

# **SOUTH DERBYSHIRE DISTRICT COUNCIL – ASSET DISPOSALS POLICY**

## **INTRODUCTION**

This document sets out the framework for identifying and disposing of Council assets, i.e. land and property within its ownership. This is in accordance with the Council's Asset Management Plan and forms part of the overall Property Strategy.

In doing so, it sets out the background to the issues surrounding disposals. The policy is essentially intended to apply to those assets considered to be "surplus to requirements."

The Council's land and property portfolio is a significant corporate resource. The way in which council's manage all of their assets is now tested annually in the Use of Resources Assessment.

This includes identifying surplus or underperforming assets and considering alternative options, including their disposal, in order to achieve better value and realise investment.

Local authorities are subject to constraints relating to how they dispose of their property. This document will provide a framework for best practice when dealing with disposals. It will consider the broad principles relating to the disposal of assets.

The policy will be subject to regular review to take account of changes in legislation, other Council policy and the ongoing review of the Council's property records.

The policy is set out in the following sections.

- 1) What is a disposal?
- 2) Challenging why the Council owns land and property.
- 3) A Local Authority's powers to dispose of land and property.
- 4) Identifying surplus and underused assets.
- 5) Public open space.
- 6) Consultation.
- 7) Methods of disposal.
- 8) Other considerations.

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### **1. WHAT IS A DISPOSAL?**

1.1 Section 123 of the Local Government Act of 1972 governs the disposal of local authority assets. This defines a disposal as:

- A transfer of the freehold interest or;
- A grant of a term exceeding seven years, or;
- The assignment of a term, which, at the date of assignment, has more than seven years to run.

1.2. The policy is also intended to focus solely on the issues relating to the disposal of the Council's land and property interests, excluding the Council's Housing Stock.

### **2. CHALLENGING WHY THE COUNCIL OWNS LAND and PROPERTY**

2.1 South Derbyshire District Council owns land and property primarily:

- To provide facilities from which to deliver a direct service to members of the public and directly support service delivery.
- To provide an investment that makes a financial return to support service delivery and/or aid the delivery of the Council's Corporate Plan and other strategies.

#### **Operational Land and Buildings**

2.2 Currently, the majority of the Council's operational assets are considered to be fully utilised and therefore, not surplus to requirements because they are being used to deliver a service. However, more detailed analysis is required of each asset to ensure that each is "fit for purpose" both now and in the future.

#### **Commercial Property**

2.3 Commercial property may have been acquired for economic development reasons, to support the location of small and local businesses within the area. Examples of this type of property include the industrial units within the Council's ownership at the George Holmes Business Centre and Boardman's Industrial Estate.

2.4 As part of the Council's asset management planning, the Council needs to continually challenge why it is still holding onto these assets and whether there is still a service need to support the local economy by holding onto assets in this way.

2.5 In order to do this, a detailed analysis of the financial returns from each asset is considered as part of the asset management planning. In addition, opportunities to dispose of these assets or whether the Council's aims for holding onto that asset can be met in any other way are also considered.

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- 2.6 This data will be reviewed as part of the suitability and sufficiency analysis being developed as part of the asset management plan. This will measure the condition and use of assets and will be another indicator whether an asset is “underperforming.”

### **Other Land Holdings**

- 2.7 In addition to property, the Council has substantial land holdings, including significant areas of public open space. These land holdings are varied and located around the District. It is considered that some of the (miscellaneous) holdings may be “surplus to requirements.”

### **Community Facilities**

- 2.8 These include community/village halls, etc and public toilets. Several are currently held in partnership (with Parish Councils) and several others are currently under review regarding future ownership and management. As part of the asset management framework, disposal will be one option considered when these assets are reviewed.

## **3. A LOCAL AUTHORITY’S POWER TO DISPOSE OF ASSETS**

- 3.1 Under the Local Government Act of 1972, authorities have powers to dispose of their property subject to certain constraints, which are set out below:

### **Disposal at less than market value**

- 3.2 The Council must endeavour to sell all surplus assets to obtain best consideration. Councils were formerly obliged by legislation to do this to comply with the Local Government Act 1972, unless the Secretary of State had provided consent. It is still expected that in most cases assets will be sold for the best consideration reasonably obtainable.
- 3.3 However, more recent provisions made under the Local Government Act of 1972 (The General Disposals Consent Provisions 2003), removed the requirement for specific consent to dispose of any interest in an asset held by an authority for less than the best consideration reasonably obtainable.
- 3.4 However, this is providing that the undervalue does not exceed £2m (two million pounds) and for which the authority consider that by doing so, it will contribute to the promotion or improvement of the economic, social or environmental well-being of the area.
- 3.5 Accompanying guidance is not intended to be exhaustive; but it emphasises the importance both of ensuring that decisions about disposals are based on competent professional advice and that they are undertaken in the best interests of the local community.
- 3.6 In addition, there is a general expectation that local authorities should be seen to act fairly when disposing of their land.

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### **Crichel Down Rules**

- 3.7 Surplus land which was originally acquired compulsorily, under the threat of compulsion or under statutory blight provisions, that has not been materially changed in the interim, may need to be offered back to the former owner or former owner's successors under these rules. Disposals to former owners under these arrangements will be at current market value.

### **4. IDENTIFYING SURPLUS and UNDERUSED ASSETS**

- 4.1 Best practice recommends that an asset may be deemed to be surplus to the Council's requirements if:
- It makes no positive contribution to the delivery of the Council's services, nor generates any income, nor is required for regeneration/redevelopment purposes and/or it has no potential to do so in the future.
  - An alternative site has been identified which would achieve a more cost effective solution to provide service delivery and the existing site has no potential for future alternative service delivery or strategic or regeneration/redevelopment purposes.
- 4.2 It may also be deemed as surplus if the income being generated from the investment is below that which could be achieved from:
- An alternative investment at a better rate of return.
  - Intensifying the existing use of the site.
- 4.3 In addition, disposal may also be considered if land and property proves costly to maintain and manage or its future maintenance liabilities make it uneconomical to hold.
- 4.4 However, the objective of strategic asset management is not to dispose of the Council's "family silver." Any assets that are suitable and sufficient to meet the Council's service objectives, both now and in the foreseeable future or that provide a satisfactory rate of return as an investment to the Council should be maintained effectively and continuously monitored to ensure that they will continue to do so in the future.

### **Long Term Considerations**

- 4.5 Best practice also recommends that investment and disposal decisions be based on thorough option appraisal and whole life costing techniques ("the systematic consideration of all relevant costs and revenues associated with the acquisition and ownership of an asset").
- 4.6 This is still to be developed, pending the review and update of property and stock condition records. With the benefit of up-to-date stock condition survey information and property data, the Council can consider making investment decisions using this methodology.

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- 4.7 With the benefit of detailed information on each asset, the Council will be able to make clearer, more informed decisions as to whether an asset is performing as an operational tool or whether it is meeting a satisfactory required rate of return.
- 4.8 The Council will follow best practice and use a professional standard model. This will provide a set of criteria to judge each asset against and an opportunity to consider whole life costing and option appraisal issues in more detail.

### **Other Indicators**

- 4.9 Sites that may be suitable for disposal can also be identified initially through reference to the Council's local plan, via enquiries from sources outside the authority (i.e. developers or adjoining land owners), through an analysis of the Council's property records and terrier and by carrying out land registry searches if the land has been registered.
- 4.10 A thorough site appraisal would be required prior to any recommendations being made for disposal.

## **5. PUBLIC OPEN SPACE**

- 5.1 The Council's current policy is not to sell public open space, unless there are "extenuating circumstances."
- 5.2 In many instances, these land holdings, which have arisen from property developments, are subject to covenants restricting their use, future development, ownership, etc. This means that the Council would not be able to dispose of them without first having obtained a release from such restrictions.

## **6. CONSULTATION**

- 6.1 Once an asset has been identified for disposal, the following consultations will be carried out:

### **Planning**

- 6.2 The Council's Planning Department will be consulted at an early stage in the site identification process to establish in principle whether there are any alternative uses that the site may be suitable for (subject to planning permission being obtained) and whether there are any other planning issues that may affect the value of the property.
- 6.3 The appraisal of the subject site should always consider the maximum sale value that can be achieved. Should the site not be used for the use that would generate the maximum capital receipt, in straightforward cases and in full consultation with the Council's Planning Department, the Council should

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consider obtaining an outline planning consent for the maximum use value prior to the disposal of the property.

- 6.4 The submission of any planning application will be subject to formal Council approval prior to any application being made.

### **Legal**

- 6.5 The Council's Legal Department will be consulted to ensure that all legal issues relating to the asset or potential disposal are fully considered. The effect of such advice may have an effect on market value, the future use of the asset and the opportunity to dispose of assets in some instances.

### **Other Council Departments**

- 6.6 The Council's Environmental Health, Housing and Leisure Services Departments will be consulted, as well as the Council's Housing Strategy Manager. This is to ensure that any comments, service requirements and objections are considered in context to the consideration of any proposed disposal.

### **Council Members and Parish Councils**

- 6.7 Where a specific asset has been identified as being surplus and suitable for disposal, Local Ward Members and Parish Councils will be consulted requesting comments or objections to the disposal of land in principle.

### **Other consultations**

- 6.8 Will take place with other Statutory Authorities to undertake a detailed inspection to confirm whether there are any development constraints or services on site that will affect the disposal. Ground investigation works and desk top studies into previous land use history will also be carried out where appropriate.

### **Other Stakeholders**

- 6.9 If it is clear that more than one party may be interested in purchasing any asset, adjoining owners may also be contacted to determine the extent of any other interested purchasers.

### **Future restrictions on use**

- 6.10 Where consultations reveal that the Council would wish for the purchaser to only be able to use the land for a specific purpose in the future, the inclusion of a restriction or restrictive covenant within the conveyance may be considered. Any potential affect that such an inclusion may have on the capital receipt and future management issues will be considered.
- 6.11 In addition to this safeguard being in place, current planning policy may also reveal that certain uses would not be permitted under the Council's Planning Policy, which may be subject to change in the future.

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### **Final Decision**

- 6.12 The final decision on any disposal rests with the Council's Finance and Management Committee. The Committee will consider each case on its own merits taking into account the technical details involved in each case and responses from the various consultees.
- 6.13 No actual disposal will take place until the Finance and Management Committee approve it in full.

### **7. METHOD OF DISPOSAL**

- 7.1 Any report taken to Committee recommending disposal will also outline the most appropriate form of disposal method with justification of why that method is best. The method may include:
- Auction
  - Private treaty
  - Tender
- 7.2 The report will also recommend a marketing strategy, either in house or by using an external party. All associated costs of disposal will be offset against the capital receipt obtained.
- 7.3 Unless a special purchaser has been identified that is prepared to pay a premium for the site over and above market value or in the furtherance of achieving one or more of the Council's Corporate objectives (subject to compliance with the Council's legal requirements), all potential purchasers are to be given an opportunity to tender or submit an offer as part of the marketing process.
- 7.4 In deciding the most appropriate disposal method, each case will be judged on its own merits against prevailing market conditions and other factors outlined in this policy. In all cases, procedure should ensure fairness and transparency. The final decision will be the responsibility of the Finance and Management Committee.

### **Timing**

- 7.5 The timing of any marketing campaign will need to be considered against the Council's budgetary requirements and the current state of the market. Before recommending the most appropriate disposal method, the following issues will be considered:
- The potential for the value of the site to increase in the future.
  - The potential for the Council to benefit from a merger of interests with a third party and exposure of the site to the market following the completion of such an exercise.
  - Regional planning guidance and the local plan process.
  - Current market conditions.

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- 7.6 The Council's Financial Management and Procedural Rules will be followed where appropriate in all methods of disposal.

### **8. OTHER CONSIDERATIONS**

#### **Ransom strips**

- 8.1 Some properties and pieces of land may have inflated values due to their impact on surrounding property values and the inability for surrounding land to be developed unless they are acquired. An example of this would be a strip of land that would provide the only means of access to a larger development site at the rear.
- 8.2 Without that strip of land and suitable access, planning consent to enable development may not be possible. In such instances, the Council may have an opportunity to either dispose of the land at a price above market value or enter into a partnership with the developer of the adjoining land in exchange for a more favourable monetary consideration than market value.
- 8.3 The effect of this will be considered when the land is valued and will be reported to Committee with recommendations as to how the land is disposed of to ensure best value is achieved.

#### **The effect of a special purchaser**

- 8.4 A special purchaser may be defined as one to whom the property or the interest in the property has a particular attraction which the market in general would not have. Examples of such a purchaser may include the owner of an interest in land who has or could have a particular relationship with the property concerned (i.e. the owner of an adjacent property) or someone who has another legal interest in the property (i.e. superior landlord or tenant).
- 8.5 Situations may arise also whereby a developer could benefit from acquiring the Council's property or interest in property, because ownership would enable it to create additional value by using it to form part of a much wider development.
- 8.6 In such instances, these special purchasers may be prepared to pay more than market value and a full appraisal should be conducted to establish what potential might exist for the Council to benefit from a share in the developer's venture.
- 8.7 The Council will need to demonstrate that, when considering costs, timeliness and risks to the transaction, that best value has been achieved for the taxpayer. The Council may also wish to consider putting in place measures that will enable it to share in any subsequent increases in development value in order to satisfy the requirements of public accountability.

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### **Disposing of Land at Less than Best Consideration**

- 8.8 However, there may also be instances where in the interests of the greater viability and vitality of the area, there may be a case for disposing of an asset at less than market value.
- 8.9 This may be the case where it would mean that derelict or underused land in prominent locations can be redeveloped so that the attractiveness of the area to other businesses, for instance, is not undermined.

### **Overage or claw back provisions**

- 8.10 In certain cases, the implementation of a clause within the transaction documentation may be considered necessary to ensure that the Council can benefit from subsequent increases in the development value of any land or property in the future.

### **Other statutory consents required**

- 8.11 Committee approval for disposal of any asset will be on a "subject to contract basis." This will not guarantee that planning permission or other consents will be granted, which are subject to completely separate regimes and Committee processes.

### **Guidance on Property Valuation**

- 8.12 RICS Appraisal and Valuation Standards (otherwise known as The Red Book), which is produced by the Royal Institution of Chartered Surveyors (RICS), provide formal guidance on property valuation. This imposes mandatory standards on chartered surveyors and members of other professional bodies that adopt it.

### **Legislation**

- 8.13 The impact of legislation surrounding issues such as accessibility, asbestos, health and safety, etc. will also be considered, where appropriate.

### **Progressing the Disposal**

- 8.14 Upon the receipt of approval by Committee, the Council's Legal Services Unit will be instructed to deal with the disposal, subject to the prior receipt of any other required consent that may be required.
- 8.15 Once the disposal transaction has been completed, Members and the internal asset owning department will be informed as appropriate, as well as the Council's Business Rates Unit and Grounds Maintenance Unit (if appropriate).
- 8.16 The Council's property records will also be updated.

