

LAND & BUILDING ASSETS DISPOSAL POLICY

Document Status: Draft

Document Ref: AssetDispPolicy

Originator: Assistant Director, Assets

Updated:

Owner: Assistant Director, Assets

Version: draft

Date: 01/06/2022

For consideration and approval by Asset Strategy Steering Group

Classification: SECO Public Domain

Document Location

Land & Building Assets Disposal Policy

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Revision History

Revision Date	Version Control	Summary of changes
01/06/22	draft	Draft for comment

Next Revision

Review Type	Date

Approvals

Name	Title	Approved
	Asset Strategy Steering Group	
	Executive Leadership Team	
	Cabinet	

Document Review Plans

This document is subject to a scheduled annual review. Updates shall be made in accordance with business requirements and changes and will be with agreement with the document owner.

Distribution

The document will be publicly available on the Tamworth Borough Council website.

Security Classification

This document is classified as 'SEC0 Public Domain' and will be published on the Tamworth Borough Council website.

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Introduction

This policy relates to the disposal of council owned land and property through sale of the freehold interest, granting of a long lease, granting of a short lease, granting of a license, or granting of a 'tenancy at will'.

The policy also addresses disposal by way of a statutory forced disposal, adverse possession, and the removal of restrictive covenants.

There are a number of reasons why the Council may consider disposing of land and property including: -

- Income generation
- Regeneration (Strategic)
- Community benefit
- Surplus to requirement (strategic)
- Changing operational demands
- Removal of a liability

This policy does not include disposal of council housing assets under the 'Right To Buy' legislation nor does it address the disposal of any other asset which would be dealt with through Financial Guidance documents.

Background

Tamworth Borough Council owns and manages a diverse portfolio of Assets which include property and land for a range of reasons including: -

- Operational property for the purposes of undertaking its business activities.
- Investment property for the purpose of generating income.
- Assets for community benefit including historic assets.
- Amenity and leisure land for public use.

This policy is directly linked to the Council's Asset Management Strategy which aims to define the purpose for which property is held, how its performance is assessed and how retention, adaptation or disposal are considered.

The purpose of this policy is to provide a framework for the disposal of land and building assets as a means of maximising income, limiting liability and meeting the changing demands of the Council and the residents of Tamworth. The policy aims to provide a transparent methodology on the process for land and building asset disposals.

Local authorities are subject to certain constraints when disposing of land and building assets 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 fairly when disposing of land.

Under s123 of the Local Government Act 1972 local authorities have powers to dispose of property in any manner they wish, subject to certain constraints which may include a requirement to obtain the consent of the Secretary of State.

The Local Government Act 1972 s123 details the requirement for Councils not to sell land for a consideration less than the best consideration reasonably obtainable unless the Secretary of State's consent was obtained. There are however some exceptions; under the General Disposal Consent (England) 2003 this requirement for specific approval no longer applies provided 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. Any disposals at such an undervalue will need Cabinet approval. All valuations will need to be carried out in accordance with the requirements of the Order. There are additional requirements under the Localism Act in relation to Assets of Community Interest.

Approach

Definitions

Under the guidance of the s123 Local Government Act 1972 disposal is considered to be one of the following: -

- 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.
- A grant of an easement/right of way over land/property

General principles for disposal

The stages of preparation leading to *any* disposal should include the following: -

- *Asset Management Strategy* – So far as possible any surplus or underperforming assets will be identified through the Asset Management Strategy and considered for disposal by the Asset Strategy Steering Group. Assets identified for disposal to facilitate regeneration projects will be brought to the Asset Strategy Steering Group by the Regeneration Board for consideration.
- *Internal Consultation Process* - Relevant Directorates are to be consulted and given an opportunity to comment on proposed disposals. Consideration is to be given to any comments and/or proposals for alternatives to disposal.

- *Legal Consultation* – at an early stage legal advice on title and any rights or obligations which might affect the asset is to be sought. If it is intended to include covenants or other restrictions in the disposal, legal advice should be obtained prior to negotiations. Any potential obligation under the *Crichel Down Rules* to offer the land back to a former owner will also be considered as part of this process.
- *Inspection, valuation and potential future use* – before entering into any negotiations an inspection is to take place to consider condition, value, and development potential and to identify any other issues which is likely to compromise the disposal or impact on the value of the asset.
- *Identification Of Development Potential* – Any asset identified as having the potential for development should be considered by the Regeneration Team before progressing any negotiations for disposal. Consideration should be given to the Council's strategic aims and professional advice is to be sought on the best approach for disposal so as to achieve the best outcome.
- *Valuations* - Valuations will generally be conducted using the RICS Red Book methodology and in line with CIPFA guidelines. For larger disposals consideration will be given to matters such as 'hope value' and overage.
- *Method of disposal* – The method of disposal and process for obtaining approval will vary based on the nature and value of the disposal and is set out in more detail in the section of *roles & responsibilities*.
- *Fees* – The approach to the apportionment of fees will vary based on the nature of the disposal. For routine operation disposal, lease extensions, leasehold reversions and any forced sales the Council should look to recover all fees from the other party. For all other disposals fees should be considered on a commercial basis and take account of external legal and professional advice.

Disposal Methods

There are a variety of options that can be considered for the disposal of assets; the method adopted should be that considered to be most suited to the nature of the disposal.

Negotiated

This approach is most likely to be used for the disposal of small parcels of land where there is a single party with legitimate interest, usually the owner of the property adjoining the land in question. Negotiation can only be used for disposals of land with a value of £10,000 or less. Formal valuations are to be undertaken and legal advice will be sought.

Sealed Bids

The use of a 'sealed bid' process whilst permissible is not advisable and with the use of technology in tendering has become less relevant. It is most appropriate for use on the sale of smaller plots of lower value but where there is potentially more than one party who could claim to have legitimate interest and where those parties are largely residential as opposed to commercial interests.

Formal Tender

This approach is likely to apply where assets have been identified as being surplus to requirement or have been identified for regeneration purposes not being delivered by the Council.

Formal tender should be used for all assets with a value in excess of £10,000 making use of the In-Tend system but which have no agreed development or regeneration plan attached to them.

Where the disposal of an asset relates to a site that has a development brief or regeneration plan attached to it external advice is to be sought on the most appropriate and advantageous method of disposal.

Auction

Where an asset has been identified as being surplus to requirement but is not considered to be suitable for development or regeneration disposal through auction should be considered. This is likely to apply to assets that have been identified as surplus because they are underperforming or have become derelict.

Partnership

It is likely that some disposals will take place by way of partnership working with external bodies. This type of disposal will need to be subject to a detailed options and financial appraisal process.

Routine Operational

A routine operation disposal will in most cases arise by way of an application received from the adjacent owner(s) to purchase the freehold or leasehold interest (in excess of 7 years) of a small area of land or property with no strategic objective. Where it has been assessed that there is no development value or open market opportunity and the asset has an open market value of less than £10,000, 'confined' negotiations with the adjacent owner(s) can commence with a view to achieving the most advantageous financial outcome.

In cases where there is more than one other contiguous land holding consideration should be given to alternative disposal strategies (e.g. sealed informal tenders) to obtain the best consideration.

The Council holds numerous small parcels of land across the borough, many of which are only a few square metres in area, which are sought after by local residents. This is usually to increase their own garden space, to accommodate an extension to their property, or to give access to land suitable for development, not owned by the Council. As a rule, disposal of this type of land should not be considered, unless it satisfies one of the following criteria:

- The asset is desolate and derelict
- There is significant financial benefit to the Council through removal of further liability for maintenance or liability for the asset.

If one of the above apply, and after consulting with the list of consultees, a price suitable for the proposed use of the land will be agreed by the Assets Team, with the prospective purchaser, and the proposal to sell will be reported to Cabinet for approval prior to any formal agreement being given. If the land value exceeds £10,000 a formal and open disposal process must be used.

Strategic Regeneration

Members, The Regeneration Board or Asset Strategy Steering Group may from time to time identify land or building assets for use in wider strategic regeneration projects to be delivered by the Council, external agencies or through partnerships.

Disposal for strategic regeneration purposes is generally excluded from this policy and as such the most appropriate method of disposal should be given proper consideration as part of the project delivery plan. However due consideration must be given to the prevailing legislation relating to the disposal of assets.

Governance for such disposals must form part of the governance arrangements specific to the project.

Surplus

Surplus assets will be identified through the Asset Management Strategy but will generally consist of assets that are no longer required due to operational changes, assets that are underperforming either physically or financially or assets that have been identified as a means of generating a capital receipt.

The recommendation for disposal will be made by the Asset Strategy Steering Group for consideration by Cabinet. Where disposal is approved specialist property advice is to be sought on valuations and on the most appropriate mechanism for the disposal process.

Housing

This policy excludes the sale of council housing through the Right To Buy process which is covered by legislation.

Sales of other council housing assets will be identified through the Asset Management Strategy and will generally consist of assets that are underperforming either physically or financially, assets that no longer meet the needs of the residents or assets that require investment that would not deliver a reasonable return on investment.

Other housing assets such as garage or parking areas may be considered for disposal if they are surplus to requirement and would not show a return on investment.

Where disposal is approved specialist property advice is to be sought on valuations and on the most appropriate mechanism for the disposal process.

Other

Open Space

Land identified as being public open space should only be considered for disposal as a means of releasing land for strategic development and regeneration purposes. Any disposal of public open space will be subject to consultation with appropriate Elected Members and the wider community. Any disposal of public open space must be approved by Cabinet.

Release of covenant

From time to time the Council will be approached by a land or property owner requesting the release of a restrictive covenant. Each request is to be considered on its merits with consideration being given to why the restrictive covenant exists and whether its intended purpose still applies. Legal advice is to be obtained in all instances.

Where there is no reason for the restrictive covenant to be in place and where the legal advice supports it the covenant should be removed. All costs associated with the removal of a restrictive covenant should be met by the person(s) seeking removal.

Where the intended purpose of the restrictive covenant remains, it should not be removed.

Consideration must be given as to whether or not there is any financial value to be realised from the release of a covenant. The primary consideration must be the intended purpose of the covenant, however where the financial return outweighs the other benefit of the covenant negotiations can commence once approved by the Assistant Director, Assets

Adverse Possession/Appropriation

From time-to-time Land Registry will notify the Council of an adverse possession claim relating to an asset registered to or believed to be in the title of the Council.

Upon receipt of any such notifications consultation with the legal team and appropriate directorate are to commence with a view to establishing a defence against the claim. It is essential that the information is gathered, and defence submitted within the required timescales. The Assistant Director, Assets is to be informed of any notices for adverse possession claims.

Where Council owned assets appear to have been appropriated by third parties contact shall be made by the Assets team demanding that the appropriated asset is returned to its original state. Should the third party not

comply with the demand the matter shall be passed to the legal team for formal action to be taken.

Assets of Community Value

A separate policy exists in relation to Assets of Community Value as set out in the Localism Act 2011. Any Council owned assets identified as Assets of Community Value being considered for disposal must follow this process.

Spontaneous Offer

The Council will occasionally receive a spontaneous offer for an asset that has not previously been identified as being either surplus or for regeneration purposes. The approach take in relation to spontaneous offers will depend on the nature of the asset and its estimated value. Where there is only likely to be a single interested party and the land is valued at less than £20,000 the 'Routine Operational' approach can be taken. Where there are potentially multiple interested parties and/or the asset value exceeds £20,000 the 'Surplus' approach is to be applied.

CPO or Statutory Acquisition

The Council may receive an application for some form of statutory asset acquisition; this will normally be in relation to a major infrastructure or civil engineering project. Upon receipt of any such notice the Assistant Director, Assets must be informed. Cabinet and Ward Members are to be notified and suitable legal and valuation advisers are to be appointed to protect the financial and reputational interests of the Council.

The Council, through its specialist advisers will work to achieve the most favourable financial and physical outcomes for the Council and its residents.

Leasehold Extensions

There is provision in law for long leases to be extended. Any tenant with a long lease must apply for a lease extension using the formal approach. The Council will appoint a specialist valuer and legal advisor to undertake the valuation of the lease extension and advise on the legal provisions around any such lease extension.

A lease extension must be granted within a reasonable timeframe with the premium being paid being calculated in line with current valuation methods. All valuation and legal fees are to be met by the purchaser.

Leasehold Reversion

The Council currently owns a number of residential properties that were sold on a leasehold basis. There is a provision in law for leaseholders to acquire the Freehold interest in their property subject to the payment of a premium. Leaseholders must apply for a Leasehold Reversion using the formal approach. The Council will appoint a specialist valuer and legal advisor to undertake the valuation of the reversion and advise on the legal provisions and deal with any Land Registry documentation.

The reversion must be granted within a reasonably timeframe with the premium being paid being calculated in line with current valuation methods. All valuation and legal fees are to be met by the purchaser.

Residential Leasehold (former Council Housing)

There is provision for Leaseholders in a residential block to take over management of the block or to acquire the Commonhold or Freehold interest in the block. Disposal through this route is governed by separate legislation which will be applied when considering such disposal requests.

Roles & Responsibilities

The Council's Scheme Of Delegation sets out the delegated authorities in relation to the disposal of assets and the granting of leases and licenses along with the setting of investment rents.

Overall responsibility for the management of Assets including the disposal, acquisition and leasing of investment property is with the Assets Team.

Key Roles

Asset Strategy Steering Group – oversight and approval of the Asset Management Strategy. Approval of assets identified as surplus, and approval of assets identified for regeneration purposes.

Regeneration Board – identification of assets suitable for inclusion in regeneration projects and for advising on the most appropriate route for delivering regeneration projects (from an assets perspective)

Assistant Director, Assets – overall accountability for the development and delivery of the Asset Management Strategy and responsibility for the services undertaking disposals.

Property Services Officer – responsible for undertaking negotiations and valuations in relation to operational disposals and for overseeing external valuation and legal services for other disposals.

Street Scene Operations Manager – key consultee in applications for the acquisition of small plots of land.

Valuations – for operational disposals valuations will be carried out by the Property Services Officer. For other disposals external specialist will be procured to provide valuation services.

Legal – legal matters will be dealt with through the shared service arrangement with South Staffordshire District Council. The lead officer for the shared service at SSDC will determine whether or not to outsource the legal work to a more specialist legal firm.

Governance

Cabinet will be responsible for approving the Asset Management Strategy and the Disposals Policy.

The Council's Scheme of Delegation sets out the nature and financial limits on the disposal of assets.

The Asset Strategy Steering Group will approve the Asset Management Strategy, including the identification of surplus and regeneration properties before final approval by Cabinet. The Asset Strategy Steering Group will also be responsible for the ongoing review of Surplus and Regeneration assets.

The Regeneration Board will be responsible for identifying assets to be considered for regeneration purposes.

Operational Disposals of low value will be reported by way of a Scheme of Delegation report through the ModGov system. Larger value, strategic and regeneration disposals will be reported through the Cabinet process.

Reference Documents

Local Government Act 1972 (s123)

Localism Act 2011

Asset Management Strategy

General Disposal Consent (England) 2003

Net Zero Carbon Assessment

It is not anticipated that this policy will have a direct impact on the Council's Net Zero Carbon targets, however poorly performing property is more likely to be identified for disposal through the Asset Management Strategy and Asset Management Plans.

Community Impact Assessment

Part 1 – Details	
What Policy/ Procedure/ Strategy/Project/Service is being assessed?	Disposal of land and building assets
Date Conducted	01/06/2022
Name of Lead Officer and	Paul Weston, Assistant Director, Assets

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Service Area		
Commissioning Team (if applicable)	Asset Strategy Group	
Director Responsible for project/service area	Rob Barnes, Executive Director, Communities	
Who are the main stakeholders	Residents of Tamworth Businesses in Tamworth	
Describe what consultation has been undertaken. Who was involved and what was the outcome	This forms part of the wider Asset Management Strategy which has been considered by the Asset Strategy Steering Group	
Outline the wider research that has taken place (E.G. commissioners, partners, other providers etc)	A disposals policy is considered to be good practice as part of active asset management. There are provisions within the Local Government Act to deal with disposal of land and property assets by Local Authorities.	
What are you assessing? Indicate with an 'x' which applies	A decision to review or change a service	X
	A Strategy/Policy/Procedure	X
	A function, service or project	<input type="checkbox"/>
What kind of assessment is it? Indicate with an 'x' which applies	New	<input type="checkbox"/>
	Existing	<input type="checkbox"/>
	Being reviewed	X
	Being reviewed as a result of budget constraints / End of Contract	<input type="checkbox"/>

Part 2 – Summary of Assessment

Give a summary of your proposal and set out the aims/ objectives/ purposes/ and outcomes of the area you are impact assessing.

This relates to the disposal of land and building assets in the ownership of the Council. Disposal may be by way of sale of Freehold, granting of long leases, granting of short leases, granting of licenses or transfer to other parties.

Excluded from this is disposal through the Right To Buy process which is a statutory process.

Who will be affected and how?

This is most likely to impact on residents and businesses of Tamworth and those looking to acquire land and/or property in Tamworth.

This policy sets out the criteria, process and governance surrounding the disposal of land and building assets.

Are there any other functions, policies or services linked to this impact assessment?

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Yes	X	No	<input type="checkbox"/>
If you answered 'Yes', please indicate what they are?			
Asset Management Strategy			
Acquisitions Policy			

Part 3 – Impact on the Community
Thinking about each of the Areas below, does or could the Policy function, or service have a direct impact on them?

Impact Area	Yes	No	Reason (provide brief explanation)
Age	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Disability	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Gender Reassignment	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Marriage & Civil Partnership	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Pregnancy & Maternity	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Race	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Religion or belief	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Sexual orientation	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Sex	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Gypsy/Travelling Community	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Those with Caring/Dependent responsibilities	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Those having an offending past	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Children	X	<input type="checkbox"/>	Persons under the age of 18 would not be able to enter into a legal agreement to acquire land or property.
Vulnerable Adults	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Families	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Those who are homeless	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Those on low income	X	<input type="checkbox"/>	Opportunity to acquire land and/or property open to this group subject to them being able to meet the financial commitments associated with any acquisition.

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Those with Drug or Alcohol problems	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Those with Mental Health issues	X	<input type="checkbox"/>	Opportunity to acquire land and/or property open to this group subject to them having the capacity to enter into a legal agreement.
Those with Physical Health issues	<input type="checkbox"/>	X	Opportunity to acquire land and/or property open to this group.
Other (Please Detail)	<input type="checkbox"/>	<input type="checkbox"/>	

Part 4 – Risk Assessment

From evidence given from previous question, please detail what measures or changes will be put in place to mitigate adverse implications

Impact Area	Details of the Impact	Action to reduce risk
Children	Persons under the age of 18 are not able to enter into legal contracts to acquire land/property or to enter into a lease.	None – this is a matter outside of our control.
Those on low income	Persons on low income may not be in a position to acquire land/property or to lease property.	Limited – people will need to demonstrate that they have the financial means to meet the commitment of acquisition/lease. People will be advised to seek financial and legal advice before entering into agreements.
Those with Mental Health Issues	Certain people may not have the capacity to enter into legal agreements for land/property.	Where a person is legally deemed not to have capacity this would be outside of our control. As with any other potential purchaser/tenant they would be advised to seek financial and legal advice before entering into agreements.

Part 5 - Action Plan and Review

Detail in the plan below, actions that you have identified in your CIA, which will eliminate discrimination, advance equality of opportunity and/or foster good relations.

If you are unable to eliminate or reduce negative impact on any of the impact areas, you should explain why

Impact (positive or negative) identified	Action	Person(s) responsible	Target date	Required outcome
Children	No action as this is outside of our control.	N/A	N/A	N/A
Others	No action required. Provided people have the financial means and capacity to enter into a legally binding agreement the policy is open to them.	Paul Weston	N/A	N/A

Date of Review (If applicable)

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