



Disposal of Minor Properties

Report of the Micro Scrutiny Panel

May 2020

Introduction

The Panel was established by the Programmes and Resources Committee to undertake a micro scrutiny review of the process recently used for disposing of minor properties.

The decision to commence the disposal process was agreed at a meeting of the Audit, Resources and Performance Committee held on 3 November 2017.

The Panel was a cooperative and collaborative process with the aim of informing and improving the process for future disposals.

In carrying out its task, the Working Group had regard to the seven key principles that underpin the ways of working at the Authority:

- We always start with outcomes
- We always ask what's possible
- We always put the public first
- We always look for efficiency
- We always act with agility
- We always value our colleagues
- We always develop ourselves and others.

4 Members were appointed to the Panel by the Programmes and Resources Committee:

Cllr C Furness
Prof J Haddock-Fraser
Cllr A McCloy
Cllr B Woods

At the first meeting of the Panel Cllr C Furness was appointed as Chair. During the review the Panel was supported by the Director of Commercial Development and Engagement, the Corporate Property Officer and the Democratic Services Manager.

The Programme and Resources Committee had asked that the review be completed so it could be considered at the meeting of the Committee to be held on 15 May 2020.

Scope of Review

In considering the request for scrutiny the following issues were identified:

- The timescales for completing the process (November 2017 to June 2019).
- Value for money considerations such as the use and availability of resources and the overall cost to the Authority.
- Stakeholder engagement in the process in terms of communications with Parish Councils, Authority Members and special interest groups.
- The process used in terms of selecting of prospective purchasers and the methodology used to evaluate offers received.

Method of Review

To look at the existing Officer review of the process to establish whether it adequately addresses the issues raised by Members and examine in more detail those areas where the Panel believes that those issues have not been fully addressed.

Background

Over a number of years, for various reasons, the National Park Authority has acquired a number of minor properties, principally to secure and enhance landscape features to the benefit of our National Park to deliver our statutory purposes.

On 3 November 2017 the Audit, Resources & Performance Committee considered a report setting out proposals to rationalise the Authority's minor property portfolio, in accordance with the Asset Management Plan and the DTZ Plan of 2013.

In that report the Committee reviewed the priority list of minor properties for disposal initially undertaken in 2016 and agreed an updated prioritised list of 15 properties. In approving the list it was confirmed that disposals would only be considered where the important features of each property could be secured for future generations to enjoy. At that time it was also acknowledged that securing such features through disposal to likeminded organisations or individuals who share the Authority's management objectives may be reflected in sales at an undervalue as compared to a unencumbered open market disposal.

The Committee agreed that any decision-making and disposal of properties identified with a low to medium risk, including approval of any possible undervalue arising from a disposal process, be delegated to the Resource Management Meeting in consultation with the Head of Law, the Corporate Property Officer and the Chair and Vice Chair of Audit Resources and Performance Committee. It was also agreed that the future of properties identified as high risk would be considered as part of the Asset Management Plan Review.

Following completion of the woodlands disposal project, Officers then embarked on the programme of work to review the portfolio of minor properties. A project team of Officers with expertise in property and other specialist areas was established to consider which of the "minor properties" may be suitable for disposal following the asset disposal guidelines in place. As a result 7 properties were put on the market in spring 2019 for sale.

At the end of the process, in response to the tenders received, the Authority decided to dispose of two properties; land at Losehill Hall and Winster Ore House. The Authority decided not to dispose of the remaining properties at that moment in time but reconsider them as part of the wider Asset Management Plan Review. This decision was made because it was not considered that the potential recipients of the other 5 properties had sufficiently similar management objects to the Authority. Following a subsequent discussion with the successful bidder on one of the two properties identified for disposal the property was retained and it too will be considered as part of the Asset Management Plan Review.

At the end of this process Officers carried out a learning review to consider ways of improving the process for future disposals. As well as finalising the draft Asset Disposal Procedure, an accompanying Tool Kit for Disposal of Assets was produced to help Officers to implement the Asset Disposal Procedure. These two process documents were included in a report on the new Corporate Property Asset Management Plan approved by the Authority in February 2020.

On 17 January 2020, following a request from a Member, the Programmes and Resources Committee approved a proposal to carry out a micro scrutiny of the disposal process and appointed four Members to a Scrutiny Panel. The Panel was asked to look at the process used

because of concerns over the length of time it took to complete, issues over communication and consultation internally and externally, and the reliability of the method used to score and evaluate bids at the eventual assessment stage. The desired outcome from the micro scrutiny was to consider ways that the Authority's property disposal process could be made more efficient, effective and open.

Key points to consider were:

- Over-long timescales: from ARP decision in November 17 to eventual conclusion in June 19.
- Internal resources: input and availability of specialist Officers, time and monetary cost to the Authority in terms of value for money.
- Stakeholder engagement: clarity, timing and content of communication with parish councils, Authority members and special interest groups;
- Issues of reputational damage.
- Process: The apparent uncertainty over procedures surrounding the selection of prospective buyers and scoring methodology, resulting in just two properties eventually being disposed of.
- Feedback and learning points from Officers.

Evidence and Research

At the initial meeting the Scrutiny Panel considered a timeline of the events that had led up to the scrutiny review and noted that Officers had updated the Minor Property Disposals Toolkit to incorporate their reflections on how the process had worked in practice. In light of this it was agreed that the Panel would:

- Review the standards and risk based approach by considering the difference between the Authority's policies and those adopted by others. This could be achieved by asking whether the Policy agreed by ARP was the right one and did it achieve the goal to balance value for money considerations and ecology protection. It was noted that in disposing of woodlands the Authority had disposed of assets using covenants to offer ongoing protection. Panel Members questioned whether the Authority could have been bolder and more trusting of partners. It was acknowledged that in asking for the review there was no suggestion that Officers had not followed the approach agreed by the Committee.
- Review the policy and process by looking at how the decision to dispose was made and the scoring process used to evaluate offers. It was suggested that this could be achieved through a comparison with how other organisations have approached their minor property disposals.
- Examine stakeholder involvement in the process. Members of the Panel suggested that it would be useful to look at the correspondence around the High Rake and the Winster Ore House to illustrate this.
- Consider whether the process represented good value for money.

To achieve this at the second meeting of the Panel Members considered the approaches adopted by other National Park Authorities and Local Authorities and looked at email correspondence received relating to High Rake and Winster Ore House. In considering the correspondence it was noted that:

- It appeared as if responsibility for progressing the disposals had changed hands several times during the process.
- There had been significant delays in stakeholders, including Members, receiving responses to correspondence.
- There appeared to be some confusion over whether stakeholders were being informed or consulted on disposal proposals.
- There was a need for a greater understanding of the weighting used for scoring and evaluating bids from potential purchasers.

At the third meeting the Panel looked at the Toolkit for Disposal of Assets and considered it in the context of best practice and the specific cases discussed at the previous meeting.

Key findings

Overall the Scrutiny Panel were content with the revised process and recommended a number of changes to make sure that:

- The revised process enables the Authority and its Officers to be bolder in approach by clarifying that the methods of disposal identified in the Toolkit should have equal weighting.
- There is a clear audit trail with good record keeping including meeting notes and agreed actions.
- Good lines of communication were maintained internally and externally with a single point of contact for enquiries. The process needed to be much clearer on whether engagement with stakeholders was consultation or informing or notifying.
- Greater clarity on the stages at which Members have input into the process

Conclusions

To address the findings it is recommended that the Tool Kit for the Disposal of Assets is amended as set out in Appendix I.

APPENDIX 1**TOOL KIT FOR DISPOSAL OF ASSETS****Fourth Draft****Introduction**

This process note complements the Asset Disposal Procedure and gives officers a stage-by-stage process for disposing of Authority property. This note is based on 'learning' from the Minor Properties Disposal Project. The Senior Leadership Team and the Chair of the Authority have requested it.

The Tool Kit is based on each disposal process being led by a clearly identified Head of Service (the 'Sponsoring Head of Service') All communication must be sent to the Sponsoring Head of Service to coordinate decisions and responses within their Service, to other Services, to the Chair and Vice-Chair of Programmes and Resources Committee and the Senior Leadership Team. Incoming communication from external organisations and stakeholders must be directed to the Sponsoring Head of Service to respond to.

A 'audit trail' of the whole process needs to be kept by the Sponsoring Head of Service (or an Officer delegated by them). The audit trail must include clear meeting notes and actions points for Stages 1 to 9.

Key stages**STAGE 1 - Service appraisal of potentially surplus property**

Sponsoring Head of Service/Director Does the Authority need to carry out the activity/service that is carried out from the property? Can another organisation, business or person carry out the activity/service?

Case Worker/Team Manager/Head of Service Consider if there is a potentially surplus property, the responsibility for which lies within their Service. An initial assessment should be made in accordance with para 4.1.1 and 4.1.2 of the Asset Disposal Procedure (2020) namely:

An initial assessment must be made, with the Overarching Principles in mind, to determine whether land is surplus. Each case should be assessed on the circumstances associated with the land and taking into account the Authority's Corporate Property Asset Management Plan, and the Asset Management Plan Decision Tree should be completed. The following matters should be considered:

- a) Whether the land fits with the Authority's three strategic outcomes on landscape, engagement and communities.
- b) Whether there is an operational need and that operational need can only be met by the particular property.
- c) That the land held is integral to continuity of service delivery.

- d) If the property does not meet (a), (b) or (c) above, whether it offers or could offer significant revenue raising opportunities to warrant retaining it.

Where land satisfies any of the criteria (a) to (d) above, it is unlikely to be surplus. However, even if the property does satisfy any of the above criteria, it could still be considered for disposal if it cannot meet the two criteria below:

- a) **Financial sustainability** – the Authority only owns what it can financially afford to sustain for now and for the period of the capital strategy;
- b) **Asset condition** – any property the Authority owns will be put into satisfactory condition and will be maintained in this condition for the duration of ownership.

Sponsoring Head of Service makes the decision whether the property is ‘provisionally surplus’ and, if so, ‘sponsors’ the proposal for a corporate decision.

STAGE 2 - Consult with Senior Leadership Team and other Heads of Service if the recommended ‘provisionally surplus’ property can be corporately declared ‘surplus’

Sponsoring Head of Service sends out attached provisional surplus property report (Appendix 1) to all relevant Heads of Service with a minimum deadline of 6 weeks for their Services’ response. Heads of Services consulted by the Sponsoring Head of Service must reply even if it is to say that they have no comments on the proposal. This will ensure that there can be no ‘come back’ to suggest staff have not been consulted.

Each relevant Head of Service is responsible for consulting the relevant staff in their Service and providing a whole Service response to the Sponsoring Head of Service.

Responses should include:

- A detailed description of any relevant factors not covered in the Provisionally Surplus Report that the Service is concerned about and wishes to discuss
- What are the perceived risks and level of risk to the property that could be compromised by an ‘inappropriate’ future owner
- Advice as to whether additional public designations needs to be placed on the property before disposal (e.g. access and rights of way, local nature reserve status, TPOs)
- Advice as to whether additional legal covenants need to be placed on the property before disposal

STAGE 3 - Sponsoring Head of Service decides whether an internal meeting is required to resolve any matters

The Sponsoring Head of Service analyses other Heads of Service responses and decides whether an internal 'face-to-face' meeting is appropriate to resolve any conflicting advice given and attempt to resolve them. The face-to-face meeting could be with just one or a number of Service representatives. Heads of Service will attend themselves or nominate a relevant specialist to speak on behalf of their Service.

If issues cannot be resolved, refer the matter to relevant Directors to decide whether the property is declared surplus.

STAGE 4 – Sponsoring Head of Service decides how the property is disposed of

In order to protect and enhance the property under future ownership, the Sponsoring Head of Service to consider how the property is best disposed of. Advertisement on the open market would be the standard approach.

However, in some circumstances, disposals may be justified without open advertisement. Any proposed disposal that is not based on open market disposal and which may therefore result in a disposal at an undervalue must be the subject of a report to Programmes and Resources Committee to approve the alternative disposal route, whatever the value of the property. The following may be considered as exceptions if fully justified:

- a) In circumstances where the statutory purposes of the Authority can best be furthered by disposal to a limited category of purchasers, the Authority may invite tenders from a select list of parties (or in exceptional circumstances a single party) identified by reference to relevant criteria pertinent to the asset in question. The relevant criteria in each case should be agreed following consultation with relevant Officers; For example, these circumstances could include 'gifting' a property to a single purchaser or transferring a community asset to a single organisation.
- b) 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);
- c) The nature of the Authority'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;
- d) There may be a right of pre-emption or reversion or other rights of former owners, which prohibit sale on the open market;
- e) Where a 'special purchaser' has been identified. A 'special purchaser' is defined by the Royal Institution of Chartered Surveyors (RICS) as 'A particular buyer for whom a particular asset has a special value because of advantages arising from its ownership that would not be available to other buyers in the market'

- f) Exchange of land - Disposal by exchange of land will be appropriate when it will achieve best consideration for the Authority and is advantageous to the Authority and other parties to exchange land in their ownership. The exchange of land will usually be equal in value. However, any inequality in land value may be compensated for by the receipt of a balancing payment or other means of consideration as appropriate. In such circumstances, the Authority will always obtain an independent valuation to verify that “best consideration” will be obtained.

In the above circumstances (a)–(f), the Sponsoring Head of Service could recommend to the Programmes & Resources Committee one of the following options:

- Targeting a limited category of purchasers
- Negotiation with one particular purchaser

STAGE 5 – Sponsoring Head of Service agrees with specialists what covenants (if any) need to put on the disposal

At this stage, it would be appropriate to consider if any detailed covenants need to be placed on the property. The Sponsoring Head of Service will need to ensure that the case-worker consults with all the relevant Authority specialists and with Legal Services to agree draft covenants to be included in the sale package. The Sponsoring Head of Service should also consider whether any relevant ‘Management Plans’ should be made available to purchasers to guide future management. It is recognised that these may not be legally binding.

Note

Where possible we prefer to impose restrictive covenants as these run with the land and are enforceable against subsequent owners. However we can (and do) impose positive covenants – these are enforceable against future owners under s33 Local Government Act 1982 and by imposing chain of indemnity covenants or a covenant to obtain direct covenants from future owners supported by a restriction on the title.

STAGE 6 – Sponsoring Head of Service recommends method of disposal

Each of the three methods of disposal highlighted in bold below are of ‘equal weighting’ as potential options.

1. Open Market Method (for freehold or leasehold disposal)

- a) Private Treaty
- b) Informal Tender
- c) Formal Tender

d) Public Auction

Details, advantages and disadvantages of methods a) to d) are available at Appendix 1 of the Asset Disposal Procedure

2. By 'limited marketing' to a targeted category of purchaser with appropriate evaluation criteria

3. By Community Asset transfer to a single party

STAGE 7 – Sponsoring Head of Service to consult with:

Firstly the Chair and Vice Chair of Programmes and Resources Committee to seek advice on potential interested parties, key stakeholders and political issues which may affect the disposal process.

And then Senior Leadership Team and other Heads of Service that they agree to the decisions made in Stages 4, 5 and 6 above

This is an additional 'double checking' stage to ensure that there is 'corporate' agreement and sign off to the disposal.

STAGE 8 – Sponsoring Head of Service ensures that all necessary internal approvals are obtained. In the majority of cases, this stage will be carried out in parallel with Stage 9 so that feedback resulting from the external communications can be reported to Committee.

The Sponsoring Head of Service may delegate this task to the case-worker but will need to ensure that Standing Order requirements are complied with. It is likely that many proposed disposals will need Programmes and Resources Committee approval as an 'allowable exception' to an open market disposal. The allowable exceptions which may result in the land being disposed of at an 'undervalue' are listed at paragraph 4.7 of the Asset Disposal Procedure.

"The Committee must be made aware of the following:

- a) the justification for the proposal;
- b) how the proposal satisfies the terms of the Local Government Act 1972 General Disposal Consent (England) 2003 (the General Disposal Consent), namely:
 - i) the disposal is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of the whole or any part of the area or any persons resident or present in the area, and
 - ii) the undervalue is less than £2m;
- c) a valuation of the land following the advice provided in the Technical Appendix to the General Disposal Consent.

The ‘template’ attached to this Procedure Note must be used on all occasions for disposals.”

STAGE 9 - Sponsoring Head of Service carries out a communication process with external stakeholders

Sponsoring Head of Service working with Head of Marketing and Communications agrees an external Communications Plan to be ‘rolled out’ with relevant ‘stakeholders’ before marketing and/or negotiations take place. Sponsoring Head of Service and Head of Marketing and Communications decide what is the nature of the communication (eg consulting or informing) and who the relevant ‘stakeholders’ are. This will be assessed on a case by case basis.

Relevant ‘stakeholders’ could include for example:

- Parish Council or Parish Meeting
- Peak District Local Access Forum
- Council for the Protection of Rural England (CPRE)
- Friends of the Peak District
- Specialist interests organisations
- Local relevant Trusts etc.

The Communications Plan for the disposal of each property will need to include clearly defined parameters –frequently asked questions, timescales and methods for responses to whom. The Sponsoring Head of Service and the Head of Marketing and Communications will be responsible for ‘signing off’ the Communications Plan and ensuring any feedback is incorporated into the report to Programmes and Resources Committee at Stage 8 above.. Lead contacts for media interest and community liaison should be nominated and conveyed to all external stakeholders identified.

STAGE 10 – Case passed by the Sponsoring Head of Service to a property professional to implement in close coordination with Legal Services

The property professional will become the sole point of contact and coordinator for the process at this stage. Any internal or external issues that are raised need to pass to the property professional without action on them. The property professional will then seek the necessary advice needed to respond. The property professional will decide with the Sponsoring Head of Service who is the appropriate Officer to respond in each case.

STAGE 11 – Disposal completed by Legal Services