

Newry, Mourne and Down District Council

Procedures for Acquisition and Disposal of Land Assets

**MUST be read in conjunction with Policy for Acquisition and
Disposal of Land Assets**

Acquisition and Disposal Land assets Procedures

Background

Land and Property transactions, by their very nature, are generally expensive and acquisitions usually result in long term financial commitments. There is scope for substantial financial loss if they are mishandled and reversal, if possible, can be very expensive.

The decision to acquire or dispose of land should be part of an overall strategic plan for the organisation's needs. Acquiring or disposal of land is not necessarily the way to solve operational problems.

All strategic decisions about the use, acquisition and disposal of land assets is the remit of the Council.

The decision to dispose of surplus or under utilised land must be made corporately.

1.0 Acquisition Procedures

The Council will acquire land or property for the following reasons:-

- Its contribution towards the provision of Council services
- Economic development
- Strategic acquisition for regeneration or redevelopment purposes

Below is outlined the process for acquisition of land:

Stages:

1. Consideration of the acquisition of additional property must be in line with the strategic plan for the organisation.
2. Professional Advisers to assist with property search and provision of information to assist in decision-making. They should also be used in any subsequent negotiations.
3. A Statement of Need must be prepared.
4. An option appraisal, consistent with the requirements of the **Green Book**, must be undertaken.
5. The options for the procurement of the new accommodation should also be considered and will form part of the option appraisal.
6. The preferred option will be identified from the results of the analysis alongside the budgetary considerations and financial appraisal to give the best value option(s).
7. A business case should be drafted explaining the chosen option supported by the option appraisal.
8. Initial approvals should be obtained prior to commencing negotiations.

Any offer to the vendor will be made "subject to contract, Council approval and if required, other conditions", eg survey, statutory searches etc.

Meeting the strategic property requirements of the organisation

Before embarking upon the process of acquiring new or additional property or accommodation any such acquisition must meet the strategic plan for the Newry, Mourne and Down District Council. In order to help determine suitable accommodation and location options a business needs analysis should be completed. This should comprise a review of the business functions, how these are delivered and to what extent any of them are location dependent. This should include a review of staffing, IT and accommodation considerations.

Requirement to seek professional advice

It is important to obtain professional advice covering valuation and negotiation and possibly also for undertaking a search and for planning matters. The valuer used **must** be a professional member of an appropriate body, such as the Royal Institution of Chartered Surveyors, and suitably qualified with sufficient current local and national knowledge of the particular market, and with the skills and understanding to undertake the valuation competently.

Option Appraisal

An Option Appraisal consistent with department guidelines on Appraisal and Evaluation must be undertaken to examine the total costs and benefits of different potential solutions. This will include fixed and variable costs taken over the expected life of the project. The economic costs to be appraised will include the following:

- for new build, the construction costs, including cost of land, consultant fees, fitting out, etc.;
- for existing property, the purchase price and expenditure in adapting the property to meet the specific needs of the customer;
- rent, service charge, rates, annual repair costs, insurance if appropriate;
- transaction costs, e.g. professional fees, premiums, etc.;
- repairs, immediate and cyclical, and decoration;
- dilapidations;
- running costs, services, cleaning, security costs etc.;
- staff costs, travel relocation expenses, removal costs;
- any unusual or onerous lease conditions;
- any penalties for break options in the lease;
- quantifiable benefits e.g. part of a larger than necessary building leased out to a third party at a commercial rate; and
- residual value of the property at the end of the appraisal period.

A decision must not be taken on a particular solution before a range of options has been fully considered and appraised - including an analysis of the risks involved. The Option Appraisal should consider the availability of existing land, the surrender of existing property (if appropriate) and other specific points which may give rise to costs during the appraisal period.

When the number of options has been reduced, alternative outcomes should be studied by sensitivity testing. The appraiser can take the preferred and next best options and see how they respond to changes such as unexpected rises in costs, the exercising of lease break clauses or premature termination.

Procurement Options

Acquisition by both lease and purchase should be considered. The financial commitment in each case is different and the decision should only be made after full consideration by the Finance Department and appropriate property professional advice.

Preferred Option

The economic and financial costs of the options, the results of the sensitivity testing and the ranking of options in terms of their outputs and policy considerations should then be considered together to determine which option gives the best value for money. This will not always be the cheapest option, as other options may offer a much better balance of benefits to cost, or be significantly less risky. The budgetary consequences and affordability of the preferred option must also be considered and it is therefore essential that a separate financial appraisal is undertaken and that the Finance Department is involved in the evaluation process. It may be useful to undertake a weighting and scoring exercise to determine the shortlist of options.

Once a provisional decision on appropriate properties or locations has been taken, and the necessary approvals have been obtained, then negotiations for particular properties can be opened. As negotiations proceed, and the final terms of the purchase or sale emerge, it is necessary to revise the appraisal to ensure that the provisional decision on the best options remains valid. As the process brings better information to light the appraisal should be updated and revised to ensure that the original assumptions remain valid. The relevant specialist-finance function should be informed immediately of any change in projected costs.

Negotiations

The external property adviser's report will recommend land which the organisation will wish to view.

During negotiations for the preferred option, a fall-back option should be pursued where possible to preserve bargaining power and in case the preferred option collapses. Options are often dependent upon variables such as planning consent which may not be forthcoming.

As more detailed information is obtained during negotiations, the appraisal should be continually updated and refined and provisional decisions re-examined to ensure that they remain valid.

If there will be a delay of 6 months or more between the initial decision and the conclusion then advice should be sought from the Finance Department on whether

the figures should be adjusted, or if a further valuation or survey is required (a valuation should generally be reviewed after 6 months).

When provisional negotiations are concluded the final package including the Heads of Terms of Agreement to Lease or Purchase must be clearly stated. Consideration should be given to whether any special conditions are to be included in the purchase offer and where none are required this should be included in the instructions to legal advisers to formally conclude the transaction.

It is vital that a legally binding contract is not entered into until the appropriate time and as a result any offer to the vendor will be made "subject to contract, Council approval and if required, other conditions", eg survey, statutory searches etc all correspondence must be without prejudice.

Acquisition Price

The price paid on the acquisition by the Council will be open to scrutiny and it is therefore vital that an independent valuation is correctly instructed. Acquisition in excess of the independent current valuation is unusual and should be supported by the Option Appraisal showing that the option represents the best value for money. A proposed acquisition with a cost in excess of the independent current valuation should be cleared in advance by Council.

Building and Specialist Surveys

A full building survey is essential before purchasing or leasing an existing building in order to determine suitability of the structure and potential risks and financial outlay in ensuring the property is sound. The building survey should be sought at the earliest possible stage. Where existing properties are to be altered, refurbished, converted or otherwise developed, building surveys should always be commissioned prior to any commitment to acquire. Problems identified may require further investigation.

With listed buildings or scheduled monuments it is particularly important to get specialist advice on what can be done with the building, what adaptations, if any, will be allowed, and to assess the future running and maintenance costs.

With new-build options, site investigations will check that the ground can bear the proposed development, and ensure that there is no environmental contamination of the site which may limit the use and value of the site, or lead to the Council becoming responsible for environmental remediation costs. Such investigations may also identify the presence of archaeological remains which may delay, or preclude development.

With a new building there will be a liability period for the Council to have defects remedied by the contractor. It is also important to secure collateral warranties from the building contractor, the architect and others associated with the building project and for the contract or the lease to specify the steps to be taken in the event of latent defects appearing. Legal advisers must be asked to advise on how best to protect the interests of the Council.

Where an existing property is taken on lease the Council must ensure it does not become obligated to return the property in a better condition than that in which it was acquired, unless this is part of a detailed agreement with financial benefit to the Council. A Schedule of Condition must be prepared by a Building Surveyor and agreed by the landlord and Council prior to occupation. This will record the condition and state of repair and decoration and assist the assessment of any dilapidations claim by the landlord at the end of the tenancy. Legal advisers must be asked to advise on how best to protect the interests of the Council.

The information generated by these surveys and reports should be fed back into the appraisal to ensure any hidden costs they reveal are properly taken into account.

Auctions

In the event of land being identified to be acquired at auction an authorised agent can bid up to a pre-arranged limit. Auctioneers will take instructions to do this on behalf of potential purchasers. One difficulty is that auctioneers usually require a deposit from the successful bidder at the auction so a member of staff with authority to sign for large sums of money will need to be present. As any bid accepted is binding, the title, surveys and all other investigations must have been completed before the auction and so work will have to be undertaken as a priority to ensure such work is concluded prior to the auction. Property and legal advisers must therefore be involved prior to the auction to carry out the relevant investigations. Appropriate professional advisers (finance and property) should be asked to have representatives present at the auction.

Post Appraisal Evaluation

A post appraisal evaluation should be carried out within six months of acquisition being completed to assess whether or not the appraisal was done as well as possible and check that the property meets the current need. If the project involved a major construction contract, a formal Post Project Evaluation will be required in accordance with the guidance from the NI Audit Office.

2.0 Disposal Procedures

Council is subject to certain constraints when it comes to selling land/property in its ownership. These are legislative and also the general expectation that the Council acts fairly when disposing of land and property.

The Council will therefore seek to sell any surplus land/property for the best available consideration except where a legitimate and lawful exceptional circumstance has been identified and in that instance in accordance with *Circular LG 02/08 (The Department Circular)*
DOE approval will be sought.

The principles for Disposal of Land are outlined below:

1. Land will not be sold without the approval of the Council unless delegated authority has previously been given, and without relevant professional advice being first obtained;
2. In all cases, the principle of obtaining best consideration be applied unless there are justifiable reasons for not doing so and the approval of the Department has been sought.
3. Where land is sold by auction a reserved price, as recommended by the appointed Valuer must be applied.
4. When accepting offers subject to contract, it must be made clear in writing to the prospective purchaser that, in the event of a higher bid being received prior to exchange of contracts, the Council would consider the higher bid if without good cause there has been a failure to make reasonable progress towards exchanging contracts and in those circumstances all would-be purchasers would be given a specific date and time to reconsider the matter and submit their highest and final offer.
5. Where a successful bidder seeks to lower his/her bid prior to exchange of contracts, all interested parties must be given an opportunity of making a further offer by a specified date.
6. ***The principle of selling Council land to registered social landlord is accepted with each site considered on its merits, provided that any sales are at market value and that the land is not needed for potential development by the Council itself.***
7. Where it is agreed to sell Council owned land for development by a Registered Social Landlord in accordance with (6) above, the sale will only be completed when the Registered Social Landlord is in a position to proceed with the development and a condition is included in the conveyance giving the Council the option to buy back the land if development does not proceed satisfactorily, and that the nature of this arrangement be included in the report that recommends the sale.

Title

The title of the land should be checked by a member of the Legal Services Team.

The statutory power under which the land was purchased should be identified the means under which the land was purchased may restrict disposals (see "Crichel Down Rules")

Any matters affecting the land shall be considered to determine whether they might affect a potential purchase/sale, for example wayleaves, leases, licences, restrictive covenants within the conveyance etc.

Internal Consultation

It will be appropriate to consult internally at an early stage so that any problems with a sale are known. The following provides an example of who should be consulted:-

- Relevant department (eg leisure)
- Facilities Management and Maintenance Department if the land is obviously maintained by the Council.
- The Planning Department to determine whether the land or the adjoining land of the has planning permission or development potential, what potential the land has (eg change of use or building operations), and the likelihood of obtaining planning consent. There may be development restrictions if the land is public open.

Valuation

It is expected that his part of the procedure will be carried out early in the process so that

Councillors have an idea of the value of the land. The valuation can be carried out once the above processes have been completed.

Land WILL NOT be sold without relevant professional advice first being obtained. In all cases, the principle of obtaining best consideration should be applied unless there are good reasons for not doing so and the approval of the department has been sought.

Whilst advising the valuer of the details of the proposal the valuer should also be asked to advise if they consider this to be in the Council's best interests. In appropriate cases the valuer should be asked to advise in respect of:

- Marketing
- Value
- State of repair
- Use and development
- Neighbouring interests

The instruction should enclose a plan and advise the valuer

- if the Council intends to sell the land to a particular purchaser
- if the Council if the land has development potential / planning permission
- if any restrictions on the disposal

A best consideration is normally to be sought, which is normally but not necessarily the open market value, unless good reasons exist for not obtaining best consideration . In order to determine whether the best price is being obtained account will need to be taken of the development potential of the land concerned.

In certain circumstances Valuers' advice may also be required as to the most appropriate mode of sale.

The terms of reference for appointment of the valuer **MUST** comply with the RICS Red Book.

Acting on Valuers advice

The advice of the Council's appointed valuer in respect of method of disposal and marketing must be accepted unless there are good reasons for not doing so, in which case those reasons must be recorded.

- That the prospective purchaser will be responsible for seeking any necessary planning permission

The valuer may recommend that other parties should be given an opportunity to bid, therefore the prospective purchaser must not be advised that the decision will be to sell the land to him/her.

Approval to sell to purchaser

Following the consultation process the Council will notify the prospective purchaser on a **SUBJECT TO CONTRACT** basis of the sale terms, advised method of disposal etc and will request the following:

- Confirmation that the terms are acceptable; and
- Details of his/her solicitor (if appropriate)

Note: The letter to the prospective purchaser should state that in the event of a higher offer being received prior to exchange of contracts the Council will consider the higher bid if the prospective purchaser has, without good cause, failed to make reasonable progress towards exchanging contracts. In those circumstances all would-be purchasers would be given a specific date and time to reconsider the matter (ie in the light of the higher bid) and submit their highest and final offer.

Instructing Solicitors

On receipt of confirmation from the prospective purchaser that the terms of sale are acceptable, a member of the Legal Services team will instruct Solicitors to act on the Council's behalf.

Instructions should include:-

- Plans
- Title deeds/official copies
- An instruction that if a higher bid is received prior to exchange of contracts, the Council will consider the higher bid if the prospective purchaser has, without good cause, failed to make reasonable progress towards exchanging contracts

- Provision that payment should, if possible, be by BACS

On receipt of confirmation from the prospective purchaser that the terms of sale are acceptable, and once Solicitors have been instructed, advise the Head of Finance and Systems of the proposed sale and sale price. This is to enable forward monitoring of capital receipts.

After Completion of Sale

Once the sale has been completed:

- Amend the property terrier
- Record details of the sale with finance
- Prepare a memo advising all relevant services of the completion of the sale eg maintenance, insurance etc.

Where a person requests to purchase land

Where a person requests to purchase Council land they must provide detail of the land to be purchased, the reasons for purchase and details of who the contract would be with

On receipt of the above information correspondence will be sent to the prospective purchaser **SUBJECT TO CONTRACT** advising of the following:-

- The procedure which will need to be followed, ie
- Seek valuation/advice on how to market
- Consultation with Councillors and officers
- Report to Finance and Resources Committee
- That any sale will be subject to a professional valuation being obtained **this will be done prior to a decision.**
- The likely terms of sale
- The purchaser will be required to reimburse any valuation / legal / administrative/ fees whether or not the matter proceeds to completion, unless it is the Council's decision not to proceed with the sale.

On approval to sell to purchaser process as detailed above should be followed.

Approval to Acquire or Dispose of land or property

A report must be prepared for the Finance and Resource committee to seek approval to acquire or dispose of land or property, set out below is information which should be provided within the report:

- The history of the site as an introduction
- Adequate plan and details of site area (in metres square)
- Details of any relevant conditions/restrictions
- Legal implications
- Financial implications – set out whether best consideration is to be sought/market value paid (and if not, why not and the likely amount of the difference)
- Detail valuer's advice
- Who is to pay legal / administration / valuation fees
- Details and outcome of consultation
- If the sale is to a Registered Social Landlord details should be included of the required "buy back" provision
- Risk Management – detail any potential risks that could result from a decision to acquire/dispose/ or not to acquire/dispose
- Alternative options
- Statement of reasons for the recommendation
- Recommendation

Additional Information

Crichel Down Rules

If the land has been acquired by or in the shadow of compulsory purchase powers The Crichel Down Rules state that the asset has to be offered back to the owner at market value (best price reasonably obtainable, including any special valueb from a person with a special interest, such as a former owner).

The Crichel Down Rules apply to land which was acquired by, or under a threat of, compulsion by government departments.

Any surplus property is to be initially offered to the former owner at open market value in advance of open marketing.

Definition of surplus land or property

Property/land will be deemed to be potentially surplus to requirements if either/or

- It no longer makes a contribution to the efficient and effective delivery of Council services
- Has no potential for future strategic or regeneration/redevelopment purposes by the Council
- It has no potential for future strategic or regeneration/redevelopment purposes by the Council
- An alternative available site has been identified which would achieve a more cost effective service delivery
- Its disposal would help facilitate the achievement of the Council's corporate objectives

Methods of Disposal

The Council may dispose of land in the following ways:-

1. Sell it
2. Lease it, let it, grant it in free form
3. Exchange it, giving or receiving money for equality of exchange
4. Leasehold, surrender it
5. Grant a licence to use it for any such purpose or for such purposes as are mentioned in the licence; or
6. Grant (by way of sale, lease, letting or licence) any easement, profit of right in respect of it

Open market disposal/Private treaty disposal/Joint development

The timing of any marketing of disposals will be considered against the Council's budgetary requirements and the current state of the market, eg

- Is there a corporate need to raise capital receipts
- Is there a potential for value to increase in the near future

Newry, Mourne and Down District Council

Acquisition and Disposal of Land Assets Policy

1. Title

Acquisition and Disposal Policy for Land Assets

2. Statement

In acquisition and disposal of land assets Newry, Mourne and Down District Council ("the Council") recognises that it is required by law, to fulfil certain statutory duties and, in particular, to comply with the legislation (listed at point 5) and Guidance from the Department of the Environment. The Council regards compliance with legislation and guidance as essential to creating and maintaining confidence that the Council is open and accountable in the consideration of disposal and acquisition of land assets.

3. Aim

The aim of this policy is to ensure the Council's compliance with legislation and guidance and that there is a consistent application of processes to consider the disposal and acquisition of land assets.

4. Scope.

This Policy applies to the acquisition/disposal of land assets held by Newry, Mourne and Down District Council.

The Policy applies to all those who are involved in the acquisition and disposal of land assets held by Newry, Mourne and Down District Council (including but not limited to employees, agency staff, elected members, other public representatives, contractors, agents, consultants, servants of the Council.) All parties referred to above are responsible for complying with the Council's Acquisition and Disposal of land assets Policy and Procedures. Non-compliance with the Council's policy and procedures may result in the Council breaching its' legal obligations.

5. Related Policies/Legislation

Local Government Act (NI) 1972

The Interpretation Act (NI) 1954

The Recreation and Youth Services Order (NI) 1986

The Local Government (Miscellaneous Provisions) NI Order 2002

EU programme and Procurement Regulations

Council financial regulations

Scheme of Delegation

Circular LG 02/08 (The Department Circular)

6. Definitions

"Land" means any property constructed on land or land itself.

"Acquisition" and "Disposal" apply to any relevant interest in land, including freehold, leasehold, tenancies, licences, restrictive covenants, wayleaves, easements etc.

7. Policy Owner

TBC

Newry, Mourne and Down District Council
Acquisition and Disposal of Land Assets Policy

8. Contact details in regard of this policy are:

TBC

9. Policy Authorisation

MT Authorised on _____

Governance Committee Authorised on _____

Council Authorised on _____

10. Policy Effective Date

11. Policy Review Date

The policy will be revised together with any wider strategic review of land assets but not more 4 years from adoption.

12. Procedures

Procedures for acquisition/disposal of land assets must be adhered to in the delivery of this Policy.

13. Equality Impact Assessment

While the Council will equality screen the Acquisition and Disposal of Land Assets Policy, at this stage of development it is not envisaged it will be required to be subject to an equality impact assessment.