

Property Acquisition Fund Policy & Procedure

1. Introduction

- 1.1 The Council has set up a capital fund to be made available for the acquisition of land and property to generate a revenue stream to support and safeguard the services that the council provides.
- 1.2 The current policy for the acquisition of land & property is set in the Property Acquisition Policy. The policy and process lacks the flexibility particularly in terms of timescales and was drafted on the basis of acquisitions for operational reasons and that all negotiations would be by negotiation
- 1.3 Markets conditions continue to improve and there have been cases where vendors have brought properties to the market on the basis that they are to be sold very quickly.
- 1.4 The Council needs to review its acquisition process in the current dynamic market if it is to acquire attractive and appropriate properties. It is proposed that duly authorised officers be given the necessary authority to agree and complete the purchase of suitable properties subject to prior consultation and unanimous agreement of the Leader of the Council, Chair of Asset & Enterprise Committee, Acting Chief Executive/Chief Executive & s151 Officer.

2. Background

- 2.1 The property market stalled in the summer of 2007 however, in the last 2/3 years there has been a marked improvement both in the residential and commercial markets.
- 2.2 Land and Property can be acquired by private treaty (negotiation), auction, CPO and by way of partnership working, e.g. land swaps. Generally, properties are marketed by way of private treaty and terms and conditions are negotiable. The acquisition of any property is dependent upon the market and the willingness of owners to sell. Unless a vendor is a distressed seller then it may be difficult to persuade any particular vendor to sell. Therefore both a focussed and opportunistic approach needs to be adopted.

- 2.3 Vendors and their advisers take into account the price offered and also the ability of the prospective purchaser to agree, contract and complete. Offers that are submitted conditional upon certain requirements or require a prolonged approvals process, whether real or perceived, are likely to be discounted from consideration or at least considered to be less attractive than others without such conditions.
- 2.4 The proposed Property Acquisition Fund Policy & Procedure sets out a process that provides for a truncation of acquisition process in order to capture these opportunities and to allow for flexibility. It is recommended that the application of the process as set out in the Acquisitions Policy be suspended in specified circumstances to enable the Council to bid at auctions or to enter binding contracts at short notice where the purchase terms are particularly attractive or beneficial to the Council. The Policy will be used in exceptional situations and only after consultation with key Members and Officers.

3. Policy

- 3.1 It is proposed that the Strategic Asset Manager is authorised in appropriate circumstances to purchase on behalf of the Council land and property up to the maximum value of the Property Acquisition Fund subject to consultation and the unanimous agreement of the Leader of the Council, Chair of Assets & Enterprise, Chief Executive/Acting Chief Executive and the s151 Officer, subject to the following:
- Where such authorisation is exercised the property must be consistent with the aims and objectives of the Council and that the process contained within the adopted Acquisitions Policy can not be complied within the timescales stipulated by the vendor
 - Prior to authorisation a “Justification Certificate” for the purchase should be prepared.
 - The Justification Certificate shall comprise an appraisal of the open market capital and rental value, purchase costs, estimate of any repair/refurbishment costs and whole life cost analysis.
 - Any use of the delegated authority should be reported to the next available meetings of the Asset & Enterprise and Finance & Resources Committees and Council.

4. Considerations

4.1 When property is purchased at auction, there may be a buyer's commission to be paid

4.2 Stamp Duty Land Tax is payable on properties according to the statutory scale which is currently:

Purchase price/lease premium or transfer value	SDLT rate
<£125,000	0%
£125,000 - <£250,000	1%
£250,000 - <£500,000	3%
£500,000 - <£1,000,000	4%
£1,000,000 - <£2,000,000	5%
>£2,000,000	7%
>£2,000,000 (purchased by certain persons, including corporate bodies)	15%

4.3 In addition certain vendors may opt to tax (i.e. impose VAT) on the sale price. This cost will be in addition to the purchase price. Land registration fees are also payable to the Land Registry to register the completion of the acquisition on a prescribed scale based on the value of the relevant property. Search fees and legal fees may also be payable.

4.4 All expenses directly attributable to any purchase will in accordance with accounting regulations be charged to the fund as part of the cost of acquisition. Any VAT attributable to the purchase will unless the Council's partial exemption limited is exceeded be recovered from HMRC.

5. Legal Considerations

5.1 The power to acquire land for purposes in connection with the Council's functions by agreement is contained in s 120 of the Local Government Act 1972 and s121 in the case of compulsory acquisition. Whilst there is no general duty to purchase at the best consideration but the Council must be able to demonstrate that it has exercised those powers in a manner consistent with its fiduciary duty to the Council Tax payer i.e. by ensuring that it is satisfied that the purchase price paid is reasonable in the light of the particular facts and circumstances.

6. Criteria

- 6.1 All sectors of property are to be considered, i.e. residential and commercial and acquisition geographical area should be within the South East, including Essex and the Home Counties. Individual lot sizes up to £2,000,000 are to be purchased. Consideration should be given when acquiring investment properties to length of lease and the security of the income subject to any other material consideration. The revenue yield should generally be in excess of the cost of borrowing unless the intension is to assemble a site for development purposes or to enable a development to be undertaken at some future point.