

Strategic Property

Disposal Policy (Property & Land)

**Bolton
Council**



“ We will promote a high quality physical environment and refreshed identity to Bolton centres

Contents

1.	Introduction	1
2.	Purpose	2
3.	Definitions	3
4.	Policy Approach and Process	4-11
5.	Implementation and Review	12

1.

Introduction

As part of the Council's Strategic Asset Management Plan (SAMP), land and property assets held by the council will be appraised and considered for disposal and potentially surplus to requirements.

“ To enable a consistent, transparent and professional approach in how we identify surplus land and property, we have developed a Disposal Policy that will form an appendix to the SAMP and be adopted by all stakeholders and partners across the council.

This policy supports and contributes to achieving the council's corporate strategic objectives

Bolton Council owns an extensive land and property portfolio and recognises that through efficient and effective management and disposal, this valuable resource can support the Council's priorities and contribute to:

This policy sets out the core principles to be applied when considering land or property for disposal. Whilst the primary focus of this document is to provide key policy guidance for officers, elected members, businesses and the general public, it is important to note that each individual case will be assessed on its own merits and nothing in this document binds the Council into any particular course of action when dealing with the portfolio.

Improving the appearance of the Borough	Improving service to customers	A well managed property and land portfolio
Strengthens the council's financial position	Delivery of the Strategic Asset Management Plans	The Council's commitment to achieving a zero-carbon, energy efficient property portfolio.

2.

Purpose

The Disposal policy is a key enabler as part of the Council's Strategic Asset Management Plan (SAMP), ensuring property assets held by the council will be appraised and considered for disposal and potentially surplus to requirements.

Using the following policy principles

- The asset no longer makes a positive contribution to delivery of council services
- The revenue and capital demands to maintain far outweigh any income, financial or policy benefits
- Has no potential for future strategic regeneration and/or redevelopment purposes
- An alternative site can provide a more cost effective and efficient service
- No adopted and resourced Council plan/policy/strategy, that could bring the asset into use in foreseeable future
- The property or land is surplus to operational requirements and if sold would therefore contribute to the Council's financial sustainability
- No potential advantageous shared use with partners (One Public estate/CAT)
- The asset does not contribute towards the Council's commitment to delivering and maintaining a zero-carbon, energy efficient estate.

☞ The policy applies to all stakeholders and partners across the council, but is driven and delivered by the Councils Corporate Landlord Model sitting within the Directorate of Place, but adopted and endorsed by all Directorates.



3.

Definitions

This policy provides an appendix to the councils SAMP – Strategic Asset Management Framework.

“ One Public Estate – is a programme that promotes working together across the public sector and taking a strategic approach to asset management.

The SAMP provides a 5-year framework of the overall approach to property and land towards a set of five objectives (Corporate Landlord, Estates optimisation, Economic regeneration, partnerships and Housing delivery).

The adoption of RICS and CIPFA Public Sector Asset Management principles have been incorporated within this policy, to provide an objective reference.

RICS Valuation – Professional Standards 2019 UK VPGA 17 – Local authority disposal for less than best consideration. (updated Jan 2019) is the current professional guidance the council/nominated partners are required to use in determining objective land and property values.



4.

Policy Approach and Process

“ One Public Estate – is a programme that promotes working together across the public sector and taking a strategic approach to asset management.

4.1 Best Consideration

Under the Local Government Act 1972 (as amended) the Council is obliged to obtain the best consideration that can reasonably be obtained when disposing of land and property. Best consideration is defined as the unrestricted market value taking into account any additional amount which might be obtained from a purchaser with a special interest. Unrestricted market value generally means the best price obtainable where the principle aim is to maximise the value of the receipt. The unrestricted value should take account of whatever uses might be permitted by the Local Planning Authority.

Consideration is not limited to the purchase price; it may also include disposal terms which have an identifiable commercial value to the Council but this should be converted to a capital value for the purpose of establishing what the best consideration is.

Where the Council is disposing of key strategic development land, it will evaluate the regeneration benefits arising from the disposal together with the financial considerations. The Council will also take account of the financial strength of the proposed purchaser and the purchaser's commitment to a proposed scheme.

The Local Government Act 1972 General Disposal Consent (England) 2003 allows the Council to dispose of land and property which it considers will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the area at less than best consideration, providing the undervalue does not exceed £2m. For proposed transactions where the 'undervalue' will exceed the £2m threshold specific consent from the Secretary of State will be required.

Disposals undertaken through the Council's Asset Transfer Scheme will generally be at less than best consideration utilising the General Consents and will be subject to the requirements of the Scheme. In circumstances where the Council is mindful to dispose at an under value it will have regard to the following:



- Circular 06/03: Local Government Act 1972 General Disposal Consent (England) 2003 and General Housing Consents 2005 published by the Department of Communities and Local Government (DCLG), particular regard being had to the Technical Appendix which explains the issues outlined earlier in more extensive detail
- European Commission Communication on State Aid elements in sales of land and buildings by public authorities (97/C 209/03) – also known as the ‘State Aid Rules’.
- RICS Valuation – Professional Standards 2019 UK VPGA 17 – Local authority disposal for less than best consideration. (updated Jan 2019)

In determining whether or not to dispose of land for less than best consideration, the Council will ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue in accordance with the Technical Appendix. Any decision to sell at an undervalue will be made by the Executive Cabinet Member.

4.2 Methods of Disposal

All land and property assets which are released for disposal will be fully marketed except for disposals to nominated and special purchasers (see below), which will be sold by private treaty negotiation. Disposal of land and property can be undertaken in a number of ways and it is for the Council to determine the most appropriate sales mechanism for their asset, but potential approaches include:

- **Formal Tender** – where the sale is publicly advertised, and tenders submitted by a given date.
- **Informal or Negotiated Tender** – where informal tenders are invited by a given date subject to contract. Negotiations may continue after tenders are received, with the possibility that different bidders may compete to offer the most advantageous terms. This approach enables the seller to continue to negotiate after the closing date for tenders to ensure the best possible terms and outcomes.

- **Public Auction** – where land is sold through an open auction, available to anyone. Sales will be publicly advertised in advance. Auctions have the advantage of being open, competitive and allow for transactions to be completed quickly.
- **Private sale** – where the sale of land is negotiated with one or a small number of potential buyers at a price agreed between the parties. Private sale has the advantage of being straightforward but is likely to be appropriate only in certain circumstances (for example for smaller lots of land, where sitting tenants have rights to purchase and also farm tenants, etc.).
- **Disposals to Nominated Purchasers** – Disposals to nominated purchasers will be considered by the Council where this meets an identified regeneration, social or community need. All ‘off market’ disposals to nominated purchasers will be subject to an independent external valuation to determine best consideration.

- **Disposals to Special Purchasers** – The Council may dispose to purchasers to whom a particular asset has special value because of advantages arising from its ownership that would not be available to general purchasers in the open market. Such ‘special purchasers will include adjoining owners and parties with an interest in the property where a disposal will release additional, or marriage value, to be shared with the Council.
- **Exchange of Land** – A transaction involving Council owned land in exchange with another landowner. The land acquired by the Council will meet at least one of its corporate objectives and be commercially equal in worth to the land exchanged, either from the value of land or additional payment at exchange.

4.3 Disposal Terms

Wherever possible, the Council will endeavor to keep land and property disposals simple and cost effective for both parties. For certain types of disposals, it may be necessary for the Council to impose terms which are considered necessary to protect the Council’s interests. Such terms may include:

- **Development Obligations** – The Council generally will only dispose of strategic development land for identified development proposals. Where appropriate, the Council will impose obligations to commence and complete the proposed development within a reasonable timescale backed up with an option for the Council to re purchase the land.

- **Development Option Agreements** – Development agreements will be used for the disposal of strategic development sites where the principal aim of the disposal is to facilitate regeneration benefits from a particular scheme.
- **Overage and claw back** – Where appropriate, disposals will include provisions for securing a share of future enhanced values through the use of overage and claw back clauses.



4.4 Disposal and Planning permission

- **Outline planning consent** – Assessing whether an application for a change of planning use might have the potential to increase the value of the surplus land/property. If the change of use is obtained by the Council, it removes an element of risk and uncertainty for potential buyers, which may lead to an increase in the purchase price they are willing to pay.
- Prior to the marketing of land and property, the Council may seek planning permissions for alternative uses where this will help maximise value and where it is cost effective and expedient to do so.
- **Release/variation of covenants** – The Council has the benefit of restrictive covenants placed on previous freehold and leasehold disposals. These covenants usually restrict the use to which land and property can be put, although they could also relate to other forms of restriction.

- Any request to release or modify covenants will be considered having regard to the original purpose of the covenant and its current relevance. Where the Council is mindful to agree to a release or other modification, it will seek a reasonable commercial return by way of compensation if the release or modification is considered to have a value, otherwise just fee recovery.
- **Public Open Space and Common Land** – The disposal of land which is, or forms part of an area of Public Open Space or Common Land (excludes amenity land), is subject to special rules and procedures. Before disposing of such areas, the Council is obliged to publish the intention to dispose and consider any representations which are subsequently received. The provisions regarding the disposal of Common Land require consent from the Secretary of State and replacement land to be made available where the area of land to be sold exceeds 200m².

- **Disposal of School Playing Fields** – Where the Council wishes to dispose of land forming part of a school playing field it will be necessary, in all but a minority of cases (area less than 50m²) to seek consent from the Secretary of State. The Department for Education will usually only agree to the sale of school playing fields if the sports and curriculum needs of schools and neighbouring schools can continue to be met. The Secretary of State expects Local Authorities to have first investigated and exhausted all other possible sources of funding before considering the sale of school playing fields. Even if the school is closed it is extremely difficult to secure consent to dispose of playing field land.
- **Disposal of Former School Sites and Former School Caretaker's Houses** – Where the Council wishes to dispose of a former school site it will be necessary to seek consent from the Secretary of State, if the closure was in the last eight years.
- There are various criteria to be met, including having advertised the school as being available for use as a free school.

- Vacant caretaker's houses may only be sold with the consent of the Secretary of State.
- Easements and Wayleaves etc – The Council will not grant any new easements, private rights of way or privileges over Council owned land unless this is necessary to protect or promote the long term interests of the Council.
- Any existing rights will remain until such time as the subject land may be released for development whereupon the land will be sold subject to the existing rights.
- Where permitted under the terms of the agreement, the Council will undertake a review of any payments due to the Council.
- The Council will continue to grant easements and wayleaves to statutory undertakers who have compulsory powers and rights to requisition services.

4.5 Consultation

Consultation Approach – Local ward members will be informed in the following circumstances: -

- Before disposing of surplus land or property and the release or variation of restrictive covenants
- As part of the process for advertising the disposal of 'public open space'
- Before submitting planning applications on Council owned land
- Before a report goes to Cabinet or Cabinet Committee – Assets on land and property within their Ward

Where local ward members are to be informed, they will be given at least 20 working days to respond and all comments whether in support or objection to the proposal will be included in the report to the decision making body.

Officers of the council will need to consult with local ward members on any proposals within their ward area.

4.6. Decision making and Delegated Authority

Decision making – The Council's Strategic Asset Management Plan (SAMP) provides a framework for supporting the decision making process specifically in the key areas of Estates optimisation, Economic regeneration and Housing delivery. The Council will regularly review and appraise its land and property assets, consult over its findings and present recommendations for review through its current delegations and governance arrangements.

These arrangements provide that all proposed sale and disengagement recommendations are initially reviewed by Corporate Property/Asset Management, Legal and Finance officers before seeking the Council's formal authority to dispose of an interest.



Delegated Authority – The following points are taken from Part 5, Section 5: Powers to the Director of Place, Assistant Director for Economic Development and Regeneration and other officers where specified, relating to Corporate Property Matters.

- Authority to conduct preliminary negotiations for the acquisition or disposal of any interest in land and or premises without committing the Council at the request of a Chief Officer, subject to a report being presented to the appropriate Executive Cabinet Member.
- Authority to dispose of minor holdings of land and/or premises save for land held on trust, which is surplus to the requirements of the Council up to a maximum of £100,000 total (in any one sale) but exclusive of fees.
- Authority to terminate leases, licenses and tenancies of business premises or land in Council ownership, and to take all necessary action to recover possession of the premises/land.

- Authority to serve the appropriate notices to terminate tenancies under Landlord and Tenant Act 1954 where vacant possession of premises and or land is required by the Council for a scheme previously approved by the Council or the appropriate Executive Cabinet Member and to take all necessary action to recover possession of the premises/land and authority to pay the appropriate statutory compensation.

*** The most current scheme of delegation can be found on the council's website ***

4.7 Fee Recovery

Where appropriate, the Council will seek to recover from third parties, its reasonable legal, surveying and administrative costs incurred in dealing with all matters involving the non-operational portfolio. The fee recovery will be on the basis of the agreed schedule of fees listed below.

Initial enquiries about the Council's land and property ownership will charge a nominal fee of £200 for any time and administration queries that don't proceed into a valid sale (although all of the council land and property holdings can be found on the council website).

Bolton Council Fee Schedule

Transaction Type	Legal	Estates
Auction	£1,500 out of which £500 is to be recovered from purchaser	£500 (Auctioneers fees to paid by purchaser in addition)
Freehold Land Disposal	Higher of 2% of sale price or if to be sold for nominal sum with overage and or future commitment to develop to be charged at agreed hourly rates as considered appropriate min fee in all cases of £500	3% of sale price subject to min fee of £750
Lease/agreement for lease	Higher of 2% of Premium payment subject to min fee £500 or hourly rate for complex cases and where there is no annual rent as considered appropriate	10% of first years annual rent subject to a min fee of £500
Option /Overage Agreement	Min fee of £500 in each case or hourly rate depending on complexity of agreement	£1,000

Costs are indicative guide only and subject to change



4.8 Commissioning

The Council may, from time to time, commission external consultants in connection with the disposal and acquisition of land and property. The Council will procure consultants in accordance with its CSF (Clear Sustainable Futures) contract and wherever possible will use locally based consultants in addition to utilising national and regional frameworks.

All commissions will be instructed to provide recommendations only back into the Council officers to consider and take forward via formal channels and in line with constitution and approvals governance.

5.

Implementation and review

All council disposal recommendations, decisions and sales will be done following the disposal policy criteria and principles

The policy will be circulated to all officers and partners managing the estate and will be available on the council's intranet and corporate landlord web page



Recommendations under delegated Authority, executive cabinet member or cabinet approval, will show adoption of policy principles for more consistent approach and professional rigour in substantiating recommendations and decisions

Feedback and learnings from the policy will be considered by the Corporate Landlord forums, Quarterly Asset Management committee and operational feedback from officers, Councillors and public

The policy will be reviewed in line with SAMP (2020- 2025)