

# **Huntingdonshire District Council**

# **DISPOSAL AND ACQUISITION**

# **CODE OF PRACTICE 2015**

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## **DISPOSAL CODE**

### **1. INTRODUCTION**

#### **1.1 Purpose and Background**

- 1.1.1 The main purpose of the Disposal and Acquisition Code of Practice is to provide a framework through which the Council will be able to effectively manage land and buildings within a commercial environment. The Code will assist the organisation in making best use of its resources by rationalising or disposing of surplus or under-performing assets in line with vision, aims and objectives
- 1.1.2 The purpose of the Council's Acquisition and Disposal policy is to inform Officers, Members and other interested parties of the principles and rules by which the Council will acquire and dispose of land and property
- 1.1.3 A disposal is the transfer of a freehold or a leasehold interest to a third party, or a surrender/assignment of a lease to a third party, for the payment of a premium or a reverse premium.
- 1.1.4 This Code together with the Constitution / Scheme of Delegation are key documents in the overall management of the Council's land and property portfolio.
- 1.1.5 Huntingdonshire District Council (HDC) own a range of land and property with an Assets that need to be actively managed in order to ensure that the aims and objectives are realised and that value for money is achieved from their use.
- 1.1.6 As requirements evolve there may be significant opportunities to rationalise land and property holdings, as improvements in service design and delivery are realised. It is therefore appropriate that HDC develop and implement a formal Disposal Code to form part of its overall Asset Management Planning process.
- 1.1.7 Medium to large areas of public open space land are not disposed of, unless this would result in a public benefit which meets the Council's corporate aims and objectives. Small areas of open space land are dealt with through the current 'Sales of Small Areas of Land Policy and Procedures' (up to an area of 0.25 Acre (1011 square metres).
- 1.1.8 The Council has a general power of disposal, contained in Section 123 of the Local Government Act 1972, this provides that Local Authorities are not permitted to dispose of land, or grant leases in excess of 7 years, for a

consideration which is less than the best which is reasonably obtainable, unless they first obtain consent from the Secretary of State.

1.1.9 In some instances the Council may dispose at less than best consideration, where the asset is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the whole, or any part of, its area or any persons resident or present in its area; and the difference between the full market value and the actual consideration payable does not exceed £2m.

1.1.10 The code therefore involves three separate and distinct elements

- the process for identifying and declaring assets as surplus
- the procedures for managing the asset prior to its disposal and
- the formal disposal of the asset.

## **2. GENERAL PRINCIPLES:**

2.1 Whenever there is likely to be more than one potential purchaser then all surplus land/property disposals should be advertised in the property market process by open advertisement on the market, and the actual market testing option to be agreed by CMT.

2.2 The Council is subject to certain constraints when it comes to sell land/property in its ownership, some of these legislative; others arise because of a general expectation that the Council should be seen to act fairly when disposing of land and property. The Council will therefore seek to:-

2.3 Sell any surplus land/property for the best available consideration, unless determined by exceptional circumstances that are within the law (e.g. for the benefit of the Community). Where the commercial value / marketability of the asset may be improved, by obtaining planning consent and/or further investment into the property, this will be considered.

2.4 Implement the "Method of Disposal" described in section 3 below for all surplus land/property sales as a formal Protocol to ensure that disposals are fair and transparent and that the Council received the best consideration that can reasonably be obtained.

### **3. METHOD OF DISPOSAL**

3.1 CMT will be responsible for declaring land or property surplus to requirements. Property should be regarded as being surplus to HDC's requirements if:

- (a) it makes little or no contribution to delivery of the authority's services, corporate aims or objectives, either directly or indirectly, nor generates income and has little or no potential for future strategic or regeneration/redevelopment purposes.
- (b) an alternative site has been identified which would achieve a more cost effective delivery of service.
- (c) Its disposal is important for the delivery of organisational aims and objectives.
- (d) It is deemed to be under-performing and with potential for being declared surplus to requirements if:
  - (i) Part of the property is vacant and likely to remain vacant for some time.
  - (ii)The beneficial use or financial return (in terms of both revenue and capital growth) generated from the property is below that which could be achieved from an alternative use, or from a disposal and an alternative investment opportunity.

CMT will notify the Portfolio Holder for Resources of the new surplus status of the land / property.

### **3.2 Identification Process**

3.2.1 The process for identifying surplus or underperforming property will arise in a number of ways as follows:-

- Asset Management Plan processes/Estate Review
- Condition Surveys
- Local Plan designation and development of a Local Development Framework.
- Master-Planning exercises
- Regeneration schemes
- Property has potential for development and service can be relocated.
- Capital Accounting valuation processes which considers development/ alternative uses.
- Approaches from third parties e.g. developers, adjoining owners.
- Where a statutory duty to transfer arises.

### **3.3 External consents and formal notification of a disposal**

3.3.1 Once a property has been identified as being potentially surplus, the Estates Department will establish whether there are any constraints on the site that would limit / prevent disposal, such as legal, planning, statutory authorities, government policy, and/or financial constraints such (as the property having been the subject of funding in the past that necessitates the repayment of grant monies). If such constraints are found, that prevent disposal, the Estates Team will notify CMT to explore alternative options.

### **3.4 Notice Procedure**

3.4.1 Service Departments shall give the Estates Department at least three months written notice of their intention to vacate property. In instances where properties are leased in by the Authority, Estates will send a trigger notice to the occupying service and a joint decision will be taken as to whether to renew the lease.

3.4.2 The Service Department must leave the property in a clean and tidy condition to the satisfaction of the Estates Department.

### **3.5 Engagement**

3.5.1 Once an operational property is declared surplus the Estates Department will instigate a process of engagement with other departments for future HDC use. If appropriate Third Sector interest, Ward Members, Public Sector, partners, local Parish & Town Councils and tenants of the property will be contacted before seeking formal approval to sell.

3.5.2 This engagement does not apply to the Commercial Estate where decisions will be made on a financial basis.

### **3.6 MANAGEMENT PRIOR TO DISPOSAL**

3.6.1. The Estates Department are responsible for the management of surplus property, from the agreed date at the end of the three month formal notice period. If any temporary use is to be made of a surplus property for storage, temporary occupation, etc., this must be first agreed with Estates.

3.6.2 A corporate schedule of all surplus and potentially surplus property will be held within Estates and should be kept up to date at all times.

## **4 Disposal Options**

4.1 The most appropriate method of disposal should be adopted from the following:-

- Private Treaty - Limited interest and narrow valuation band. Where appropriate, sales may be conducted by private treaty where a marketing exercise has been undertaken.
- Auction - Wide interest and easy to allocate a reserve. The property is marketed as part of an external auction process. If appropriate a reserve price will be set.
- Formal Tender - Wide interest, land ownership not complex, no uncertainties regarding the grant of planning permission, wide valuation band. The Council invites sealed bids which are opened at the same time. The Council and the purchaser then enter into a contract under which the purchaser usually pays a 10% deposit.
- Informal Tender - To identify a preferred bidder and enable further detailed terms. Appropriate for sale where there are uncertainties such as planning, and, large or complex redevelopment sites. The Council invites offers, which are opened together immediately following the closing date for the bids specified in the Tendering process. If a higher unsolicited offer is subsequently received all parties may be asked to resubmit.
- Occasionally, a limited marketing exercise may be used where the land or property has already been subjected to open market testing or following short-listing after initial expressions of interest exercise.

## **4.2 Public Engagement Considerations**

4.2.1 There is a general requirement in legislation around engagement duties and advice should be obtained from the Corporate Communications Manager to determine the level and type of engagement activity and any necessary communications plan that may or may not be required in the disposal or acquisition of land or property.

4.2.2 Sections 123(2A) and 127(3) of the Local Government Act 1972 and section 233(4) of the Town and Country Planning Act 1990 ("the 1990 Act") require a local authority wishing to dispose of open space to advertise its intentions in a local newspaper for two consecutive weeks and to consider objections. This is to be undertaken before making any final decisions about disposal as the public response to the notices may be material to any such decision. It could also be an important factor in any determination by the Secretary of State of an application for specific consent.

### **4.3 Timescale**

- 4.3.1 Surplus assets should be disposed of as expeditiously as possible. It is acknowledged, however, that in the interests of proper budgetary planning, the timing of a disposal needs to be considered against the background of HDC's budget and capital programme requirements, current state of the market, local and regional planning framework and potential for property value to increase in the future. Once these factors have been assessed the disposal will be included in a formal Disposal Programme, managed by Estates and monitored by the CMT and Treasury and Capital Management Group (TCMG).
- 4.3.2 Consideration should be given to obtaining planning consent or investment in the property prior to disposal to enhance its value and make it more attractive to the market (in line with General Principal of best consideration see 2.3).
- 4.3.3 In times when the market is not conducive to a disposal, a temporary use should be found for a property if possible, to circumvent the payment of empty property rates and security costs. In cases where there is an external letting then this should be by way of a contracted out lease under the Landlord and Tenant Act 1954 so that vacant possession can be easily obtained.

### **4.4 Disposal Process**

- 4.4.1 All disposals should be arranged and managed by the Estates Department, which will obtain the best consideration by the most appropriate method of disposal although consideration does not necessarily need to be financial and may be economic, social and/or environmental, for example a land transfer to Parish Council or other public authority for continued public benefit, See section 4.6.
- 4.4.2 Consideration needs to be given at all times to the confidentiality of all property transactions particularly until such time as a property is formally declared surplus by CMT, see section 3.1.
- 4.4.3 The Councils Chief Officer Management Team (CMT) shall determine whether to dispose of Council owned land, considering the information received from Estates. If it is determined that the land will not be disposed of, or held until a future agreed date, this will be recorded by Estates on the Disposal Programme.

- 4.4.4 Disposal will only take place with the approval of the Council's Section 151 Officer, on consideration of any valuation provided (see 4.5) and upon such terms and conditions as considered appropriate by the Head of Legal Services.
- 4.4.5 CMT shall refer to Members for a determination as to whether to dispose of or retain land where:
- it has development potential (this will include plots for affordable housing)
  - CMT consider that the disposal should be determined by Members
  - the applicant is an officer within the Council who could be seen as having a direct input to and therefore influence on the determination
  - the applicant is a Member
  - it is intended for community ownership
- 4.4.6 Although not required within the Local Government Act 1972 best consideration should be obtained for all short tenancy agreements unless less than best consideration can be justified by way of social, economic or environmental benefits. Many of these tenancies will be part of the management of the commercial portfolio and the scheme of delegation requires approval of the managing Director and Portfolio Holder.
- 4.4.7 Prior to final disposal any short term intermediate use shall be by way of a short tenancy with a term of less than 7 years, with a landlord break clause at no more than 6 months' notice. This will ensure that disposal can be progressed when viable.

## **4.5 Valuations**

- 4.5.1 A valuation of the property for disposal should be undertaken at the earliest opportunity in the process by a suitably qualified member of the Royal Institution of Chartered Surveyors, prior to marketing for sale, and continually reviewed through the disposal process. Where it is decided to negotiate a disposal to a single party, rather than offer on the open market, all negotiations for disposals should be conducted or advised by a suitably qualified property professional, preferably a member of the Royal Institution of Chartered Surveyors.
- Where it is necessary to appoint a suitably qualified property professional, observing the Code of Procurement where appropriate.
- 4.5.2 Ombudsman guidance recommends that all negotiations should be conducted at the offices of the Authority, and with two people negotiating. Clearly both are unrealistic for every case but there may well be certain circumstances when one or both are appropriate to ensure and demonstrate that best practice is being adhered to.

## **4.6 Disposal at less than best consideration**

- 4.6.1 The Council has a general power of disposal, contained in Section 123 of the Local Government Act 1972, this provides that Local Authorities are not permitted to dispose of land, or grant leases in excess of 7 years, for a consideration which is less than the best which is reasonably obtainable, unless they first obtain consent from the Secretary of State.
- 4.6.2 Where a disposal is undertaken at less than best price, then to protect the authority's interest in the event of subsequent sales, it should include, where appropriate an asset lock, claw back or uplift clause, restrictive covenants, ransom strip retention, user rights or right of pre-emption.
- 4.6.3 A valuation should be undertaken to identify the undervalue (unrestricted less restricted value) and an attempt should be made to financially value the economic, social or environmental benefits to the authority and community which justify a disposal at less than best price.
- 4.6.4 The overriding factor to be considered when disposing at below the best price is to ensure that it is within HDC's power to do so, and the reasons are well documented, transparent and justifiable.

## **4.7 Performance Management**

- 4.7.1 Capital Receipts targets will be assessed annually and progress will be monitored by the Senior Finance Office and reported to the Chief Officer Management Team.

## **5.0 Exceptions to the General Principles:**

- 5.1 For certain types of property open market advertising may not achieve the best consideration. In addition, occasions may arise where HDC wishes to support or encourage specific use or development, to deliver key objectives of the Corporate Plan. In these instances sales may be negotiated to particular purchasers. For example:

- Sale to adjoining owner or lessee where special circumstances exist.
- Conditional disposal where authority is selling for a particular purpose i.e. to a developer for regeneration, to a nominated housing association for social housing development, Community Asset Transfers or religious, community, voluntary groups to meet a local need.
- Sales to former owners under the Crichton Down rules

5.2 Where direct negotiations are to proceed with a particular developer, the developer must satisfy HDC on the following issues:-

- a) The provision of detailed information and plans of the proposed development.
- b) The timescale for completion of the development.
- c) Detailed funding arrangements and confirmation that these are in place.
- d) Evidence of end user commitment and the opportunity for Council to discuss that commitment directly with the end users in question.
- e) Details of the developer's financial offer for the property.
- f) Developers' track record with similar developments.
- g) Any partnership record with other local authorities.
- h) Full details of any proposed joint venture opportunity
- i) Details of any conditions precedent to which the proposal is subject.
- j) Any wider/longer term regeneration benefits from the proposal. For example, employment or training opportunities during construction or from the proposed end user.
- k) Provision of any other off-site benefits or facilities.
- l) Potential for attraction of shoppers, visitors, users to the district's facilities
- m) Capacity of the proposal for bringing other sites forward or opening up other development potential
- n) Potential for leverage of private or other public funds and grants
- o) Capacity of the proposal to remove or reduce other Council financial objectives in the Corporate Plan.

5.3 The information described in 5.2 will be assessed against the following criteria:

- a) Are there other developers who could deliver the project?
- b) What other potential uses are there for the site?
- c) Is there a robust and justifiable case for direct negotiation and not market testing in accordance with the code?

## 6. Delegations & Approvals

### 6.1 Thresholds within the Constitution:

£0 - £500,000	Managing Director (as Head of Paid Service) & Head of Resources (as Section 151 Officer), following consultation with Executive Councillor for Resources
£500,000 - £2,000,000	Treasury and Capital Management Group
£2,000,000+	Cabinet

## 7. Area Based Initiatives:

7.1 In area-based initiatives where HDC wishes to work with a partner or partners to secure a common agreed goal, the procedures outlined in the Partnership Protocol will be followed. Thereafter, sales to those partners within the area may be directly negotiated to further the aims and objectives of the Partnership Strategy. The land and buildings necessary to be made available in the partnership agreement will be identified at the outset and a recommendation made to the CMT. However, the partnership document may be later amended to account for changing circumstances identified by the detailed evolution of the delivery plans, new funding regimes and new opportunities which may arise.

7.2 This Code should be followed for disposals within the Area Based Initiative.

## **ACQUISITION CODE**

### **8 INTRODUCTION**

#### **8.1 Purpose and Background**

8.1.1 HDC may acquire land or property for the following purposes:

- Service delivery
- Investment
- Strategic acquisition for future development in line with HDC priorities and objectives and Corporate Plan

8.1.2 To ensure that there is a consistency of approach it is appropriate that HDC develops and implements a formal Acquisition Code to form part of its overall Estate Strategy/Asset Management Planning processes.

8.1.3 One of the core principles of an estate strategy is to provide buildings that are fit for purpose, sustainable and provide suitable access.

8.1.4 It is logical therefore that these principles underpin the acquisition of all land and property assets in addition to making a contribution to the aims and objectives of the organisation.

8.1.5 The purpose of the acquisition and future responsibility within HDC for the land/building shall be identified.

8.1.6 Estates will, in consultation with other departments, identify acquisition opportunities, recommend to CMT for direction, negotiate the terms and conditions of purchase (as guided by the Head of Legal services) and purchase with the approved by the Council's Section 151 Officer.

#### **8.2 Definition of an Acquisition**

8.2.1 This Code will apply to all acquisitions of land and property and for the purpose of this Code, an acquisition is defined as the taking of a freehold, leasehold or licence in land and property.

#### **8.3 Statutory Powers for an Acquisition**

8.3.1 Under the Local Government Act 1972 the organisation has powers to acquire any property or rights which facilitates, or is conducive or incidental to, the discharge of any of its functions.

8.3.2 Section 12 of the Local Government Act 2003 gives local authorities' power to invest. It provides that a local authority may invest:

- (a) for any purpose relevant to its functions under any enactment, or
- (b) for the purposes of the prudent management of its financial affairs.

## **9. THE PROCESS FOR ACQUIRING ASSETS**

### **9.1 Procedure**

9.1.1 The acquisition of an interest in land and property must be carried out and negotiated by the Estates Department.

9.1.2 All valuations must be carried out or verified by a fully qualified member of the Royal Institution of Chartered Surveyors with sufficient current local knowledge of the particular market, and the skills and understanding necessary to undertake/verify the valuation competently.

9.1.3 Acquisition will only take place with the approval of the Council's Section 151 Officer and upon such terms and conditions as considered appropriate by the Head of Legal Services.

9.1.4 CMT / Members shall determine whether to acquire the land after receiving a fully informed report from HDC's Lead Officer. The report should take into account the on-going cost of ownership of the property and ensure that any decision to acquire land is informed by both the capital and revenue implications of ownership and the risks associated.

9.1.5 VAT implications must be considered as part of the appraisal process prior to any decisions being made. Financial Services to be consulted with regard to VAT implications.

9.1.6 Where Compulsory Purchase powers are being considered Legal Services are to be consulted at the earliest opportunity and approval obtained by Cabinet/Council. These powers will be used where the owner or occupier of the land required is not willing to sell by agreement or where agreement cannot be achieved.

9.1.7 Advice will be obtained from the Corporate Communications Manager to determine the level and type of engagement activity and any necessary communications plan that may or may not be required in the acquisition of land or property.

9.1.8 Notification of an acquisition should be given to the Deputy Responsible Financial Officer within 10 working days.

## **9.2 Budget Responsibilities**

9.2.1 It will be the responsibility of the relevant service head to ensure funding is in place to complete an acquisition and advise Estates of the budget available.

9.2.2 Estates will work closely with the service supporting the acquisition to consider service objectives.

## **9.3 Acquisition Process**

9.3.1 Land or property may be acquired for the purpose of **service delivery** in line with the scheme of delegation, subject to the following criteria:

- a. Confirmation from the Service Head that the asset is required to achieve the agreed service delivery level.
- b. An option appraisal has been undertaken and reported to CMT, the result of which identifies the requirement for the land or property for service delivery.
- c. The on-going revenue costs are contained within an approved budget which has been confirmed by the S151 Officer.
- d. Advice on whether a leasehold or short tenancy should be included on the Balance Sheet must be obtained from the S151 Officer.
- e. VAT has been considered and the Financial Services have been consulted on the implications on VAT and that these are included in the option appraisal.

9.3.2 Land or property may be acquired for the purpose of **investment** in line with the scheme of delegation, subject to the following criteria:

- a. Net return of 6% plus
- b. Properties in generally good condition on full repairing and insuring leases
- c. Location of property - within a reasonable management distance from Huntingdon and within the Estate Department area of competence.
- d. Single let or multi let, but preference away from management intensive properties.
- e. The on-going revenue costs are contained within an approved budget which has been confirmed as appropriate by the S151 Officer and/ or an appropriate budget is approved by Cabinet.

- f. Advice on whether a leasehold or short tenancy should be included on the Balance Sheet must be obtained from the Financial Services and Audit Manager.
- g. VAT has been considered and the Financial Services have been consulted on the implications on VAT and that these are included in the Capital Appraisal Scheme and report for decision.

9.3.4 Land or property may be acquired for the purpose of **future strategic development** in line with Council priorities and objectives and in line with the scheme of delegation and subject to the following criteria:

- a. An option appraisal has been carried and reported to CMT, the result of which identifies the land as suitable for current or future strategic development in line with Council priorities and objectives.
- b. The on-going revenue costs are identified as part of the review and contained within an approved budget which has been confirmed as appropriate by the S151 Officer or an appropriate budget is approved by Cabinet.
- c. VAT has been considered and the Financial Services have been consulted on the implications on VAT and that these are included in the option appraisal.

9.3.5 If instructed to proceed with an acquisition it will be carried out in accordance with rules laid down by the relevant professional bodies, Statute and Case Law. In addition, each element of the acquisition must be carried out in strict compliance with all relevant Public Sector and Local Government Legislation, Statutory Instruments, Government Circulars, and existing procedures, policies and Standing Orders.

9.3.6 The Estates Department will negotiate terms and conditions for an acquisition and liaise with the service throughout the process. Once heads of terms have been agreed formal approval will be sought.

9.3.7 Following Formal approval Estates will draft the necessary legal instruction to formalise the acquisition. Instructions will include all necessary plans and details of any special arrangements necessary to ensure that vacant possession is obtained prior to completion.

## **9.4 Management Responsibility**

9.4.1 Where appropriate, Estates and the service representatives will carry out a pre-completion inspection of the property and if necessary seek instructions from the service regarding the interim management of the property acquired pending development or occupation.

## **9.5 Data Collection**

9.5.1 In all cases where an acquisition occurs, arrangements will be made to ensure that details are recorded in the asset management records and Terrier records.

## 10 Delegations & Approvals

= 10.1

£0 - £500,000	Managing Director (as Head of Paid Service) & Head of Resources (as Section 151 Officer), following consultation with Executive Councillor for Resources
£500,000 - £2,000,000	Treasury and Capital Management Group
£2,000,000+	Cabinet

## 11 Performance Management

11.1 The Acquisition process will be monitored in regular review meetings between the responsible officers as agreed between the parties. Incidences of poor performance shall be discussed and referred to Senior Management for further investigation and action as necessary.

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