

Section 23 – Rules for Dealings with Land and Buildings

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DISPOSALS

The following Rules apply to all 'relevant disposals' of land and buildings by the Council.

For the purposes of these Rules, a 'relevant disposal' means:

- The sale / transfer of a freehold interest;
- The sale / grant of a leasehold interest (excluding a tenancy not exceeding seven years);
- The assignment of any unexpired term of a lease which at the date of the assignment has not more than seven years to run;
- The grant of an easement;
- The grant of an option to purchase a freehold interest; and
- The grant of an option to purchase a leasehold interest (excluding a tenancy not exceeding seven years).

In these Rules 'the Executive' means the relevant decision maker which shall be Cabinet or the relevant Cabinet member or Director in accordance with the Council's approved Scheme of Delegation for Officers – Executive Functions as set out in this Constitution.

1. Best Consideration

- 1.1 The Executive shall ensure that land and/or buildings are not disposed of for consideration less than the best that can be reasonably obtained on the open market except with the express consent of the Secretary of State or where the General Disposal Consent (England) 2003, the General Housing Consents 2013 or other Ministerial Consent applies and following consultation with the Chair of the Overview and Scrutiny Committee.
- 1.2 Where the disposal is for less than best consideration, the Executive shall also be satisfied that all subsidy control rules applicable at the time of the disposal are complied with.

2. Notification

- 2.1 The Executive shall notify all relevant ward members before making any decision to dispose of any land or building to which these Rules apply.

3. Disposal of Open Space Land

- 3.1 No disposal of open space land shall be effected until the statutory procedures set out in section 123(2A) of the Local Government Act 1972 and section 233(4) of the Town and Country Planning Act 1990 have been complied with. Open space land means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground. The Director shall ensure that the Council advertises its interest to dispose of the land in a local

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newspaper for at least two consecutive weeks and consider any objections received before any final decision to dispose of the land is taken.

- 3.2 Land which is designated as public open spaces will not be disposed of unless the prospective purchaser / lessee has first obtained the necessary planning consent or it is a condition of the sale or lease that the necessary planning consent is obtained.

4. Disposal of Land Held on Trust

- 4.1 Land held on trust shall not be disposed of under delegated powers and must be disposed of in accordance with the terms of the trust.

5. Valuation and Use of External Advisors

- 5.1 Before the disposal of any land or building is authorised by the Executive, a valuation shall be prepared by the Council's surveyor or an independent qualified valuer ("the Valuation").
- 5.2 The Valuation shall be obtained from an independent qualified valuer in all cases where the anticipated value of the land or building exceeds £500,000 or where it is considered necessary due to the complexity or uniqueness of the land or building.
- 5.3 Where it is considered necessary to use the services of external advisers (for example where a disposal is complex or not a typical sale), the instruction given to the adviser shall ensure, so far as may be appropriate, compliance with these Rules.

6. Methods of Disposal

- 6.1 The Executive shall authorise the method of disposal of any land or building.
- 6.2 A report to the Executive to obtain agreement in principle to the disposal and to approve the method of disposal to be used shall include (but not limited to) the following:
- identity of the land and legal extent of ownership, including a plan;
 - any legal requirements relating to the disposal including compliance with its duty to obtain the best consideration that can reasonably be obtained pursuant to s123 of the Local Government Act 1972 (see para 2.1 above);
 - the valuation as prepared by the Council's surveyor or an independent qualified valuer;
 - the key terms and conditions that the disposal should be subject to including any restrictions upon and / or covenants required from a purchaser to be contained in any contract for sale;

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- any representations from consultees;
- confirmation whether the disposal includes land consisting or forming part of public open space and, if so, that the requirements of paragraph 3 above must be complied with; and
- the recommended method of disposal and the justification for it.

6.3 Disposal shall be by one of the following methods:

A Private Treaty

A.1 Disposal by private treaty may be either through the open market or off market.

Open Market

A.2 Disposal by private treaty through the open market is likely to be appropriate where the level of interest is unknown and the land and / or buildings are easily marketable.

A.3 With such disposal, the sale shall first be marketed, including by public advertisement or through use of an estate or lettings agent, to generate interest with the aim of achieving an offer which represents the best consideration that can usually be obtained. The Director shall approve the terms of any sale / letting before the disposal is marketed.

A.4 Where disposal by private treaty through open market is authorised, the Director shall, if the level of interest is sufficiently high, require best and final offers to be made by a specified date.

Off Market

A.5 Disposal by private treaty off market is likely to be appropriate where the nature of the land and / or buildings or other special circumstances have been identified which indicates that there is likely to be only one potential purchaser or tenant or where the disposal is to a public sector partner / stakeholder. Such circumstances may include the following:

- the land is small in size or value;
- the only realistic purchaser is an adjoining landowner; or
- where there is a purchaser for whom the land has a higher value than anyone else i.e. ransom strips.

A.6 Disposal by private treaty off market may only be authorised following consultation with the Chair of the Overview and Scrutiny Committee.

A.7 Where disposal by private treaty off market is authorised, file notes shall be kept of all negotiations with prospective purchasers or tenants and, in relation to higher value disposals, two officers should be present during any negotiations.

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B Public Advertisement and Tender

- B.1 Where there is likely to be interest on the open market, disposal by public advertisement and tender is likely to be the appropriate method of disposal to ensure best value is obtained.
- B.2 Written sales particulars shall be prepared which include full details of the land and / or building and of any rights or obligations by which the parties to the transaction are intended to be bound. The contract, conditions of sale, searches, replies to enquiries and any other supporting documentation shall also be prepared.
- B.3 The intention to dispose of the land and / or building shall be advertised in at least one local newspaper or a local property advertising service and, in cases where the land or building is estimated to have a value in excess of £100,000, the land and / or building shall also be advertised in the property pages of at least one or more national newspaper or journal or such other national property advertising service, including online services, as the Executive considers to be appropriate.
- B.4 The advertisement shall state the nature of the property and where further information can be obtained and either give at least fourteen days' notice by which parties wishing to be invited to tender should advise the Council of their interest or, where tenders have been invited, give at least fourteen days for interested parties to submit a tender.
- B.5 Where expressions of interest are first sought, tenders shall be invited from all of the persons who stated that they wished to be invited to tender. Details of the conditions of sale, contract and all supporting documentation, including any searches and replies to enquiries, shall be included in the invitation to tender along with the approved criteria for evaluating bids.
- B.6 Every invitation to tender shall state that all tenders must be submitted in hardcopy in a plain sealed envelope bearing the words "Tender For" followed by the description of the land and / or building to which it relates or by using an electronic system approved by the Council. Where submitted in hardcopy, each such envelope shall be addressed to the Council's Monitoring Officer. All tenders received must be stamped with the date and time they were received and shall be kept securely in the custody of the Monitoring Officer until the time and date specified for their opening.
- B.7 Every invitation to tender must state that a tender will only be considered if it is submitted in accordance with the instructions provided, and received by the date and time specified in the invitation to tender. The invitation to tender must also state that tenders which do not comply fully may be rejected and that the Council reserves the right not to accept the highest or any tender received.

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- B.8 Sealed bids shall be opened by a representative of Legal Services in the presence of a representative of the relevant Director. The relevant Cabinet member, the Monitoring Officer and the Chair of the Overview and Scrutiny Committee shall be notified of the time and place appointed for the opening of tenders and any Member of the Council who wishes may be present at the opening. A formal record of all tenders received must be made and include the tenderer's name and the tendered value. The record shall be signed by those persons present at the tender opening.
- B.9 Any tender received that is not in accordance with paragraph B.6 above or is received after the deadline for receipt of tenders shall not be accepted. The tender may be opened to ascertain the identity of the tenderer and shall be returned to the tenderer without any details of such tender being revealed to any party.
- B.10 All parties submitting a tender, whether successful or unsuccessful, shall be promptly notified of the outcome.

C Public Auction

- C.1 Sale by public auction is likely to be appropriate where speed and certainty is required. This method of disposal may generate wide interest and it is easy to allocate a reserve price.
- C.2 Should the disposal be undertaken by public auction, an auctioneer(s) shall be instructed to conduct the sale. Any reserve price shall be set by the Executive, which shall not be less than the Valuation.
- C.3 Legal Services shall prepare the contract, conditions of sale, searches, replies to enquiries and any other supporting documentation. The contract documentation must be ready for exchange at the auction where a binding contract will be made on the acceptance of the highest bid which exceeds the reserve price.

7. Acceptance

- 7.1 In respect of tenders or sealed bids, the highest tender/bid or the tender/bid scoring highest against the approved evaluation criteria should be accepted. In any case where it is intended that the highest tender should not be accepted a report shall be submitted forthwith on the matter to the Executive who may authorise acceptance of another tender if they are satisfied for good reasons that such lower tender should be accepted and, in which case, the reasons for any such decision shall be given and any necessary Ministerial consent shall be obtained before a binding contract for the sale shall be entered into.

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- 7.2 No tender for or offer to purchase any land and / or building shall be accepted unless the prospective purchaser will be able to complete the transaction within a reasonable time from the date of acceptance.
- 7.3 If no tender or offer is accepted, a report shall be prepared for the Executive to consider whether any further efforts should be made to dispose of the land and / or building and, if so, what further efforts should be made.
- 7.4 A prospective purchaser or tenant shall not be permitted to occupy the land and / or building prior to completion of the disposal unless some other written agreement approved by the Monitoring Officer has been entered into.

ACQUISITIONS

- 8.1 All acquisitions of land and / or building shall be the subject of a valuation report prepared by the Council's surveyor or an independent qualified valuer. A valuation of the land and / or building and any relevant terms must be included in the report to the Executive when seeking authorisation for the acquisition.
- 8.2 All acquisitions must be made in accordance with the Council's Financial Regulations and be approved by the Executive. There must be an approved budget for the acquisition.
- 8.3 Land and / or building may be acquired via public auction. Legal Services must be consulted on the conditions of sale prior to the auction taking place.