

## **PART 4 – RULES OF PROCEDURE**

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### **PROCEDURE RULES FOR THE ACQUISITION OR DISPOSAL OF LAND**

#### **1 GENERAL**

1.1 These Rules will be followed when dealing with all acquisitions and disposals of land, whether freehold, leasehold or by grant of a tenancy, except as provided below.

1.2 In the Procedure Rules for the Acquisition or Disposal of Land,

‘CP&EM’ shall mean the Corporate Property & Estates Manager or another qualified valuer with similar duties.

‘Land’ shall mean any interest in land (including buildings), or any right in, on, over or under land.

‘Operational Land or Property’ shall mean Council land and property held to facilitate the delivery of Council services to include without limitation land and properties such as offices, schools and associated playing fields, nurseries, youth centres, caretakers houses, libraries, community centres and halls, sports/other leisure outdoor centres and pools, residential homes, day and training centres, enterprise centres, housing area offices, depots, civic amenities sites, cemeteries, crematoria, laboratories, animal pounds, public conveniences, theatres and concert halls, historic buildings and civic residences, parks and recreation grounds, sports pitches, play areas and all associated buildings, changing rooms and ancillary residential accommodation, but excluding land held for investment or development purposes. In the case of doubt, the Section 151 Officer and the Monitoring Officer shall determine the issue.

‘Non-Operational Land or Property’ shall mean any Land not falling within the definition in these Rules of Operational Land or Property.

‘Designated Body’ shall mean:-

- (a) the Council exercising non-executive functions; or
- (b) an employee to whom powers (being non-executive functions) have been delegated by the Council; or
- (c) the Leader, the Cabinet or an officer exercising Executive Functions in accordance with the Cabinet Procedure Rules.

‘Relevant Cabinet Member/s’ shall mean the Cabinet Member for Finance as well as any other Cabinet Member with relevant portfolio responsibility.

- 1.3 These Rules apply to:-
- (a) the freehold acquisition or disposal of Land;
  - (b) the grant of a lease or tenancy exceeding 7 years in duration; and
  - (c) the taking of a lease or tenancy of any duration.
- 1.4 The Procedure Rules for the Acquisition or Disposal of Land do not apply:-
- (a) to disposals under the Leasehold Reform Act 1967 or under "Right to Buy" legislation;
  - (b) to the renewal or restructuring of an existing lease or tenancy;
  - (c) to the sub-letting or assignment of an existing lease or tenancy granted by the Authority;
  - (d) where the Cabinet and the Council decides they will not apply in certain cases.
- 1.5 In any dealings with Land, proper regard will be had to the professional advice from a qualified Valuer at all relevant stages during the process.
- 1.6 The Council's Corporate Property and Estates Manager (or another qualified valuer with similar duties) shall be designated as the Valuer for the purposes of paragraph 1.5 of the Procedure Rules for the Acquisition or Disposal of Land and no disposal shall be proposed except in consultation with him/her.
- 1.7 Procedures will be followed precisely so that due probity and accountability can be demonstrated and value for money achieved.

## **2 ACQUISITIONS, DISPOSALS AND LEASES - AUTHORITY**

- 2.1 Under the Scheme of Delegations, authority for approving disposals, acquisitions and leases shall be vested in:
- (a) The Director of Economic Development (or the Chief Executive), in the case of disposals where the value is not more than £1,000,000 and where:
    - (i) Member consultation and advice from the Section 151 Officer and the Monitoring Officer has agreed to the exercise of the delegation;
    - (ii) The offer represents the best price reasonably obtainable; and
    - (iii) The offer so accepted is on price alone,

Provided that this power may not be sub-delegated other than pursuant to the following paragraph (b).

- (b) The CP&EM (pursuant to sub-delegated powers from the Director of Economic Development), in the case of disposals where the value is not more than £100,000 and where:
- (i) The offer represents the best price reasonably obtainable;
  - (ii) The offer so accepted is on price alone; and
  - (iii) The offer is greater than that estimated by a qualified valuer or no more than 10% below that estimate.
- (c) The Director of Economic Development (or the Chief Executive), in the case of acquisitions where the value is not more than £1,000,000 and where:
- (i) Member consultation and advice from the Section 151 Officer and the Monitoring Officer has agreed to the exercise of the delegation;
  - (ii) The Council's offer represents no more than market value as determined by a qualified valuer; and
  - (iii) The amount offered is on price alone,

Provided that this power may not be sub-delegated other than pursuant to the following paragraph (d).

- (d) The CP&EM (pursuant to sub-delegated powers from the Director of Economic Development), in the case of acquisitions where the value is not more than £100,000 and where:
- (i) The Council's offer represents no more than market value; and
  - (ii) The amount offered is on price alone.
  - (iii) The Director of Economic Development (or the Chief Executive), in the case of the grant or taking of a lease at a rent not exceeding £1,000,000 or agreeing the renewal or reconstruction of existing leases at a rent not exceeding £1,000,000, where:
    - (iv) Member consultation and advice from the Section 151 Officer and the Monitoring Officer has agreed to the exercise of the delegation; and
    - (v) In the case of a grant, the offer represents the best rent reasonably obtainable by the Council as approved by a qualified valuer; or
    - (vi) In the case of an acquisition, the Council's offer is no more than market value as approved by a qualified valuer,

Provided that this power may not be sub-delegated other than pursuant to the following paragraph (f).

- (e) The CP&EM (pursuant to sub-delegated powers from the Director of Economic Development), in the case of the grant or taking of a lease at a rent not exceeding £100,000 or agreeing the renewal or reconstruction of existing leases at a rent not exceeding £100,000, where:
  - (i) In the case of a grant, the offer represents the best rent reasonably obtainable by the Council as approved by a qualified valuer; or
  - (ii) In the case of an acquisition, the Council's offer is no more than market value as approved by a qualified valuer.
- (f) The Cabinet, for a disposal, acquisition or lease in any case where arrangements have not been made for discharge of that function by an officer of the Council, pursuant to the Cabinet's reserved powers 16, 17 or 42 or where a reference to Cabinet is appropriate following Member consultation under paragraph 2.2 below.

2.2 The exercise of officer delegations under paragraph 2.1 above shall be subject to the following consultation requirements:

- (i) Relevant Cabinet Member/s and Ward Members shall be consulted on Operational Land disposals valued up to £1,000,000, except for routine transactions valued up to £100,000;
- (ii) Relevant Cabinet Member/s shall be consulted on Non-Operational Land disposals and any land acquisitions, except for routine transactions valued up to £100,000;
- (iii) The Cabinet and Ward Members consulted (under sub-paragraphs (i) and (ii) above) shall be given a 7 working day consultation period, during which they may object and request that the matter be referred to Cabinet; and
- (iv) All land transactions, except for routine transactions valued up to £100,000, shall require advice from the Section 151 Officer and the Monitoring Officer.

### **3 SURPLUS LAND**

The following process shall apply to Operational Land and Property and Non-Operational Land and Property which may be surplus to the Council's requirements:

3.1 Where a service area no longer requires Operational Land or Property, the service area will prepare a report to be approved by the relevant Director in consultation with the relevant Cabinet Member which states that the property or land is surplus to its requirements. Ward Members will be advised that consideration is being given to declaring the identified property or land as surplus to the service area's requirements.

3.2 Alternatively, where the Council's Corporate Property & Estates Manager ("CP&EM") (or another qualified valuer with similar duties) identifies opportunities for development or disposal of Operational Land or Property following a property review or an external enquiry, the CP&EM will discuss this with the relevant service area, identify any scope for service area re-provision/relocation if required, and institute consultation as set out in paragraph 3.1 above.

3.3 Where the CP&EM proposes the disposal of Non-Operational Land or Property, the business case and options for disposal will be discussed at regular frequency with the CP&EM and the Cabinet Member for Finance Business & Local Economy (or other Cabinet Member with similar duties) and appropriate actions agreed in individual cases.

3.4 A schedule of surplus and potentially surplus land and properties will be maintained by the CP&EM and reviewed regularly by the Asset Management Working Group (or other working group or officer with similar duties). Where alternative service area interest arises, this must feature in the relevant service area's property plan, and proposals for a re-use will be considered by the Asset Management Working Group. The relevant Director, and Relevant Cabinet Members will consider the business case for a re-use of land and property for alternative Council purposes.

3.5 The schedule of surplus and potentially surplus properties will be circulated to all members of the Council twice a year for information. Where questions or comments arise these will be referred to the CP&EM for a response.

3.6 At the earliest possible opportunity the ward Members will be advised of the proposed disposal strategy in individual cases, including planning considerations, re-development and disposal timescales. In accordance with delegated power DE4 , if no ward Member objection is received, the Director of Economic Development may declare the land or property as surplus to the Council's requirements; however where a ward Member objection is received the matter will be referred to the Cabinet for a decision.

3.7 Where any proposed declaration of a property as surplus (under delegation DE4) relates to a property providing direct services to the public then the decision shall be referred to the Cabinet for its approval under its reserved power 42.

3.8 The future of Non-Operational Land will be considered by the Asset Management Working Group (or other working group or officer with similar duties) and the relevant service area who may identify future operational use and, as per the procedure set out in paragraph 3.2, such use will be determined in a similar manner. The sale of Non-Operational Land may involve freehold reversions, ground leases as initiated by tenants, or sales as an investment subject to a sitting tenancy or to third party investors if it is determined that the Council no longer has a strategic need for the property for social, economic, employment or regeneration purposes.

3.9 Marketing arrangements - determining the most appropriate marketing methodology and co-ordinating all negotiations shall be determined by the CP&EM for all property sales and major property related projects taking proper account of the statutory obligation to demonstrate best consideration.

#### **4 INVITATION OF OFFERS - DISPOSALS OF LAND**

- 4.1 No offers for the disposal of Land will be invited except with the prior approval of a Designated Body.
- 4.2 Only a Designated Body will determine on the advice of the Corporate Property & Estates Manager (where he/she is not the Designated Body) whether disposals will be by way of sealed offer, private treaty or auction and such determination will be made so as to achieve the best price reasonably obtainable.
- 4.3 There will be no disposal of Land by private treaty or where an offer has been received from only one person except where it is determined by a Designated Body, that there is only one party who could acquire the interest because, for example:-
  - (a) the physical characteristics of the land so dictate, or
  - (b) there is only one response following prolonged marketing of the land;
- 4.4 The Corporate Property & Estates Manager will advertise any proposed disposal by public notice in at least one local newspaper and, if appropriate, in specialist journals, setting out a description of the land, the terms and conditions upon which offers are to be submitted, where further particulars may be obtained and the last date and time when offers will be received. It need not be advertised when 2.2 above applies or if it can be demonstrated to the satisfaction of the Corporate Property & Estates Manager Corporate Services that the nature of the demised land is such that to do so would serve no useful purpose.
- 4.5 Offerors will be provided with a Form of Offer based upon a Model prepared by the Corporate Property & Estates Manager and with the official pre-addressed envelope bearing the word "Offer" followed by the subject to which the offer relates and pre-addressed to the Corporate Property & Estates manager.
- 4.6 The confidentiality of identity of offerors will be maintained until an offer has been accepted, subject to any legal obligation to disclose.
- 4.7 No offeror will be favoured with information that is not made available to the others.
- 4.8 Every person submitting an offer to the Authority will be required to sign a declaration to the effect that:-

- (a) they have not and will not inform any other person of the amount of their offer; and
- (b) they have not fixed the amount of any offer in accordance with a price fixing arrangement; and
- (c) they accept that the Authority is entitled to cancel the contract and to recover from them the amount of any loss arising from such cancellation if it is discovered that there has been any corrupt or fraudulent act or omission by them which in any way induced the Authority to enter into the contract.

## **5 RECEIPT, CUSTODY AND OPENING OF OFFERS**

- 5.1 It will be a condition of every invitation that each offer must be sent in the official envelope provided, which must be sealed.
- 5.2 All offers must be delivered to the address shown on the official envelope.
- 5.3 Delivery by hand will be acceptable only in exchange for an official receipt. The receipt will clearly record the time and date of receipt.
- 5.4 All offers will be kept in safe custody until the appointed time of opening when they will be opened consecutively during the same session.
- 5.5 All offers will be opened by two employees designated for the purpose by the Director of Economic Development, at least one of whom will have had no involvement in the invitation of offers.
- 5.6 When opened, all offers will be recorded in a register and initialled and dated by the designated employees present at the time.
- 5.7 Any offer received after the time and date specified in the invitation will not be considered unless there are exceptional circumstances and it is agreed by the Director of Economic Development and the County Solicitor.

## **6 EXAMINATION OF OFFERS**

- 6.1 If, after the offers have been opened and examined, an error in computation of an offer is detected the offeror will be given details of the error and the opportunity of confirming the total offer sum or withdrawing his/her offer.
- 6.2 An offer, which attempts to qualify certain aspects of the proposals, and which would require the Authority to acquiesce, other than as planning authority, will not be considered. An offeror who submits a qualified offer will be given the opportunity to withdraw the qualification without amendment to his/her offer and if he/she does so it will be considered but if he/she fails to do so it may be rejected.

- 6.3 An offer which is conditional solely upon the outcome of matters which would not require the Authority to acquiesce, other than as planning authority, will be considered.
- 6.4 No post-offer negotiations will take place with an offeror unless the scope and principles of the negotiations have been approved in writing by an employee of not less than Operational Manager level; and no fewer than two employees are present at all times during the negotiations.
- 6.5 A written record of all verbal communications with an offeror together with the time and date thereof will be made contemporaneously (or as near as possible) and signed by the relevant employee and an employee of not less than Operational Manager level.

## **7 EVALUATION AND ACCEPTANCE OF OFFERS**

- 7.1 The offer that represents the best price reasonably obtainable by the Council will be accepted.
- 7.2 Offers may only be accepted by a Designated Body.
- 7.3 There will be no disposal at less than the best price reasonably obtainable without compliance with relevant statutory provisions, on the advice of the County Solicitor.
- 7.4 Nothing in these Rules binds the Council to accept any offer.

## **8 NOTIFICATION OF RESULTS**

Once an offer has been accepted the unsuccessful offerors will be informed that their offers are no longer being considered.

## **9 COMPLETION OF CONTRACTS**

- 9.1 Contracts and transfers will be in writing and executed in accordance with Article 13 of the Constitution and as may be required in law to give effect to the transaction.
- 9.2 Only the Designated Body may issue instructions to the County Solicitor for the preparation and completion of documentation in respect of any transaction in land, except as authorised in advance by the Cabinet and the Council.
- 9.3 Every contract will comply with the EC Treaty and any Directives of the European Union for the time being in force in the United Kingdom.

## **10 RETENTION OF DOCUMENTS**

- 10.1 Deeds, title documents, leases, charges on land, guarantees and documents of a similar nature may only be destroyed with the consent of the County Solicitor.

10.2 Details of all offers will be retained for a period of three years.

