

Disposals at Less Than Best Consideration Policy

1. Introduction

- 1.1 This document sets out the Council's policy on the disposal of Council owned land and property at less than best consideration reasonably obtainable. The policy relates to both granting of leases and the disposal of freehold and long leasehold interests.

2. Statutory Background

- 2.1 Section 123 of the Local Government Act 1972 states that Council's, except with the express consent of the Secretary of State, cannot dispose of land (other than by way of a short tenancy i.e. grant of a term not exceeding 7 years) for consideration less than best that can be reasonably obtained in the market.
- 2.2 The 1972 Act authorised the Secretary of State to issue General Disposal Consents covering particular types of cases. However, the General Disposal Consent (England) 2003 gives Local authorities greater freedom to dispose of any interest in land at less than best consideration without the specific consent of the Secretary of State. Under this General Disposal Consent LA's may consider disposal at a reduced price if 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 well being of its area.
- 2.3 There are a limited number of cases where the General Disposal Consent will not apply, housing land, open space land and land held under specific statutory powers that preclude a sale under the Local Government Act 1972.
- 2.4 The Council must be aware of the rules regarding state aid. Selling land at under value confers a benefit upon the purchaser and a Council vendor must not breach the European Commission rule which relate to the importance of avoiding distortion in competition.

- 2.5 The General Disposal Consent strongly advises Councils to obtain a realistic valuation on the under value in all cases. All values are to be reported in capital, not rental, terms i.e. discounted rent multiplied by the number of years granted.

3. Purpose of the Policy

- 3.1 A clear statement of the terms under which the Council will consider the sale of land and property at an under value is important because of the likely impact on the capital programme if capital receipts are lower than they would be if the asset was disposed of at best consideration.
- 3.2 The adoption of a policy will also provide the Council with a clear and consistent basis for making decisions about using its property assets as a means of achieving community objectives, recognising that best consideration in terms of asset value on disposal is not necessarily always measured simply in monetary terms.

4. Policy Scope

- 4.1 The Council will consider disposals at less than best consideration in accordance with the General Disposal Consent (England) 2003 where it is satisfied that the proposed use to which the property will be put assists in achieving the Council's objectives and in excess of that currently provided. Where possible assistance should be in the form of annual grants rather than discounts to value.
- 4.2 The Council must be satisfied that the promoting local body, voluntary group or association ("the body") is properly constituted and managed. This will be verified beforehand by appropriate investigation and audit.
- 4.3 The application for the Council to consider any concessions regarding value should be submitted to the Asset & Enterprise Committee and should include:

- a) An assessment as to the extent which the organization activities contribute towards achieving the Council's aims and objectives
 - b) Include a copy of the organisation's constitution and three years of accounts.
 - c) Set out the extent to which the organization is proactive in seeking to share and make available the assets to other
 - d) community and voluntary sector uses on a not for profit basis
 - e) A recommendation as to the length of any discount
 - f) Confirmation that the organization will submit its activities and accounts on an annual basis or when required by the Council.
- 4.4 The Council will consider the sale of a freehold at less than best consideration only in very exceptional circumstances.
- 4.5 The Council, where appropriate, will consider disposing of leasehold interests at less than best consideration:
- For up to 7 years.
 - For up to 25 years in circumstances where a significant investment is to made by the body which involves external funding and where the funding body requires a longer term.
 - In both cases the granting of the leases will only be made when the investment is approved by the Council and funding has been obtained to undertake the investment.
- 4.6 The Council will include in any lease an appropriate clause under which the asset will revert to the Council in the event of:
- a) Bankruptcy
 - b) Corruption
 - c) Failure to deliver benefits
 - d) Mutual annual break clauses
- 4.7 All leases will contain rent review provisions indicating that the market rent will be reviewed at appropriate intervals (annually at RPI)
- 4.8 All leases will include provisions to exclude any security of tenure rights

5. Implementation of the Policy

- 5.1 Due to the variety of arrangements currently in place in respect of the use of the Council's assets by voluntary and community organizations it will be necessary to phase in the policy as follows:-
- a) As soon as possible where lease arrangements have already expired
 - b) As and when existing lease is due to expire
 - c) When the Council agrees to enter into a new lease arrangement
6. All disposals will be conducted in accordance with the Council's Financial Standing Orders and Schemes of Delegations.