
TOOL KIT FOR DISPOSAL OF ASSETS

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.

An 'audit trail' of the whole process needs to be kept by the Sponsoring Head of Service (or a member of staff 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 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 Service 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.

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

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 the external communications can be reported to Committee. As Committee approval will be required for the vast majority, if not all, disposals, Members will have the opportunity to input their views and make decisions at this stage.

The Sponsoring Head of Service may delegate this task to the caseworker 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 (e.g. 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 Service

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 professional without action on them. The 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 member of staff to respond in each case.

STAGE 11 – Disposal completed by Legal Service

TEMPLATE (PLEASE SEE STAGE 8)

ISSUE TITLE

This report contains information relating to the financial or business affairs of any particular person (including the authority holding that information) and is exempt information under paragraph 3 of Schedule 12A of the Local Government Act, 1972

1. Purpose of the report

[Click here to enter text.](#)

Key Issues

- Identifying the property as ‘surplus’ and therefore should be considered for disposal
- How and why the disposal is within the Authority’s powers and legal obligations
- Identification of any constraints on disposal and how they can be overcome
- Valuation of the property
- Proposed method of disposal

2. Recommendation(s)

1. [Click here to enter text.](#)

3. How does this contribute to our policies and legal obligations?

Powers and legal framework

The Authority has power to acquire, hold, use and dispose of land for its statutory purposes. In exercising its powers to dispose of an interest in land, the Authority must:

- a) Pursue its statutory purposes of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park, and of promoting the opportunities for the understanding and enjoyment of the special qualities of the area by the public (giving priority in the event of conflicting purposes to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the National Park);
 - b) Seek to foster the economic and social well-being of local communities within the National Park; and
 - c) Have due regard to the needs of agriculture and forestry and to the economic and social interests of rural areas
- “The Overarching Principles”.

Applying the Overarching Principles may result in the need to impose covenants or restrictions to give effect to them.

Property may be disposed of if it is assessed as surplus.

There is also a legal obligation on the Authority not to dispose of land for a consideration less than the best that can reasonably be obtained. This would normally be achieved by an open market sale.

4. Background

Assessment of property as ‘surplus’

[STATE HOW THE PROPERTY HAS BEEN ASSESSED TO BE SURPLUS – INCLUDE REFERENCE TO AUTHORITY’S ASSET MANAGEMENT PLAN AND ATTACH ASSET MANAGEMENT PLAN DECISION TREE SETTING OUT THE FOLLOWING CONSIDERATIONS :

- Whether it is currently used/required to deliver operational functions
- Whether there is a plan to use it to deliver future operational functions
- Whether it is integral to continuity of service delivery
- Whether it is vital for business contingency in line with strategic and operational plans]

Overarching Principles

[STATE HOW AND WHY THE DISPOSAL IS WITHIN AUTHORITY’S POWERS AND IN ACCORDANCE WITH OVERARCHING PRINCIPLES – INCLUDE DETAILS OF RESTRICTIONS/COVENANTS TO BE IMPOSED TO GIVE EFFECT TO THESE

IF NO COVENANTS ARE CONSIDERED NECESSARY OR APPROPRIATE, STATE HOW DISPOSAL IS OTHERWISE WITHIN POWERS – SEEK LEGAL ADVICE IF UNSURE]

Any constraints on disposal

[SET OUT ANY CONSTRAINTS DISCLOSED IN PRE-DISPOSAL ENQUIRIES AND HOW THESE ARE TO BE OVERCOME – EG

- Legal issues from title investigation
- Physical constraints revealed by site inspection
- Do public procurement rules apply?
- Is there any State Aid?
- Do Crichel Down Rules apply?
- Grant conditions/repayments]

Other relevant matters

[SET OUT ANY OTHER RELEVANT MATTERS, EG

- Whether open space land requiring advert BEFORE decision to dispose – this should be the subject of a separate report to consider any objections before the decision to dispose is made
- Development potential
- Existence of special purchaser]

Valuation

[SET OUT DETAILS OF VALUATION OBTAINED, INCLUDING BASIS OF VALUATION, TAKING INTO ACCOUNT OVERARCHING PRINCIPLES RESTRICTIONS, AND ANY UNDERVALUE IF NOT PROPOSING OPEN MARKET DISPOSAL WITH REFERENCE TO GENERAL DISPOSAL CONSENT]

5. Proposals

[SET OUT PROPOSAL FOR DISPOSAL OF PROPERTY, INCLUDING PROPOSED METHOD OF DISPOSAL, AND FULL JUSTIFICATION IF NOT OPEN MARKET SALE]

Are there any corporate implications members should be concerned about?

6. Financial:

[Click here to enter text.](#)

7. Risk Management:

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8. Sustainability:

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9. Equality:

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10. Background papers (not previously published)

[Click here to enter text.](#)

Appendices

[Click here to enter text.](#)

Report Author, Job Title and Publication Date

Lead Officer,
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Date