

1. General

- 1.1 These Rules will be followed when dealing with all acquisitions and disposals of Land, whether freehold, leasehold or by grant of a tenancy, except as provided below.
- 1.2 In these Procedure Rules “Land” shall mean all and any interest in land (including buildings), or any right in, on, over or under land.
- 1.3 These Rules apply to:
- (a) The freehold acquisition or disposal of Land;
 - (b) The appropriation of Land in accordance with paragraphs 4.5 and 4.6 below;
 - (c) The grant of a lease or tenancy exceeding 7 years in duration; and
 - (d) The taking of a lease or tenancy of any duration.
- 1.4 These Procedure Rules do not apply:
- (a) To disposals under the Leasehold Reform Act 1967, Leasehold Reform Housing and Urban Development Act 1993, Commonhold and Leasehold Reform Act 2002.
 - (b) To the renewal or restructuring of an existing lease or tenancy.
 - (c) Where Cabinet decides they will not apply.
- 1.5 Note: Where there is any conflict between these Procedure Rules and s.123 LGA 1972 or any other mandatory statutory provision, the relevant statutory provision must be followed.

2 Acquisitions, Disposals and Leases – Authority

In accordance with the Scheme of Delegation as set out in Part 3.1 of the Constitution, and subject to paragraph 5.4 below, the authority for approving disposals, acquisitions and leases shall be vested in:

- (a) Responsible Officers in relation to:
 - (i) Acquisition of freehold or leasehold property (where a premium only is payable) up to £1,000,000;
 - (ii) Acquisition of freehold or leasehold property where a rent is payable – up to £250,000 per annum;
 - (iii) Disposal of freehold property or leasehold property (where a premium only is payable) up to £1,000,000;
 - (iv) Disposal of leasehold property where a rent is payable – up to

£250,000 per annum.

- (b) In cases where the consideration is not straightforward such as involving varying rents or a combination of rental and premium the Head of Property shall assess the total capital value of the transaction to establish if such value exceeds the limits of this delegation.
- (c) Subject to any limitations imposed by the Leader, all Responsible Officers may authorise another Officer to exercise their delegated functions provided that the Responsible Officer has line management responsibility for that Officer. In those circumstances it is expected that a written “chain of authority” will be maintained.

3 Definition of Surplus/Under-used Land

3.1 Identification of surplus/under-used Land is the responsibility of individual Departments. The Head of Service should keep all Land holdings under review and where the Land is deemed surplus or under-used Land shall prepare a report to be approved by Head of Property Services in consultation with the relevant Cabinet Member which states that the Land is surplus to requirements or under-used Land.

3.2 In making a decision to determine whether Land is surplus, the Head of Service should consider if:

- (a) The Land is currently required to deliver their operational functions.
- (b) There is a clearly evidenced plan to use the Land to deliver their future operational functions.
- (c) The Land is held for commercial purposes and/or is integral to the continuity of service delivery.
- (d) The Land is vital for business contingency, in line with the Departments strategic and operational plans.

If Land satisfies any of the above criteria it is unlikely to be surplus.

3.3 Land may be deemed to be surplus to the Council’s requirements if:

- (a) It is not used for current delivery or required for future delivery of the Departments operational functions and policies.
- (b) The Department has no formal approved strategy and timetable for bringing the Land back into permanent full operational use.
- (c) The Land makes no contribution to the delivery of;
 - (ii) a Council’s service, or

- (iii) a strategic, financial, corporate objective.
- (d) An alternative site or method of service delivery i.e. Community Asset Transfer (Appendix 2) has been identified which would be more cost effective in delivering the Departments service.
- (e) It will not contribute to the provision of a sustainable pattern of development.

3.4 Land is deemed to be under-used if:

- (a) Part of the Land is vacant and is likely to remain vacant for the foreseeable future; or
- (b) The income being generated from the Land is consistently below that which could be achieved from:
 - (i) Disposing of the Land and investing the income;
 - (ii) An alternative use;
 - (iii) Intensifying the existing use; or
- (c) Only part of the Land is used for service delivery and this could be delivered from an alternative site or by alternative methods.

4 Land Identification

4.1 Land for possible disposal may be identified in the following ways:

- (e) Through the Asset review activity undertaken by the Head of Property Services
- (f) Through a structured corporate property portfolio review or area review;
- (g) Through Service Units declaring specific sites as being surplus to requirements;
- (h) Through direct property enquiries to the Council;
- (i) Where an under-used asset is generating an income, a cost/benefit analysis has been carried out to establish whether it is in the Council's best interests to dispose of the site.

4.2 Once potential Land has been identified the Head of Property Services will undertake an initial feasibility test to establish if the Land could be disposed of to generate a capital receipt for the general fund/HRA.

- 4.3 If the initial feasibility test indicates it is possible then there will be further consultation with Planning and Highways colleagues and with Legal Services to generate a Report on Title to establish if there are any legal constraints, including but not limited to Title restrictions and legislative restrictions e.g. disposal of public open space and school playing fields.
- 4.4 Subject to these investigations and if the Land has been declared surplus or underutilised for operational purposes by a service department, then there will be discussion between the appropriate Head of Service and the Head of Property Services, for an appropriate handover for all relevant premises budgets to enable the ongoing management of the asset up to disposal and then the appropriate saving being returned to the Corporate Centre. At that time, the Head of Property Services will also discuss with the Chief Legal Officer whether a formal appropriation is required or desirable prior to disposal.
- 4.5 The Head of Property Services and Head of Housing and Public Protection (in the case of Land held under the HRA) shall have delegated authority to appropriate Land for any purpose under the provisions of Section 122 of the Local Government Act 1972 or Section 232 of The Town and Country Planning Act 1990, subject to any statutory limitations and to the written agreement of the relevant Director or Head of Service who has responsibility for the Land prior to its appropriation
- 4.6 Where the Land is HRA land consideration must be given when appropriating such Land to the Local Government and Housing Act 1989 (S74 and Sch 4) and whether such Land may be appropriated pursuant to the general powers under Section 122 of the Local Government Act 1972. Further, that consideration is given to whether consent of the Secretary of State or the Welsh Government is required for the disposal of such Land pursuant to S32 or S43 of the Housing Act 1985 (as amended).

5 Disposals - Best Consideration

- 5.1 The general power of disposal is section 123 of the Local Government Act 1972 which gives a local authority the power to dispose of land held by it in any manner it wishes provided that the local authority achieves the best consideration that can reasonably be obtained except where the disposal is for a short tenancy (the grant of a term not exceeding seven years or the assignment of a term which has not more than seven years to run) or the local authority has the consent of the Secretary of State or the Welsh Ministers.
- 5.2 The Secretary of State and the Welsh Ministers have issued a general consent for disposals of land under section 123 for less than best consideration. This allows a local authority to dispose of land for less than best consideration if it considers that the disposal will contribute to the promotion or improvement of the economic, social or environmental well-being of its area and the extent of the undervalue is no more than £2m.

- 5.3 Subject to the exemptions set out in paragraph 5.1, there is a legal obligation as noted above placed upon the Council to achieve the best consideration reasonably obtainable for land. Best consideration does not necessarily mean the highest financial premium and other matters of commercial or monetary value (such as an overage provision) can be taken into account when assessing best consideration but caution will need to be exercised and a full review of relevant case law will need to be undertaken. An alternative may be to utilise the General Disposal Consent above. It is also possible to seek approval from Welsh Government to a particular transaction.
- 5.4 Any disposal at undervalue other than a disposal in accordance with a Concessionary Lettings Policy (Appendix 1) shall require Cabinet approval and shall be set out in a Cabinet Report and include the following:
- (a) the policy background supporting the proposal;
 - (b) the potential consequences of not approving the disposal;
 - (c) whether the disposal needs the consent of Welsh Government or falls within the General Disposal Consent;
 - (d) whether it confers any commercial advantage on the prospective purchaser;
 - (e) details of the sale price and any relevant terms of the disposal.
- 5.5 Any disposal of public open space shall comply with the requirements of Section 123 of the Local Government Act 1972.
- 5.6 Any disposal of playing fields shall comply with the requirements of the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Regulations 2015. Any disposal of allotments shall comply with the Allotments Act 1925.
- 5.7 Where a disposal has the potential (a) to confer an economic advantage that is not available on market terms and (b) to affect international trade, it must comply with the UK-EU Trade and Cooperation Agreement, World Trade Organisation agreements and/or other Free Trade Agreements as applicable.
- 5.8 Where a disposal is or is part of a public contract within the scope of the Public Contracts Regulations 2015, the requirements of those Regulations shall be complied with.
- 5.9 It is the Head of Property Services who will be providing the best consideration certification but if there are situations where officers wish to consider a lower financial bid in terms of overall best consideration, the Chief Legal Officer must be consulted and the appropriate legal implications advice given.
- 5.10 In any dealings with Land, proper regard will be had to professional advice from the Head of Property Services and/or the Chief Legal Officer (as appropriate) at all relevant stages during the process.
- 5.11 No disposal shall progress except in consultation with the Head of Property Services.
- 5.12 Procedures will be followed precisely so that probity and accountability can be demonstrated and value for money achieved. Further and in order to provide for transparency and a proper audit trail, every procedure step or decision taken

under these rules must be recorded in writing and be available for inspection at any time.

6 Invitation of Offers - Disposal of Land

- 6.1 The Head of Property Services will determine a marketing strategy where appropriate, either in-house or through an appropriate agent. Where possible, costs (both surveyors and legal) will be recovered from the eventual purchaser.
- 6.2 The timing of any marketing/disposals will need to be considered against the background of the Council's budgetary requirements, together with the current state of the market. Before recommending that a disposal is to proceed, the following factors are to be taken into consideration.
- (a) Current market conditions;
 - (b) Potential for the site value to increase in the future;
 - (c) Current and proposed Development Plans;
 - (d) Any legal constraints or factors.
- 6.3 In any disposals of Land which do not fall within the delegated authority of Responsible Officers (as defined in this Constitution) and have to be reported to Cabinet, the Responsible Officers shall consult with the relevant Electoral Ward Members and any responses received from Electoral Ward Members shall be reported to Cabinet. On any proposed disposals or acquisitions falling within the delegated authority of the Responsible Officers, the officers shall consult with Electoral Ward Members where the proposal under consideration would involve a change of use in the Land requiring planning consent. Any consultation required to be carried out under this paragraph shall be in writing (letter or e-mail) and any Members consulted shall be given 10 working days in which to respond. If there is no response within this timescale it shall be assumed that the member has no comments to make. Responsible officers shall take any consultation responses received into account in making their decision.
- 6.4 No offers for the disposal of Land will be invited except with the prior approval of the Head of Property Services.
- 6.5 The Head of Property Services will determine whether disposals will be made by way of a sealed offer, private treaty or auction and such determination will be made as to the most appropriate method of disposal.
- 6.6 If there has been no marketing of the Land or only one person has indicated an interest to purchase, the Council will not proceed to a disposal of the Land by private treaty unless the Head of Property Services is satisfied that the disposal would be in accordance with the applicable statutory requirements. In the case of a disposal under s123 of the Local Government Act 1972 the Head of Property Services will need to be satisfied that the disposal would either (i) be for the best consideration that can reasonably be obtained, (ii) meet the requirements of a general or specific consent granted by the Welsh Ministers, or (iii) be for a short tenancy (as defined). In considering this, the Head of Property Services may have regard to the following matters (among others):

- (a) The robustness of the valuation evidence.
- (b) The likely market for the Land now and in the future given its relevant physical, legal or other characteristics.
- (c) The potential for the Land to be transferred to and used by a community council or Third Sector/Community Group in accordance with the Community Asset Transfer Policy set out in Appendix 2.
- (d) The responses (if any) received by the Council following reasonable marketing of the Land.
- (e) Whether the disposal would achieve a corporate objective or contribute to the promotion or improvement of the economic, social or environmental wellbeing of people or communities in its area (taking into account all considerations including subsidy controls).

6.7 Where Land is to be the subject of a marketing exercise The Head of Property Services will decide upon the method of advertisement as he thinks appropriate.

6.8 Any advert will, generally (but with a general discretion in favour of the Head of Property Services), set out:

- (a) A description of the Land;
- (b) The terms and conditions upon which offers are to be submitted;
- (c) Whether further particulars may be obtained;
- (d) The last date and time when offers will be received;
- (e) The mechanism and form of receipt and consideration of offers.

7 Evaluation and Acceptance of Offers

7.1 The final offer that represents the best consideration obtainable by the Council will be selected for acceptance (save for any utilisation of any relevant general disposal consent or reference to Welsh Government in respect of any proposed disposal ~~at~~ under value).

7.2 If there is to be a sale by auction, a designated employee may be authorised under the Scheme of Delegation for that particular sale. This authorisation will extend to making a decision on reserve price and to sign a contract at the auction providing that this accords with the general principles of these Procedures Rules.

7.3 Nothing in these rules binds the Council to accept any offer.

8 Completion of Contracts

8.1 All contracts and transactions for disposals of Land (and for the avoidance of doubt this shall include any letting licence lease or hire agreement notwithstanding that such disposal is to a charitable organisation or one in which the Council has a close working relationship) will be in writing and executed in accordance with Article 14 of the Constitution and as may be required in law to give effect to the transaction.

8.2 Only the Head of Property Services may issue instructions to the Chief Legal Officer for the preparation and completion of documentation in respect of any transaction in Land.

8.3 Every contract will comply with relevant UK, EU, Welsh Government Law, Directives and any appropriate guidance

9 Retention of Documents

9.1 Deeds, title documents, leases, charges on land, guarantees and documents of a similar nature may only be destroyed with the consent of the Chief Legal Officer.

9.2 Details of all offers will be retained for a period of six years.

10 Acquisition of Property

10.1 The general power of acquisition of land by agreement is section 120 of the Local Government Act 1972 which gives a local authority the power to acquire by agreement any land, whether situated inside or outside their area, for the purposes of any of their functions under the Local Government Act 1972 or any other enactment or for the benefit, improvement or development of their area.

10.2 A local authority also has the power to acquire land compulsory in accordance with section 121 of the Local Government Act 1972 or by appropriation in accordance with section 122 of the Local Government Act 1972.

10.3 On each occasion that the Council wishes to acquire Land the relevant Responsible Officer will instruct the Head of Property Services to negotiate, settle or confirm the terms of such acquisition after taking into account any relevant statutory provisions or guidance and any advice from the Chief Legal Officer.

10.4 Once terms are finalised, the Head of Property Services will instruct the Chief Legal Officer in writing to proceed with an acquisition of the Land including for avoidance of doubt the utilisation of compulsory purchase powers.

10.5 The terms of such acquisition will be in accordance with the market value of the interest to be acquired and the body of statute and case law together known as the "compensation code" and in accordance with the principles of best value.

10.6 The terms of acquisition may only be approved in writing by the Head of Property Services save for acquisition by auction or sealed offer wherein a designated employee may be authorised in writing by the Head of Property Services for that particular acquisition to make an offer that accords with the general principles of these Procedure Rules.

11 Miscellaneous

11.1 In considering and determining all matters under these Rules the Head of Property Services shall have regard to taxation law and practice and in particular to VAT; further the Head of Property Services will be expected to seek the advice of the Chief Legal Officer and/or the Chief Finance Officer (as appropriate) and shall have a duty to so consult prior to any disposal.

11.2 In the absence for whatever reason of the Head of Property Services these Rules shall be read in conjunction with the Scheme of Delegation set out in Part 3 of the Constitution.

Appendix 1 - Concessionary Lettings Policy

Background

1. The Council has in the past, leased land and buildings at less than full market value. Often these disposals have been to the trustees of leisure, recreational or sports clubs and societies who have limited resources. In addition to rent reviews and lease renewals which occur with such previous lettings, a number of new requests are received from similar organisations for disposals at less than market value. The Land Transaction Procedure Rules (LTPR) set out the guidance / rules which the Head of Property Services should normally follow.
2. In addition to the LTPR the Local Government Act 1972 (Section 123) provides that a Council should not dispose of land other than at the best consideration reasonably obtainable without the specific consent of the Welsh Government or the application of the General Disposal Consent. This applies to leases exceeding 7 years in duration.
3. The General Disposal Consent (Wales) 2003 Order came into force on 31 December 2003. This Order removed the former requirement for the Council to seek a specific consent for a disposal at an undervalue where the Council considers that the disposal is in the interests of the economic, social or environmental well-being of the whole or part of its area, or any or all persons resident or present in its area and the undervalue is up to and including £2,000,000 or less.
4. Under Part 3 of the Council's Constitution a Responsible Officer has delegated authority to exercise functions for which he or she has budgetary, managerial, operational or statutory authority provided that the Cabinet does not itself make a decision in a particular case.
5. The Audit Commissions Report on Local Authority Property Management highlighted the need for any such concessionary disposals to be identified and the amount of the concession to be quantified. There is also a practical need for all such disposals to be identified and recorded in this way, if consistency between the amounts of concessions granted is to be maintained. In view of the current financial pressures faced by the Council it is appropriate to consider this financial burden on the Council and in addition a periodic review of these allowances should be undertaken as a matter of good management practice.

Application of Policy

1. It is recommended that the following approach is adopted as a consistent basis for implementing the policy framework described above subject to the LTPR that:
 - (a) The full market value of the interest to be leased should be assessed. This could occur at a rent review, at a lease renewal or at the proposed granting of a new tenancy. The market rent would be assessed in the usual way taking account of the nature of the property, its current state, the interest which is to be created with the obligations to be carried out by both parties and any other relevant factors;
 - (b) The tenant who is seeking a reduction from that market value should be asked to identify all the relevant circumstances in support of his case,

including alignment with the Council's corporate objectives, accounts and financial evidence relating to the activity to be undertaken either on or relating to the premises. This would also require a declaration of any grant or assistance which has been obtained from the Council or any other party;

- (c) The Council shall allow a rent concession only when it can be clearly demonstrated that such grant is necessary for the organisation to continue to deliver its service. There shall be an expectation that grant recipients will develop a financial strategy steadily to diminish the level of grant required. This strategy must be demonstrated as part of the grant application;
- (d) The level of rent grant should be the minimum necessary to ensure continuity of the operation and if possible should not exceed 75% of the rental value of the premises. The precise level shall be determined by careful analysis of the current financial position and financial strategy of the organisation;
- (e) Ideally each payment of rent grant shall be given explicitly. The mechanism for this will be to charge the full rental value for the premises and separately make an explicit grant payment to that organisation;
- (f) Decisions whether to grant rent concessions for leases of less than 7 years and, if so, at what level, will be undertaken by the relevant operational Head of Service and the Head of Property Services, after consultation with the relevant Cabinet or Council Members. Ultimately however under the LTPR, it is the responsibility of the Head of Property Services to determine whether a concession should be granted.