



Appendix A

**NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL
HOUSING REVENUE ACCOUNT DISPOSAL POLICY**

Final Draft

11 February 2015

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1.0 Introduction

1.1 The purpose of this policy is to set out a transparent and consistent framework to be adopted in connection with the disposal of HRA land and property in accordance with the corporate and Housing Revenue Account (HRA) Asset Management Strategies (AMS).

2.0 Reasons for the disposal of Land or Property

2.1 Changing requirements for service delivery and the regular review of the Housing Strategy and HRA Asset Management Strategy will at times lead to some HRA assets (land or property) becoming surplus to requirements. In addition there may be circumstances in which a disposal is considered the best way to achieve one or more of the strategic objectives of the Council.

2.2 Unless there are exceptional circumstances, the Council will only dispose of HRA land or property to increase capital receipts to support the HRA Asset Management Strategy, or if the disposal will benefit one or more of the following:

- The overall investment in the Council's existing HRA stock and assets to maintain good quality homes;
- Strategic housing regeneration, development or redevelopment ;
- Investment in new build and/or acquisitions of good quality affordable housing;
- Environmental improvements to housing estates;
- Improved provision of housing services and/or delivery of the Council's Housing Strategy;
- Corporate economic development purposes which benefit Council tenants;
- Revenue or capital income generation;

3.0 Legal Powers

3.1 The Council has no statutory obligation to dispose of HRA assets, other than under Right to Buy legislation, and will do so at its own discretion, and only when it considers that such disposal will be in the best interests of North West Leicestershire District Council.

3.2 Local authorities are subject to constraints should they determine to dispose of land or buildings in their ownership. Some of these constraints are enshrined in law; others arise because of a general expectation that local authorities should be seen to act reasonably when disposing of assets as in other aspects of their work.

3.3 Under the Local Government Act 1972, local authorities have the powers to dispose of assets in any manor they wish, subject to certain constraints, but the Council does have an obligation to obtain the best value possible when it disposes of an asset(s).

3.4 Under the Act, and the General Disposal Consent (England) order 2003, and the General Consent under s.25 of the LGA 1988 (Local Authority assistance for privately let housing) 2010, Councils may dispose of assets at less than the best consideration reasonably obtainable provided that any undervalue does not exceed £2 million and the transaction is considered by the local authority to help secure the promotion or improvement of the economic, social or environmental well being of its area.

3.5 Disposals at greater undervalue require the consent of the Secretary of State. A disposal for the purposes of the 1972 Act consists of:

- A freehold transfer;
- A grant of a term exceeding seven years;
- The assignment of a term which, at the date of the assignment, has more than seven years to run.

3.6 Since the 1972 Act, government policy has also introduced the concepts of Community Asset Transfer, community rights in respect of Assets of Community Value, and recognition of the Social Return on investment. The Localism Act 2011 further extends rights and powers for communities and individuals. Any proposed disposals under the terms of this legislation will be completed through the relevant policies and procedures.

3.7 Councils may also be restrained from disposing of land for a purpose that was not the purpose for which it was acquired under legislative powers and this is particularly relevant for:

- Allotments
- Open space
- Recreational ground

4.0 Preparatory Research

4.1 Once the potential need to dispose of HRA property or land has been identified, or an opportunity arises, preparatory research will be carried out by the relevant Director, in consultation with the Head of Finance as Section 151 Officer and the Corporate Asset Management Group, to establish whether the disposal will fulfil one of the criteria set out in section 2.2 of this Policy.

4.2 Criteria against which any decisions are made in respect of a disposal will include, where appropriate:

- The condition of the property, associated land and other related asset and the costs of refurbishment and/or maintenance required to achieve and maintain the Council's accepted quality standard;
- The supply of such property within the HRA asset portfolio and the current and future demand for such property from existing and potential customers within the local community;

- Any housing management, Council or associated community issues that impact upon the decision to retain or dispose of the asset;
- Feedback from consultation undertaken with tenants and leaseholders directly affected by the proposal and/or the wider tenant/resident community as appropriate;
- Planning policy;
- Development constraints;
- Availability (in terms of timing);
- Locational advantages (where a strategic disposal is under consideration)
- The financial return on disposal (where a revenue generating asset is being considered);
- Restrictive covenants/easements etc;
- Meeting the Council's strategic priorities as outlined in the Local Plan, HRA Business Plan, Asset Management Strategy and/or other Strategies;
- Conditions around the spending of any income generated from disposal.

4.3 Where a number of potentially suitable properties and/or assets exist for disposal, robust comparisons will be made to establish an appropriate means for disposal prioritisation based on the current marketplace and any other associated factors.

5. Financial Appraisal

5.1 When a suitable property or site has been identified, a financial/feasibility appraisal will be carried out to establish the financial/budgetary implications of disposing of the asset. The advice of Finance will be sought regarding the financing of the disposal, to enable the opportunity cost of the disposal to be fully assessed. The Director will undertake a financial appraisal in conjunction with the Head of Finance as Section 151 Officer taking into account the following matters, where appropriate:

- Any revenue or capital costs of disposal and other relevant expenditure;
- The opportunity cost of disposal;
- Any revenue, or potential revenue, generated from the disposal of the asset, both short and long term;
- Availability of alternative funding sources for any project the proceeds of the disposal have been earmarked for;
- Internal resourcing required
- Risk assessment
- The savings, in asset management terms, of disposing of the property or site, including:
 - immediate maintenance/refurbishment requirements
 - demolition costs, if appropriate
 - adaptation requirements
 - ongoing maintenance/life cycle costs
 - national non-domestic rates including empty rates liability
 - insurance
 - Council Tax

- the overall effect of the expenditure/saving/income on the Council's budgetary position.

5.2 The proposal, setting out the reasons for disposal, together with the business case and any other pertinent details (including valuation), should be presented in the first instance to Asset Management Group for approval to proceed with negotiations for disposal. Any associated costs must be included in the relevant budgetary provision available prior to any commitment being made.

5.3 Any recommendation by Asset Management Group to dispose of an asset(s) will subsequently be treated as follows -

- Value under £10,000 – referred to the Head of Finance for approval to dispose under the relevant delegated powers.
- Value £10,001 to £50,000 – referred to Corporate Leadership Team for consideration prior to exercising delegated powers.
- Value £50,001 and over – referred to Cabinet for decision prior to disposal.

6. Due Diligence

6.1 Prior to disposal, appropriate investigations will be undertaken into matters relating to:

- The legal title of the property
- Planning and Building Regulation compliance for the existing use and proposed purpose, including the potential designated use in the Local Plan.
- Other relevant statutory consents
- Pollution
- Existing construction and Mechanical and Electrical plant

7. Valuation

7.1 Valuation advice will be provided by the District Valuer or other suitably qualified surveyor (RICS). Appropriate informal advice shall be obtained prior to that to assist with assessing options and recommendations.

7.2 Where a disposal is in respect of a major or complex site, additional independent valuation advice may also be sought. Independent advice is to provide a safeguard for the propriety of the Council's transaction. The advice may include assistance with negotiations with the prospective purchaser.

7.3 Where independent advice suggests that the true Open Market Value of the asset is below, or equivalent to, the offered price and / or there are overriding factors which justify the disposal, a report shall be prepared for Cabinet by the relevant Director, in consultation with the Head of Finance as Section 151 Officer, seeking approval to continue with the proposed disposal.

- 7.4 Where the disposal is to be by way of a long lease, Finance will be specifically consulted to assess the implications regarding VAT, Capital Controls and Treasury Management.

8. Negotiation

- 8.1 After the approvals described in 5.2 and 5.3 have been obtained and where the possibility of a disposal has been established at a capital value of £50,000 or more, the relevant Director, in consultation with the Head of Finance as Section 151 Officer will prepare a report for Cabinet to obtain agreement in principle to proceed, identifying the financial benefits of the disposal. If approval to proceed is given by Cabinet, negotiations will be commenced with prospective purchasers by the District Valuer or other suitably qualified surveyor (RICS) acting under the instruction of the Council.
- 8.2 Disposals of a lower value may be approved by the relevant Director and the Head of Finance as Section 151 Officer, subject to the approvals described in 5.2 and 5.3, the Portfolio Holder for Housing being informed at the earliest possible opportunity, and a report being prepared to inform the next Cabinet meeting.

NB. Any recommendations by the third party carrying out either the valuations and/or the negotiations must be included in any reports that are presented to the Asset Management Group, Cabinet, Council and/or Head of Finance as Section 151 Officer.

9. Cabinet Approval

- 9.1 The acceptance of any offer to purchase with a value of more than £50,000 will be made “*subject to contract, Cabinet approval and, where appropriate, survey*” and a report will be prepared for the next Cabinet, by the relevant Director in consultation with the Head of Finance as Section 151 Officer, recommending acceptance of the disposal.

10. Instructions

- 10.1 Once Cabinet approval has been received, and any surveys satisfactorily carried out (or earlier if appropriate), Legal Services will be instructed to complete the documentation associated with the disposal.

11. Exceptions

- 11.1 In exceptional circumstances. The Chief Executive, acting on the advice of the Head of Finance as S151 Officer, and in consultation with the Leader of the Council, may accept offers for land and property of a value in excess of £50,000 in accordance with, and to give effect to, the Council’s strategies and corporate aims (subject to a report being prepared for the next Cabinet by the Chief Executive. This approach will only be utilised where flexibility for the

Chief Executive is required in order to respond quickly to any time critical opportunities that arise.

12. Completion

- 12.1 Once the disposal has been completed, Legal Services will advise the relevant Director, the Head of Finance as Section 151 Officer, Financial Planning, relevant Members and such others as are appropriate.
- 12.2 The Director of Housing will ensure that the Asset is removed from the Asset and Financial Database. Legal Services will ensure that Land Registration information is provided to Property Services so that GIS database system can be updated.
- 12.3 Where appropriate or where requested as a requirement, the relevant officer will provide periodic update reports to Cabinet, Council and/or or the Corporate Leadership Team or Asset Management Group providing detail on the progress of the project for which the asset was disposed.

13. Disposal of HRA land or property for service delivery and/or delivery of corporate aims

- 13.1 Land or property may be disposed for the purpose of service delivery in line with the scheme of delegation (and clause 5.3), subject to the following criteria:
 - Authority from Corporate Leadership Team confirming that the level of service delivery is required.
 - An option appraisal has been carried and reported to the Asset Management Group, the result of which identifies the requirement to dispose of the land or property for service delivery.
 - Any on-going revenue costs are contained within an approved budget which has been confirmed as appropriate by Financial Planning, or an appropriate additional budget is approved by Cabinet.
 - VAT has been considered and Financial Planning have been consulted on the implications on VAT and that these are included in the option appraisal.

14. Strategic Disposal for Future Development in line with Council priorities and Objectives

- 14.1 Disposal of HRA land or property may be required for the purpose of future strategic development in line with Council priorities and objectives, and in line with the scheme of delegation (and clause 5.3), subject to the following criteria:-
 - An option appraisal has been carried and reported to Asset Management Group, the result of which identifies the land or property as suitable for current or future strategic development in line with Council priorities and objectives.

15. Disposal of HRA Public Open Space

- 15.1 On occasion it may be deemed beneficial to dispose of areas of HRA open land by sale to enable them to be incorporated within the wider boundary of a privately owned property or building. In such instances, assuming a value of less than £50,000 the Director of Housing will take such decisions in accordance with this Policy, including sections 5.2 and 5.3 above.
- 15.2 For the disposal of larger areas of HRA land, some of the detailed requirements relating to the disposal of public open space may be set out in s106 agreements and these will be reported to Cabinet after prior approval through the Asset Management Group and Corporate Leadership Team.
- 15.3 The maintenance liability of each parcel of land must be considered in full before any disposal will be agreed.
- 15.4 It is intended that the purchaser will liaise with the Council before and during the adoption process to ensure that any agreed works are being carried out to the correct standards and specifications.
- 15.5 Boundary, hedges, fences, ditches and trees should be conveyed where appropriate with the adjoining development to reduce future maintenance costs.

16. Disposal by gift or possessory title

- 16.1 If such a disposal opportunity arises, it will be considered if meeting the appropriate measures and criteria set out in this Policy.

17. Leases and Licences

- 17.1 Entering into a lease or licence agreement shall be considered in the same terms as any property disposal the Council makes. Therefore reasons for the disposal, property searches, financial and risk appraisals, independent valuation, negotiations and Council approvals should all be identifiable stages. Clear ownership of responsibilities will require agreement prior to assignment of a lease in terms of Health and Safety, maintenance requirements etc

18. Financial and other criteria for disposals

- 18.1 The Council needs to take a strategic approach to land and property disposals. The requirement to dispose of land and property for any of the purposes identified this Policy should be identified as part of the Council's procedures for developing its Medium Term Financial Strategy, HRA Business Plan, Asset Management Strategy, Capital Programme and Council Delivery Plan.
- 18.2 Service Managers will be required to take a medium to long term view when planning delivery of their services and will need to identify any requirement to dispose of land and property or any opportunities to dispose of surplus assets

in order that planning these changes can be incorporated in the Council's service and financial planning processes.

19. Method of Disposal

19.1 Once approval for disposal has been agreed as outlined in this Policy the method of disposal will be determined as outlined in the Council's Corporate Asset Disposal Policy (April 2008). The Asset Management Group will:

- Determine the method of open market competition **OR**
- Confirm the existence of a Special Purchaser **OR**
- Confirm the land will be sold through a partnership

19.2 **Open market competition** will be one of the following:

- Formal Tendering – the Council invites sealed bids, which are opened together. The Council and the purchaser then immediately enter into a contract under which the purchaser usually pays a 10% deposit;
- Auction – the property is marketed as part of the auction process. If appropriate a reserve price will be set;
- Private treaty where a marketing exercise has failed to secure a buyer, or where there is justification for dealing with a single potential purchaser.

19.3 In three specific cases open market competition may not achieve the best consideration:

- Sales of areas of land where there is realistically only one potential purchaser;
- Sales of land where there is a '**special purchaser**' for whom the land has a higher value than for anyone else, for example, "ransom strips" (The Stokes v Cambridge principle);
- Occasions may arise where the Council wishes to support or encourage a specific use or development, to deliver key objectives of the Housing Strategy or Council Delivery Plan. In these instances sales may be negotiated to particular purchasers subject to the conditions in section 3.4 regarding any proposed disposal at less than market value.

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

- The provision of detailed information and plans of the proposed development.
- The timescale for completion of the development.
- Detailed funding arrangements and confirmation that these are in place.
- Evidence of end user commitment and the opportunity for Council to discuss that commitment directly with the end users in question.
- Details of the developer's financial offer for the property.
- Developer's track record with similar developments.
- Any partnership record with other local authorities.

- Full details of any proposed joint venture opportunity.
- Details of any conditions precedent to which the proposal is subject.
- Any wider/longer term regeneration benefits from the proposal. For example, employment or training opportunities during construction or from the proposed end user.
- Provision of any other off site benefits or facilities.
- Potential for attraction of shoppers, visitors, users to the district's facilities.
- Capacity of the proposal for bringing other sites forward or opening up other development potential.
- Potential for leverage of private or other public funds and grants.
- Capacity of the proposal to remove or reduce other Council financial liabilities.
- Satisfaction of the Council's approved housing regeneration objectives.

19.5 The information above will be assessed against the following criteria: -

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

19.6 Where the Asset Management Group has recommended that a site be sold at a price below open market value, the matter is to be reported to the Head of Finance as Section 151 Officer, and Corporate Leadership Team, for consideration and approval before proceeding to a delegated decision or Cabinet. A sale of land at a price below open market value may require the consent of the Secretary of State under the provisions of the Local Government Act 1972 and thus before proceeding to contract the relevant officer shall confirm with Legal Services that any disposal meets the requirements of the Local Government Act 1972. General Disposal Consent (England) 2003.

19.7 The **Partnership** Protocol contained within the Corporate Asset Disposal Policy (April 2008) will act as a good practice guide for selecting development partners. Officers and members will be expected to follow the good practice contained in this Protocol to safeguard the authority from any allegations of favouritism or anti-competitive practices.

20 Money Laundering

20.1 All transactions should be carried out in accordance with the Council's Anti-Money Laundering Policy.

20.2 All cash transactions must be within the limits set out in the Anti-Money Laundering Policy.

20.3 Legal Services must make checks for all purchasers and ensure that purchasers' solicitors have an up-to-date Anti-Money Laundering Policy and that they are registered with the Law Society.

21. Internal and External Audit

- 21.1 Auditable records of all disposals will need to be maintained and accessible by the Council's Internal Audit function and External Audit to verify actions/values and how the authority made the decision to dispose. Any appointment of a third party consultant must reserve the right of access to their records in relation to the transaction.