



ADUR & WORTHING  
COUNCILS

# **STRATEGY AND PROCESS DOCUMENT FOR THE DISPOSAL OF COUNCIL OWNED LAND AND BUILDINGS**

*Revision B Date: 23/10/2024*

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## **PART A            INTRODUCTION**

### **1.        SCOPE AND PURPOSE**

- 1.1        Government advice recommends that local authorities have a document describing their policy and guidance when disposing of land. This policy and guidance document is in accordance with Government advice and details the Council's policies and internal guidance relating to disposals of land.
- 1.2        For the purposes of this policy, a disposal of land means any freehold disposal, by sale or exchange, of Council owned land or buildings and any disposal by the granting of a lease for a period greater than 7 years. Leases of 7 years or less are not covered by this policy document.
- 1.3        The purpose of this document is to make the Council's policies, guidance and procedures transparent and public. It is intended for use by Council officers and to inform all purchasers of Council-owned property and members of the public. This policy is only intended for disposals relating to Adur & Worthing Councils. It does not apply when the Council acts on behalf of other parties.
- 1.4        The Council's actions in disposing of land are subject to the statutory provisions contained in Section 123 of the Local Government Act 1972, which requires that local authorities get the best consideration they reasonably can when disposing of land. In the majority of cases a local authority disposing of land will be entitled to act as any other landowner would. The exception to this rule is where there is a public law dimension to the disposal e.g. where there may be a legitimate expectation to act in a particular way.
- 1.5        The duty to obtain best consideration is subject to certain exceptions that are set out in a government document, referred to in this policy as 'the Consent' - see Appendix 1 for details.
- 1.6        If the Council wishes to dispose of land for less than best consideration, and is not covered by the Consent, the Council can resolve to do so, but will require the formal consent of the Minister for Housing, Communities and Local Government. It will be for the local authority to decide whether any proposed disposal requires specific consent under the 1972 Act, since the Minister has no statutory powers to advise authorities that consent is needed in any particular case. Once an application for a specific consent is submitted, the Minister is obliged to make a decision on the proposed disposal on its merits. However, if he is of the opinion that his consent is not required (i.e. the sale is not at an under-value), or if he believes that the case falls within the terms of the Consent, his statutory function to give specific consent will not arise. Where an authority is uncertain about the need to seek consent, it may wish to seek its own legal advice on the matter.

- 1.7 An authority may find it useful to keep its appointed auditor informed of any legal advice it receives and the proposed action it wishes to take. An auditor has a duty to consider whether the authority is acting lawfully.
- 1.8 It is important that each land disposal is treated on its own merits and nothing in this document will bind the Council to a particular course of action in respect of a land disposal. Alternative methods of disposal, not specifically mentioned in this policy, may be used where appropriate, subject to obtaining proper authority.
- 1.9 If the land is open space land, an additional advertising requirement and a duty to consider representations made will apply under Section 123(2a) of the 1972 Act.
- 1.10 Land held by a local authority for the purposes of the Housing Act 1985 (i.e. housing) is subject to its own restrictions. The Secretary of State has issued a general consent regime in this regard.

## **2. SUMMARY OF LAND DISPOSAL TYPES**

- 2.1 The Council will usually use one of five means to dispose of land. Further guidance upon when it will be appropriate to use any particular means of disposal is contained in Part C below. The means of disposal are:-
- *Private Sale* - a sale of land negotiated with one or a small number of purchasers. The land may or may not have been marketed as available for sale. A binding legal agreement is created on 'exchange of contracts' between the Council and the purchaser.
  - *Public Auction* - a sale of land by open auction which is available to everybody. The sale will be advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer.
  - *Informal Negotiated Tender* - a sale of land after a public advert that requests informal offers or bids that meet a given specification or set of objectives. The Council may then negotiate further or more detailed terms with one or more individuals submitting the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts between the authority and the chosen bidder.
  - *Formal Tender* - a sale of land by a process of public advert and tenders submitted by a given date in accordance with a strict procedure. A binding legal agreement is created upon the acceptance of a tender by the Council.
  - *Exchange of Land* - a transaction involving the exchange of Council owned land with another land owner. The land acquired by the Council will meet at least one of its corporate objectives and will be 'equal' in value to

the land exchanged or there can be an equality payment made by either party.

## **PART B            POLICY**

### **3.    POLICY STATEMENTS**

3.1    The Council will dispose of land in accordance with:-

- Statutory provisions;
- The policies and procedures recorded in its Constitution;
- The Council's Disposal Procedure;
- Corporate and Policy Directives

3.2    Land will not normally be disposed of at less than the best consideration than can be reasonably obtained. In very exceptional circumstances this may be considered in furtherance of corporate priorities and in this case only when the transaction is covered by one of the exceptions detailed in the Consent or has the approval of the Secretary of State

### **4.    COUNCIL PROCEDURES**

4.1    The following procedures relate to the disposal of land:

Approvals for declaring land surplus to the Council's requirements, and authorising its disposal will be obtained in accordance with approved procedures and a checklist is at the foot of this document.

This Policy and Guidance document will be followed in disposing of land and buildings and can be inspected on the Council's website.

4.2    The principle of a disposal will be approved by Cabinet or the Cabinet Member, as appropriate. Decisions to approve the terms of any disposal of land are made by either the Assistant Director for Regenerative Development under approved Delegated Authority, or in conjunction with the appropriate Cabinet Member or, in the case of more significant disposals, Cabinet. This can be exercised according to the Councils' Scheme of Delegations and in particular to delegations:

24.    *'In accordance with Council policies, to manage land, property and other assets allocated to the functions for which they are responsible.'*  
This delegation requires consultation with the appropriate Cabinet Member and the Head of Major Projects and Investment.

25. *'To determine property matters occurring on an occasional basis and in the interests of expediency.'* This delegation requires consultation with the Assistant Director for Legal Services and Monitoring, the Assistant Director for Regenerative Development and the Director of Finance.
  
89. *'To dispose of land in connection with the Council's functions and to grant and/or modify leases, easements, licences and wayleaves of, in or over buildings or land in connection with the Council's functions.'* This delegation requires consultation with the appropriate Cabinet Member.

## **PART C            GUIDANCE**

Guidance to determine whether property or land is suitable for disposal is in the Appendices.

### **5.        DISPOSAL BY PRIVATE SALE**

- 5.1     A disposal by private sale (also referred to as a sale by private treaty) may take place after a period during which the land is put on the open market, including advertising and signage that it is available for sale at an asking figure or on the invitation of offers by a specified closing date. In this case, the Council will be able to accept applications to purchase at the asking figure or consider the highest bid as representing the best consideration that can be reasonably obtained.
- 5.2     If land is to be sold by Private Sale without being marketed, then the reasons justifying a private sale must be recorded in writing. In some circumstances the Council may seek an independent valuation to verify that 'best consideration' is being obtained.
- 5.3     A private sale without the land being marketed may be justified where:
- a)     the land to be disposed of is relatively small in size and an adjoining or closely located landowner(s) is (are) the only potential or likely purchaser(s).
  - b)     the nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained.
  - c)     the Council's land is part of a larger area of land that is proposed for development, redevelopment or regeneration. Also, the nature and complexity of the proposed development of the overall site is such that the Council's corporate objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area.
  - d)     The Crichel Down Rules apply and the Council has decided to sell the land to the person from whom it acquired the land
- 5.4     A legally binding agreement will not be reached until either contracts for the lease or sale of land are exchanged or a development agreement is signed.

### **6.        DISPOSAL BY PUBLIC AUCTION**

- 6.1 A sale by public auction may be appropriate where there is no obvious potential purchaser and where speed and best price can be publicly demonstrated.
- 6.2 The authority of either Cabinet or the appropriate Cabinet Member (as detailed under 4.2) will be required, providing the reasons for a sale by public auction. At least one Council officer shall attend the auction to act on behalf of the Council. The contract for sale or lease must be ready for exchange at the auction.
- 6.3 The binding contract will be made on the acceptance of the highest bid by the auctioneer providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed and exchanged.

## **7. DISPOSAL BY INFORMAL/NEGOTIATED TENDER**

- 7.1 A disposal by informal/negotiated tender differs from a formal tender in that neither the Council nor the successful bidder is legally obliged to enter into a contract for the disposal of the land. The informal/negotiated tender process allows the Council to identify one preferred bidder with whom it may then negotiate further detailed terms or proposals for the sale of the land concerned.
- 7.2 The Council may, as a part of the disposal process, request best and final offers for a sale, or informal development proposals for land that either meet a given specification, or a request for proposals. This process is particularly useful for large or complex development or regeneration sites requiring development and where the proposals may need to be developed in cooperation with the preferred bidder to meet the Council's corporate objectives and to achieve the best consideration that can be reasonably obtained.
- 7.3 Although not a formal tender, after the closing date these are recorded in the Offer Book as a record of the offers received.
- 7.4 A binding legal agreement is not created until the exchange of contracts for sale or lease or the signing of a development agreement.
- 7.5 This method is suited to sales where there are uncertainties, particularly planning, and allows for use of conditional contracts, including clauses which can allow for further sums to become payable upon grant of planning permission at different points in the future.

## **8. DISPOSAL BY FORMAL TENDER**

- 8.1 A sale of land by formal tender may be appropriate where:
- a) the land ownership is not complex;
  - b) legal documentation for contracts/transfer are in place together with statutory searches and replies to standard enquiries;
  - c) there are no uncertainties as to grant of a planning consent; and
  - d) the Council is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance.
- 8.2 Alternatively, this method can be considered where all matters to enable a tenderer to come to a firm price and raise funding for the purchase are in place and available as part of the tender package. For example; the disposal of land to a developer with an obligation to build industrial units for lease.
- 8.3 Other situations which may benefit from this type of sale are land or property sales which have attracted intense local interest from several local parties with a particular interest, or where late bids have, or are considered likely to be made.
- 8.4 This method can provide a well organised, transparent way of achieving completion when a timeframe is essential, but is often more costly and a longer lead in period is required.
- 8.5 Formal tenders will not be appropriate where the land ownership position is complex or the development proposals for the land are insufficiently identified or otherwise incapable of detailed specification at the pre-tender stage. This is particularly so where a detailed planning permission is required, such as a listed building or property in a Conservation Area.
- 8.6 Authority to use this method will be given by either Cabinet, the appropriate Cabinet Member or under Delegated Authority as detailed under 4.2. In either case, the reasons justifying a sale by formal tender must be recorded in writing. The formal tender procedure to be adopted in such cases (subject to any amendments to this agreed by the Assistant Director for Legal & Democratic Services) is set out in Appendix 3. Any exceptions to this procedure must be authorised and recorded.
- 8.7 With a formal tender process a legally binding relationship is formed when the Council accepts a tender in writing. It is essential therefore, that every aspect of the disposal is specified in the tender documents. The tender documents should include a contract for sale or lease which should be completed with the tenderer's details, the tender price, include a deposit cheque to preclude withdrawal of the tender prior to acceptance and be signed by the tenderer. It will be released unconditionally to the Council on submission of the tender.

- 8.8 Sale of land by formal tender will require a detailed specification to be drawn up. This needs to specify the land to be sold, any requirements to be met by the tenderer and any obligations that must be met.
- 8.9 The Council will place a public advertisement identifying the property for sale. Those who have expressed an interest will then be invited to submit a tender bid, in accordance with the tender procedure outlined in Appendix 2.

## **9. DISPOSAL BY EXCHANGE OF LAND**

- 9.1 Disposal by exchange of land will be appropriate when it will achieve best consideration for the Authority and is advantageous to the Council and other parties to exchange land in their ownerships.
- 9.2 Authority for a disposal of land by exchange with another land owner for alternative land will be by either Cabinet or the appropriate Cabinet Member. In either case, reasons for justifying this manner of disposal must be recorded in writing. A binding legal agreement will be created when a contract is exchanged for the exchange of land.
- 9.3 The exchange will usually be equal in value. However, an inequality in land value may be compensated for by an equality payment or by other means where appropriate. For example, where the Council in exchange for a larger piece of land receives a smaller piece of land but the recipient of the larger plot agrees to build industrial units on the Council's smaller area to equalise the consideration. In such circumstances the Council may seek an independent valuation to verify that 'best consideration' will be obtained.

## **10. EXCEPTIONS**

- 10.1 Other methods of disposal may be used where circumstances warrant. Authority needs to be obtained in accordance with paragraph 4 above.

### **10.2 SALES IN GROUPS**

The Councils will from time to time make disposals in groups. These may be for example ten assets released into the market of varying types, so that resources are efficiently directed to focus on a limited and targeted number of disposals. Alternatively it may be decided to group a range of similar assets from the same Tier into the market in order to focus marketing attention on one group of potential buyers for that type of asset. The Councils may choose to batch properties together that have a common underlying title or shared

access, users or other commercial reason to do so. In each case agents advice will be sought. Members will be consulted on each property in each group before committing to a sale process.

## **11. LATE BIDS AND OTHER CONSIDERATIONS**

- 11.1 Guidance from the Local Government Ombudsman recognises the problem caused to local authorities by 'late bids'. The Guidance says that difficulties are less likely if Councils ensure that exchange of contracts take place as quickly as possible after the decision to sell (or lease) is made. It suggests that local authorities should be allowed to sell at an agreed price within a reasonable period of reaching a 'subject to contract' agreement.
- 11.2 In the context of the methods of land disposal dealt with in this document, a late bid may occur:-
- a) in the case of a private sale, after a sale or lease has been agreed, but before exchange of contracts
  - b) in the case of a public auction, after the auction has been closed, but the reserved price has not been met.
  - c) in the case of an informal or negotiated tender, after receipt of bids, but before exchange of contracts or signing of a development agreement.
  - d) in the case of a formal tender, after the closing date for tenders, but before acceptance by the Council of the successful tender.
  - e) in the case of disposal by exchange, after a sale or lease has been agreed, but before exchange of contracts.
- 11.3 Each 'late bid' must be considered in the context of the individual circumstances at the time. The Council's approach to 'late bids' will vary depending upon the method of land disposal used. In each case, its overriding duty will be to obtain the best consideration that it can reasonably obtain (subject to any exceptions in the Consent). The Council's approach to late bids is as follows:
- a) The Council discourages the submission of late bids in all cases when it is disposing of land. It will attempt to minimise problems by aiming for early exchange of contracts.
  - b) Where land is being disposed of by way of formal tender, bids received after the deadline for tenders, will be recorded as late, together with the time and date of receipt. The appropriate Cabinet Member should decide whether to consider late bids after taking advice from the Assistant Director for Legal & Democratic Services and/or Strategic Director.

- c) Except as provided in 11.3b above, until the Council has entered a legally binding contract or agreement with another person, it will consider late bids unless there are good commercial reasons for not doing so. This should be explained to any purchaser when a disposal of land by private sale or negotiated/informal tender is agreed.
- d) Consideration of a late bid does not mean that it will necessarily be accepted even if it is the 'highest' bid. The Council will take into account the likelihood of the late bid proceeding to completion in a timely manner and the possibility of late bids being used as a spoiling or delaying tactic.
- e) Subject to the above, the Council may, in appropriate circumstances, ask both the late bidder and other interested parties, to submit their best and final bids in a sealed envelope by a set deadline.
- f) A decision on whether to accept a late bid for a private sale, informal tender or by exchange are to be made by either Cabinet, the appropriate Cabinet Member or, in the case of an urgent matter, a Strategic Director.

- 11.4 A last minute bid may be rejected for sound commercial reasons. For example; if there is no real certainty of it leading speedily to a contract or is suspected as a spoiling bid.
- 11.5 The Council will at all times bear in mind that the overriding duty is to obtain best consideration, unless a specific decision has been made to take advantage of certain exceptions as mentioned in the Consent in order to further corporate objectives.
- 11.6 In considering what amounts to 'monetary value' in terms of best consideration to be obtained, the creation of jobs or desirable social outcomes, although desirable, cannot be quantified by the Council.
- 11.7 Where land or property is sold at a restricted value in accordance with the Consent, or with the consent of the Secretary of State, provision shall be incorporated into the contract and transfer requiring that any difference between the price paid and the full unrestricted value (as assessed by the Property and Investment Manager) shall be repaid to the Council should the land not be developed so as to provide for the non-monetary benefits which the Council sought to achieve. This refund of the effective land subsidy shall be referred to as "clawback".

## **12. ACHIEVEMENT OF BEST CONSIDERATION WHERE LAND OR PROPERTY HAS REDEVELOPMENT POTENTIAL**

- 12.1 Where, in the opinion of the Property and Investment Manager, land has potential for redevelopment which will enhance its disposal value, outline planning consent for such development may be obtained prior to disposal.
- 12.2 Where the form of development which will maximise value cannot readily be identified it will be appropriate to market the land with bids invited subject to the grant of planning consent for a specified form of development.
- 12.3 Contracts for the sale of land may include a restrictive covenant limiting development of the land to that specified in the outline planning consent or the form of development proposed in any bid made subject to the grant of planning consent.
- 12.4 Should any revised planning consent be obtained subsequent to a disposal which increases the value of the property sold, the Council will not agree to waive or vary any covenant restricting the form of development without the receipt of best consideration reflecting the accrued increase in the value of the land. This uplift in land value shall be referred to as "overage".
- 12.5 Where land is sold which does not have any apparent development potential, a restrictive covenant may be included in the contract for sale and transfer prohibiting the erection of any structures on the land or its use as anything other than amenity land.

### **13. CONTACT POINTS**

- 13.1 Property and Investment Manager
- 13.2 Assistant Director for Regenerative Development

# APPENCIES

## 14. Appendix 1

### THE GENERAL DISPOSAL CONSENT

The Local Government Act 1972: General Disposal Consent (England) 2003

1. The First Secretary of State ("the Secretary of State"), in exercise of the powers conferred by sections 123(2), 127(2) and 128(1) of the Local Government Act 1972, hereby gives consent to a disposal of land otherwise than by way of a short tenancy by a local authority in England in the circumstances specified in paragraph 2 below.
2. The specified circumstances are:
  - a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
    - i) the promotion or improvement of economic well-being;
    - ii) the promotion or improvement of social well-being;
    - iii) the promotion or improvement of environmental well-being; and
  - b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).

## 15. Appendix 2

### FORMAL TENDER PROCEDURE

- a) No tenders shall be invited unless Public Notice has been given in at least one local newspaper giving details of the property and the proposed transaction, and inviting interested persons to apply to tender within a period of not less than 28 days.
- b) Where an agent has been appointed to act on the Council's behalf, their name and address will also be given.
- c) Interested parties will then be provided with property particulars and details of the tender process.
- d) All tenders must be delivered in the envelope provided or in a sealed envelope addressed to the Assistant Director for Regenerative Development, bearing the words "Tender for ....." and the address of the land or property for sale, but without any name or mark indicating the sender. Applicants who wish to submit their offers by post must do so by Recorded Delivery.
- e) No bid shall be accepted that is not specific, or made in reference to another bid, such as £100 over the highest bid.
- f) The Council will make it clear that it does not bind itself to accept the highest, or any tender.
- g) Tender envelopes will remain unopened until the appointed time for opening.
- h) All tenders will be opened together after the closing date has expired by one senior officer nominated by the Assistant Director for Legal & Democratic Services and at least one other officer. In the case of more significant disposals the Leader and other Cabinet Members may be invited to attend the opening ceremony.
- i) The Assistant Director for Legal & Democratic Services will maintain a record of tenders received.
- j) Any tenders received after the expiration of time for tendering, or which contravene any provision of the tendering conditions or instructions will only be opened with the authority of the Assistant Director for Legal & Democratic Services after consultation with the appropriate Cabinet Member.

## 16. Appendix 3

### DISPOSALS CHECKLIST

- ▽ Consult CFO first to check the financial implications of any disposal
- ▽ Notify Demographic services for inclusion on the Forward Plan, before marketing aka 28 day notice (if over £100k of anticipated value) and receive acknowledgement
- ▽ Land or property to be sold is identified- see Appendix 4 for process
  - o Designate lead officer with appropriate qualifications and systems training
  - o Review appropriate governance routes for particular disposal
- ▽ Consult
  - o Cabinet Member & Leader on disposal and governance
  - o Any internal use requirements
  - o Planning
- ▽ Obtain authority to sell
  - o Delegated Authority
  - o Cabinet Member
  - o Cabinet
- ▽ Carry out background checks
  - o Title information
  - o Site investigations
  - o Planning situation
  - o Highways/access
  - o Special purchaser
  - o Budget/financial situation
  - o VAT
  - o Section 123 - Local Government Act 1972
  - o 'Crichel Down' rules
- ▽ Gather necessary information for data room
  - o Above documents where not Council or commercially confidential
  - o Plans/dimensions
  - o Energy Performance Certificate
  - o Statutory undertakers
  - o Environmental information
  - o Asbestos register
  - o Condition survey
  - o Compile CPSE (Enquiries before contract)
- ▽ Identify actions to maximise value
  - o Extend, regear, amend leases, or achieve vacant possession

- o Ensure property is presentable for sale in appropriate state for its market, whether appropriate to commission a stock condition survey (structural, Mechanical and Electrical and or other) and whether to carry out physical works to enable a best value sale, taking into account advice from agents, the decision to be made by the Property and Investment Manager and documented in the file folder.
- ▽ Select method of disposal
  - o Private sale
  - o Informal tender
  - o Formal tender
  - o Public auction
  - o Exchange of land/property
- ▽ Prepare marketing details/instructions
- ▽ Identify names from Applicants list, and agent's advices if appointed
- ▽ Set closing date (if applicable)
- ▽ Market
  - o In-house
  - o External agents
    - Procurement
    - Budget
  - o Website and social media
- ▽ Arrange opening of offers
  - o Attendees
  - o Location
  - o Bid recording form
- ▽ Open offers
- ▽ Identify purchaser
  - o Negotiate terms
  - o Agree terms
  - o Carry out background checks
  - o List potential sale on the Forward Plan
- ▽ Consultation
  - o Sent
  - o Reply received
- ▽ Delegated Authority
  - o Submitted
  - o Authorised
- ▽ Legal e-form
  - o Submitted

- o Authorised
- o Acknowledged
- ▽ Draft documents
  - o Received
  - o Approved
- ▽ Completion
  - o Advise utilities and give meter readings
  - o Hand over keys
  - o Update records
  - o Update Earthlight
  - o Update Estates Application
  - o Update Transparency List on website
  - o Remove any signage if required under contract
  - o Secure the site
  - o Advise VAT office, Finance, Legal and Technical Service teams
  - o Advise owning committee, eg Community, Parks, Adur Homes, General Fund
  - o Legal to pack and store any paper documents
  - o Appropriate communications to be published by Comms Team

### **Accounting for Funds Received**

The Solicitors acting for the Council will liaise with the Cash Office to expect cash transfer in pending invoicing by solicitors as part of the Sale Contract (Standard Conditions of Sale applicable) and Completion Statement or the Solicitors will implement a transfer in accordance with the appropriate Law Society Protocols.

## 17. Appendix 4

### GUIDANCE TO DETERMINE WHETHER PROPERTY IS SUITABLE FOR DISPOSAL

Identify properties to be disposed of using the following criteria:

Property is suitable for disposal if the:

- A. Property is not income producing and has no or very limited prospect of doing so or realising added value  
OR
- B. Property has no or limited community or social value that warrants the Council owning the property AND CLT are satisfied with this being the case  
OR
- C. Annual and annualised costs of ownership including but not exclusively as to maintenance outweigh its annual or capitalised future value to the Council  
OR
- D. Property has no reasonable prospect of being developed for emergency or temporary accommodation or social housing  
OR
- E. Anticipated capital receipt is sufficient to warrant a disposal as the amount received will exceed the annual interest charges to the Council of the capital receipt if expressed as borrowings (for example applying a notional 'hurdle rate' of 5% or 20 year's purchase)

AND in each case before disposal;

- F. Property is capable of being disposed of if it is not held in a way that creates a legal impediment to its sale. For instance charitable land, or land given to the Council, which is typically but not exclusively public open space.

AND in each case before disposal;

- G. That Legal Team have confirmed that there are no impediments such as F. above and that Finance Team have checked that the repayment of debt and or loss of any income is understood and properly quantified

As a final criteria, a property may be suitable for disposal when measured against the above but should be retained because the Property:

1. Is required for bona fide other uses by the Council
2. Has a reasonable potential for community use that may be delayed or a work in progress
3. Is required for re-wilding or other environmental schemes
4. Is so restricted by covenants or repayment of debt that a sale would produce nil or negative net value or see point E. above, has other legal impediment to sale

5. Is held for strategic purposes or any other statutory obligation upon the Council
6. Is held for alignment with the Council's objectives, as determined by the Constitution, Statute, or Member's Decision as properly recorded

These criteria will be supported by relevant evidence so that a clear audit trail can be established to ensure that any decision made is open, fair and transparent, thereby being compliant with the policy and the obligations within it.

## **18. Appendix 5**

### **SCHEME OF DELEGATION - Adur and Worthing**

**The link to the Adur Constitution is here**

<https://www.adur-worthing.gov.uk/media/Media,168761,smxx.pdf>

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<https://www.adur-worthing.gov.uk/media/Media,168762,smxx.pdf>

All disposals will be conducted in accordance with the Council's Constitutions and disposing officers will have regard to the Schemes of Delegation And Financial Regulations.

## 19. Appendix 6

### LEGAL COMMENTARY

#### Power to Dispose of Land

The Council has power to dispose of land given to them by S123(1) LGA 1972 however that power is subject to some conditions. One of those conditions (S123(2) LGA 1972) requires that, except with the consent of the Secretary of State, not to dispose of land (whilst exercising the powers of this section) otherwise than by a short tenancy, for a consideration less than the best that can be reasonably obtained.

#### Best Consideration Reasonably Obtainable

The only consideration that can be taken into account when determining if the “best consideration” condition is met is consideration that forms commercial or monetary value. Case law has established the following principles:

- What is reasonable depends entirely on the facts of the particular transaction
- Best price does not require the highest offer to be accepted (again, each case will depend on its facts).
- A local authority can have regard to ethical considerations, however such must be balanced with the commercial considerations.
- The terms on which the land is disposed are material to the assessment of the consideration. E.G. if a purchaser assumes onerous restrictive covenants, that will reduce the value of the consideration, and the sale is likely to be at an undervalue.

A court will only likely find a breach of s123(2) LGA 1972 if a council:

- Failed to take proper advice
- Failed to follow the advice that it received for reasons it could not justify; or
- Had followed advice that was so erroneous that in accepting it the local authority must have known it was acting unreasonably.

#### General Disposal Consent (England) 2003

The Secretary of State has given consent for disposals of certain undervalues subject to complying with the [General Disposal Consent \(England\) 2003](#) (“the Consent”). In brief outline, the General Consent can be utilised by local authorities, to help secure the promotion and improvement of the economic, social or environmental well-being of its area. This consent can be utilised provided that the undervalue does not exceed £2,000,000.

The Consent guidance says:

In determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue.

The Consent guidance includes a Technical Appendix for “Valuations For The Purpose Of Determining Whether Proposed Land Disposals Under The Terms Of The Local Government Act 1972 Fall Within The Provisions Of The General Disposal Consent 2003”. A copy of the Consent guidance should be given to any valuer instructed to provide a valuation.

The Technical Appendix says that the report should set out unrestricted and restricted values together with the value of conditions (even if those are nil). The valuer should also state the assumptions made. The valuer should take into account the requirements of the RICS Appraisals and Valuation Standards (Fifth Edition) (“the Red Book”) including UK Guidance Note 5. All values should be assessed in capital, not rental, terms – when a lease is to be granted, the valuer should express the value of the consideration as a capital sum.

### Council’s Constitution

Please also note that the [Council’s constitution](#) says that “Prior to any disposal of land, a valuation of the asset to be sold should be obtained from an appropriately qualified valuer.” (para. 4.4.2 of the Joint Councils Financial Regulations).

### Open Space Disposals

In addition to the above, regardless of the length of the term of any lease, any disposal of open space also needs to comply with S123(2A) LGA 1972.

S123(2A) LGA 1972 requires the Council not to dispose any land consisting or forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question, to be advertised in a local newspaper for two consecutive weeks, and consider any objections to the proposed disposal which may be made to them.

“Open Space” means land laid out as a public garden or used for the purposes of public recreation or land which is a disused burial ground.

ENDS