	Nigel	Paul	Pete	Sean	Matthew	Dave	Dennis	
24/7/14		22/7/14	22/7/14	13/8/14	2 July 2014	24/06/14	24/7/14	
Please indicate below your name that you have reviewed.								
Paul McL	Sue 1/8							
25/7/14								

Amendments history sheet

Issue Number	Changes Made	Issue Date
1	Policy written	2007
2	Update	2010
3	Update	2013
4	Update	2014

If you would like a copy of the strategy in a different format, such as large print, Braille or a different language, please contact us.

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Contents

1 Introduction

2 Policy

Appendices

Appendix H13 - Guidance

- Disposal by Private Sale
- Disposal by Public Auction
- Disposal by Informally Negotiated Tender
- Disposal by formal Tender
- Disposal by Exchange of Land
- Exceptions
- Late Bids & Other Considerations
- Achievement of best consideration where Land or Property has Redevelopment Potential

Appendix H14 - Formal Tender Procedure

Appendix H15 - Equality Impact Assessment

Appendix H16 - Crichton Down Rules

1 Introduction

Scope & Purpose

When property assets become surplus and are no longer required for the day to day provision of service a number of options need to be considered such as;

- Effective and efficient management for their re-use within the Council;
- A relevant use by the Community;
- A disposal to help facilitate the capital programme's aims whilst minimising any ongoing maintenance and revenue implications.

This policy and guidance document supports the Council's management of the disposal of those assets that are surplus to its requirements and therefore the capital receipts that will be generated to contribute towards funding the Council's capital programme.

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. This policy is only intended for East Sussex County Council disposals, it does not apply when the Council acts on behalf of other parties.

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.

Best Value and Section 123 Local Government Act 1972

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 policy, may be used where appropriate, subject to obtaining proper authority, (Appendix 1). 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 a government document, referred to in this policy as 'the General Disposal Consent' - see below.

In this Policy and Guidance document:

"the General Disposal Consent" means the 'Local Government Act 1972 : General Disposal Consent (England) 2003'

<https://www.gov.uk/government/publications/disposal-of-land-for-less-than-the-best-consideration-that-can-reasonably-be-obtained-circular-06-2003>

"the Guidance" means the 'Local Government Ombudsman's Guidance on Good Practice 5 : Disposal of Land.' November 1995

General Disposal Consent

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:-

- a. The Council considers that the purpose for which the land is to be disposed of 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.
- b. 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.

<https://www.gov.uk/government/publications/disposal-of-land-for-less-than-the-best-consideration-that-can-reasonably-be-obtained-circular-06-2003>

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 County 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 will be in accordance with the Council's Community Asset Transfer policy.

All Council property disposals will be in accordance with the Localism Act 2011. It will consider if the surplus property has been registered as an "asset of community value" and if it has, the Council will ensure that there is opportunity for a Community Right to Bid prior to any disposal process commencing as specified in this policy paper.

[Link to Community Asset Transfer Policy](#)

2 Policy

Policy Statements

The Council will dispose of land in accordance with:-

- Key Council Priorities
- Statutory provisions;
- The policies and procedures recorded in its Constitution;
- The Council's Disposal Procedure;

Our Principles

The Council's Property Asset Management Plan 2012/13 identified the following four key principles that will underpin our management of all property assets in the ownership of East Sussex County Council. By adopting these principles we will strive to rationalise the estate, reduce backlog maintenance and provide fit for purpose buildings which are efficiently used and support service delivery. The adoption of this policy will support these principles as follows;

Principle 1 – Improve or replace

Out of scope

Principle 2 - Release

The authority needs 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.

Priority – Review Our Assets

Challenges

- 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 ensure that all properties currently identified as surplus are disposed of in the agreed timescales to achieve best value.
- 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.

Pledges

- To provide accurate building performance information to feed into a comprehensive property review process
- To report property performance information to Cabinet on an annual basis

Priority – Disposal of assets

Challenges

- To ensure that all properties currently identified as surplus are disposed of in the agreed timescales to achieve best value
- To balance competing priorities for surplus assets
- To investigate the potential increase the disposal value by making targeted improvements

Pledges

- To hold an accurate and up to date record of surplus properties and expected capital receipts.
- To dispose of properties no longer required as efficiently as possible

Principle 3 – Reduce our Carbon Footprint

Challenges

- To identify the least efficient properties

Pledges

- We will dispose of the least efficient properties taking into account service needs.

Principle 4 – Work in Partnership & empower our communities

Challenges

- To ensure the community has been fully consulted before and during the disposal process and that equality issues have been fully addressed

Pledges

- We will make detailed option appraisals to ensure we have assessed each disposal reflects the needs of the community.
- To work strategically with our partners to ensure that we learn from our common experience and share best practice.

Our approach to Disposals

When a property is declared surplus to the service, we ensure that it will not be suitable to any other of the county's service departments, and ensure that its disposal will support the Council's key priorities as adopted in the Council Plan 2013/14 (Link). These key priorities are:

1. Driving Economic Growth
2. Keeping vulnerable people safe and free from harm
3. Building Resilience for individuals and families to live independently
4. Making best use of resources

Before placing any property on the open market a process of consultation is undertaken with our partners such as Strategic Property Asset Collaboration in East Sussex and other community interests groups. We will also consult with the local member in accordance with practices summarised in the section entitled Council procedures below.

We will review opportunities to enhance disposal receipts by investigating potential alternative uses, and partners whereby a number of mechanisms can be put in place to ensure any future enhancement of value is properly shared with the Council.

When ESCC 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 (See Appendix H15).

Summary of Land 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.

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 Part C below. 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 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 authority 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.
- 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 'equal' in value to the land exchanged or there can be an equality payment made by either party.

For further details in respect of any of the above please see Appendix H13.

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 of the Constitution (Responsibility for Functions).
- The processes followed by the Council in disposing of land and buildings.
- Local Members are consulted on all property disposals at an early stage including when the land is in the process of being declared surplus. It is recognised that local members, because of their local knowledge of the district that they represent, will be able to contribute to the discussion as to the value or otherwise of continued retention of the asset and also provide valuable market intelligence such as potential special purchasers. Therefore engagement should be sought and encouraged at an early stage of the disposal process.
- The final decision to dispose of a property and at what terms will be at the discretion of the Lead Member for Resources as advised by the Assistant Director, Property and Capital Investment in accordance with the scheme of delegation.
- Decisions to approve the terms of any disposal of land are made by either the Assistant Director, Property and Capital Investment, under Delegated Authority, or in conjunction with the Lead Member for Resources, or on some major projects the Chief Operating Officer. This can be exercised according to the following financial criteria:
 - The Assistant Director, Property and Capital Investment, under Delegated Authority of the Chief Operating Officer where the payment from the other party does not exceed £250,000 (in case of a lump sum payment) or £25,000 per year (in respect of an annual rental).
 - The Chief Operating Officer, in consultation with the Lead Member for Resources where the payment from the other party exceeds £250,000 (in case of a lump sum payment) or £25,000 per year (in respect of an annual rental).
- Where a property has been previously acquired through or under the threat of compulsory means and is now surplus to Council requirements consideration of the Crichel Down rules may apply and is set out in Appendix H16.

Appendix H13

Guidance

Disposal by private sale

A disposal by private sale may take place after a period during which the land is put on the open market including advertising and generally marketing including signage 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. A disposal by private treaty can have a closing date and be by way of inviting sealed bids by that date if considerable interest is anticipated.

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 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(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 East Sussex;
- 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 to but are 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 is set out in Appendix 6 of this policy document.

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 either the Assistant Director, Property and Capital Investment or the Lead Member for Resources 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 level. Prior to the sale it will therefore be necessary for the Assistant Director, Property and Capital Investment or Chief Operating Officer 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/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.

The Council may, as a part of the disposal process, 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 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.

Although not a formal tender, after the closing date these 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 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, but 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 transport authority will be sought.

Authority to use this method will be by either by the Lead Member for Resources, or the Assistant Director, Property and Capital Investment, under Delegated Authority of the Chief Operating Officer. In either case, the reasons 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 to this agreed by the Assistant Director of Legal and Democratic Services) is set out in Appendix H14. 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 H14.

Disposal by exchange of land

Disposal by exchange of land will be appropriate when it will achieve best consideration for the Authority and is advantageous to the Council and other parties to exchange land in their ownerships.

Authority for a disposal of land by exchange with another land owner for alternative land will be by either the Lead Member for Resources, or the Assistant Director, Property and Capital Investment, under Delegated Authority. In either case, reasons for justifying this manner of disposal must be recorded in writing. A binding legal agreement will be created when a contract is exchanged for the exchange.

The exchange will usually be equal in value. However, an inequality in land value may be compensated for by an equality payment or 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.

Exceptions

Other methods of disposal may be used where circumstances warrant. A notable exception to the standard methods of disposal is the Council supporting government policy in the transfer of maintained schools to Academies who self determine on conversion.

The Council typically transfer the Council's land under a 125 year lease at a peppercorn rent in accordance with the Academies Act 2010. Whilst a long lease is preferable, the Department for Education (DfE) recognises that at times parties will seek to enter into local agreements. The expectation is still however that all land and facilities used wholly or mainly for the purpose of the converting school will transfer and be made available for Academy use.

The following link provides DfE Land Transfer Advice (Version 10.1, dated April 2013):

[DfE Land Transfer Advice V10-1 April 2013 Final.docx](#)

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 Lead Member for Resources should decide whether to consider late bids after taking advice from the Assistant Director of Legal and Democratic Services and the Chief Operating Officer.
- 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 Lead Member for Resources or the Assistant Director, Property and Capital Investment.

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 Department for 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 Assistant Director, Property and Capital Investment) 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".

Achievement of best consideration where land or property has redevelopment potential

Where in the opinion of the Assistant Director, Property and Capital Investment 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 officer's 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 Assistant Director, Property and Capital Investment.

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 County 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 maybe by an "overage" provision or a mechanism for "claw back".

Appendix H14

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.
- 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 Assistant Director of Legal and Democratic Services, 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 Assistant Director of Legal and Democratic Services 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 Assistant Director of Legal and Democratic Services and another officer. This may be a representative of Chief Operating Officer, if this is considered appropriate by the Assistant Director of Legal and Democratic Services.
- i) The Assistant Director of Legal and Democratic Services 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 Assistant Director of Legal and Democratic Services after consultation with the relevant Lead Cabinet Member.

Appendix H15

Equality Impact Assessment

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

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 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.....

Appendix H16

Crichel Down Rules

In 2004 the Government produced a circular entitled “Compulsory Purchase and the Crichel Down Rules” which prescribed the way in which all Government departments and executive agencies that are subject to a power of direction from a Minister must manage the disposal of land previously acquired by use of compulsory powers. Local authorities, that are not subject to a ministerial power of direction, are not subject to such a prescription but are recommended to also follow the rules.

In particular the General Rule of these guidelines states that “where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given the first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition.”

It is recommended that the Council has regard of these rules when disposing of land of formerly acquired by compulsory means subject to the following guidance.

Guidance for the disposal of Council owned land that has been acquired by or under threat of compulsory means.

Stage 1 Identification of land

The Crichel Down rules will relate to land that has been compulsorily acquired by the Council and is no longer required. Subject to the following exceptions:

- Agricultural land acquired before the 1st April 1935.
- Agricultural land acquired on or after the 30 October 1992 which becomes surplus to requirements more than 25 years after its acquisition.
- Non Agricultural land which becomes surplus and available for disposal more than 25 years after its acquisition.
- Land that has materially changed since acquisition.
- Land where boundaries of agricultural land has been obliterated.

There is also an exception in relation to the disposal of small areas of land where the attempted identification of an absent former owner who has now disposed of his/her interest in land adjacent to the subject property would be out of proportion to the value of the land. Only where the current market value of the subject is likely to exceed the value of £25,000 will the Council be obliged to take steps as specified within the Rules to identify a previous owner.

Despite these exceptions it is acknowledged it may still be appropriate to first offer to the adjacent landowner unless there are overriding local circumstances or best value may not be achieved.

Stage 2 Consultation

Consultation shall take place within Communities, Economy & Transport and other departments to declare the land surplus in consultation with the Lead Member for Resources.

Local Authorities as previously stated are not under a statutory obligation to comply with the Crichel Down rules. Therefore any compliance with these rules will be at the discretion of the Assistant Director, Property & Capital Investment in consultation with the Lead Member for Resources.

For instance where it is concluded that there is an overriding local or community interest such as a disposal to a parish council, registered charity or other properly constituted body where best value may not be achieved then upon the direction of the Assistant Director, Property and Capital Investment a disposal may proceed to such a body even when it was not the former owner of the property.

If you would like a copy of the document in a different format, such as large print, Braille or a different language, please contact us.

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Report to: **Lead Cabinet Member for Resources**

Date: **24 September 2015**

By: **Chief Operating Officer**

Title of report: **The Local Government Association (LGA) - Municipal Bonds Agency**

Purpose of report: **To seek formal approval for the Council to participate in, and commit funding in the Municipal Bonds Agency (the Local Capital Finance Company Ltd) as sponsored by the Local Government Association.**

RECOMMENDATIONS

The Lead Member is recommended to agree:

1. **the level of Council participation and committing funding to an investment of up to £100,000 to the Municipal Bonds Agency (the Local Capital Finance Company Ltd);**
 2. **to note that the Cabinet approved participation and the amendments to the Treasury Management strategy on 29 June 2015;**
 3. **to delegate authority to the Chief Finance Officer to take any action consider appropriate to give effect to or in consequence of recommendations 1 and 2 including determining the terms of and entering into any agreements considered necessary to be entered into including the Subscription Agreement.**
-

1. Background

1.1 The Local Government Association (LGA) has created a collective Municipal Bonds Agency (MBA) which it believes will allow councils to raise funds at significantly lower rates than those offered by the Public Works Loans Board (PWLB). The MBA is an independent company with the sole aim of reducing financing costs for councils through arranging lending at competitive interest rates. It is envisaged that the company will fund lending through any or all of the following:

- Raising money on the capital markets through issuing bonds
- Arranging lending or borrowing directly from local authorities
- Sourcing funding from other third party sources, such as banks, pension funds or insurance companies.

1.2 The County is not able to issue its own bonds due to the stringent capital markets requirements including an initial sum of £250m+ needed to get a market rate. However, the agency would be able to raise finance in bulk from the capital markets by issuing bonds and lend on to other local authorities. The current indication is that around 60 local authorities have pledged support, and taking part in the setting up of the agency does not commit the Council to borrowing but would give early access to potentially cheaper borrowing if required.

2. Supporting Information

2.1 The PWLB offers money at a rate of Treasury gilts plus an additional percentage set by the Chancellor of the Exchequer. The rate currently sits at a 1% premium to gilts, with discounts available subject to conditions. The March 2012 budget subsequently announced a reduction by 0.20% to 0.80% above gilts in PWLB loans, i.e., PWLB Certainty rate.

2.2 MBA claim that local authority financing costs could be reduced by up to a prudent 20% to 25% compared to the certainty rate provided by the PWLB, an annual saving on each £10m of borrowing of up to £25,000 each year. The latest report on the Capital Programme showed that the Council would be utilising borrowing of close to £90m over the next three years, which is being reviewed as debt coming to term may not need to be refinanced

2.3 MBA will offer competition to PWLB; as a result PWLB could react by reducing its own margins thereby making the MBA rate unattractive for local authority borrowers. Whilst it is difficult to predict the reaction to the establishment of an MBA, either way, it has the potential for local authorities to access lower borrowing rates.

2.4 The MBA is looking to raise up to £10m of equity capital in two phases. Phase 1 will be to fund the mobilisation stage for which £0.9m is required, £0.5m of which will be committed by the

LGA and £0.4m from UK local authorities with the objectives of establishing the corporate structure, hiring staff, raising the required level of capital and identifying the initial set of local authority borrowers.

2.5 Phase 2 will be to complete raising capital up to £10m from local authorities who wish to be owners and shareholders, to fund the launch phase and running costs of the Company through to the point when it will reach break-even. It is intended that the initial borrowing being available in the second half of 2015.

2.6 There are other benefits beyond price that arise from the creation of the MBA for councils to consider. They include:

- Reducing exposure to shifting government lending policies through increased competition and diversity of lending sources, relevant following the 1% hike
- The creation of a centre of expertise at the intersection between capital markets and local government finance.
- The opportunity to access European Investment Bank (EIB) funding for future Council infrastructure development. EIB rates are lower than PWLB rates, but cannot usually be accessed by local authorities, because in most cases the EIB will only lend money for specific projects worth £250 million or more (in some cases the EIB will help finance £150 million projects) for which it will provide up to half the funding.
- There is the possibility that the Council may receive dividend income in the future arising from the investment, and potential increase in the investment value.

2.7 The proposals are grounded in the prudential code and the revised business case reinforces the principle that borrowing by councils must be prudent and affordable.

2.8 It is however important that Members are aware of key issues around the investment commitment that is being given, particularly with regard to risk:

- The company has not commenced operations and is a new and unproven concept;
- It may not be possible to raise the required level of capital or further capital may be required;
- The demand for borrowing may not materialise;
- The PWLB may reduce its margins making the company an unattractive prospect;
- If the company has to be wound up, assets remaining in the company will be distributed to the value of cash investments – the value of any investment may not therefore be realised;
- In the event of any local authority becoming bankrupt, the Council's liability will be limited to the proportion of its investment.

2.9 However, we have an entry window now, which will not be open for too much longer, so we may not be able to reap the full benefits of access to EIB rates or bonds in the future and the company is much more viable than previously thought, due to the commitment of other councils

3. Investment

3.1 It is proposed that the Council invests up to £100,000, and delegate to the Chief Finance Officer authority to sign the Subscription Agreement. Whilst there are some risks associated with the investment as outlined in paragraph 2.8, there is the opportunity to make some substantial savings on borrowing costs.

4. Conclusion and reasons for recommendations

4.1 Lead Member is recommended to approve the level of Council participation in, and commit funding to an investment of up to £100,000 in the Municipal Bonds Agency (the Local Capital Finance Company Ltd) as sponsored by the Local Government Association (LGA). The proposed source of funding is to use some of the resources set aside within the Treasury Management for future borrowing opportunity.

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Local Member(s): All
Background Documents
None

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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