



BODMIN TOWN COUNCIL

DISPOSAL OF COUNCIL LAND & PROPERTY

1. Introduction

The Town Council, like most local (town and parish) councils is becoming increasingly influenced by national changes given the financial climate and public spending constraints. Localisation of Council Tax in 2013 was a significant shift which cascaded direct cuts to the local tier and can be hardest felt in areas with high deprivation indices and relatively low skilled employment opportunities as these are often localities where there is a higher number of benefit claimants.

Bodmin Town Council saw its precept contract by 23% in 2013/14 which equated to a cut of around £171,000. Whilst this cut was hardest felt in 2013/14 the ongoing impact is year-on-year reductions and in 2015/16 the Council Tax Support grant reduced by a further £30,000 and in the 2016/17 budget by £18,000.

The significant outcome following the 2013/14 cut was a review and assessment of what services and buildings the Council could afford to continue to provide and maintain. Current information from central government suggests that the Council Tax Support grant will be phased out by 2020 which brings undoubted challenges.

To assist with mitigating the impact of reducing public spending, the Council will therefore need to review the way in which it manages its land and property portfolio into the future. The Town Council will need to use its assets more effectively and an outcome of that process could result in a smaller property portfolio. However, the Council can explore income generation opportunities for its property by way of leases and also shared occupation or co-location of services with any partners.

It is government policy that local authorities should dispose of surplus and under-used land and property wherever possible. The Council has fairly wide

discretion to dispose of its assets (such as land or buildings) in any manner it wishes. When disposing of assets, the Council is subject to statutory provisions, in particular, to the overriding duty, under section 127 of the Local Government Act 1972, to obtain the best consideration that can be reasonably obtained for the disposal.

This duty is subject to certain exceptions that are set out in the 'The Local Government Act 1972 General Disposal Consent (England) 2003.

In all cases, disposal at less than best consideration is subject to the condition that the undervalue does not exceed £2,000,000 (two million pounds).

This Policy is produced as a guide only and will need to be considered against the Council's aims and objectives. Disposals can be varied and complex and often responsive to unique circumstances or situations which prevail at the time. It is therefore essential that the Council takes a measured approach which should be reflected in an allocation of sufficient time and resources to enable relevant information to be obtained, especially as there will be a need to procure advice from specialists such as surveyors, valuers and solicitors for legal advice.

Having the requisite documentation and information in place will ensure that the Council is in a position to make an informed decision on any land / property disposal matter.

2. The 'Surplus' Test

Land/property will be deemed surplus to the Council's requirements where:

- a) it makes no contribution to the delivery of the Council's services or strategic objectives;
- b) an alternative site has been identified which would be more cost effective in delivering the Council's services or strategic objectives;
- c) it has no potential for strategic or regeneration/redevelopment purposes in the near future;
- d) it will not contribute to the provision of a sustainable pattern of development;
- e) it makes no contribution to protecting and enhancing the natural, built and historic environment, including making no contribution to helping to improve biodiversity.

3. The 'Under used' Test

Land/property will be deemed to be under-used if:

- a) all or part of the site is vacant and is likely to remain vacant for the foreseeable future;
- b) the income being generated from the site is consistently below that which could be achieved from:
 - i. disposing of the site and investing the income;
 - ii. an alternative use;
 - iii. intensifying the existing use;
- c) only part of the site is used for service delivery and this could be delivered from an alternative site;
- d) it makes no contribution to protecting and enhancing the natural, built and historic environment, including making no contribution to helping to improve biodiversity. In the case of open spaces, amenity areas and similar sites, the under-used test should also consider the 'community value' of the asset, which would include visual amenity and not be limited solely to income generation or whether the site is vacant etc.

4. Open space (including, parks, playing fields & informal open spaces of 'public value' whether or not there is public access to it)

Assets in this category are considered to be valuable community resources, to be enjoyed by the wider community. Open space also enhances the quality of urban life, the character of residential areas, the environment and the visual amenity of an area etc. There will be a general presumption against declaring these assets as surplus / under-used unless:

- a) alternative provision of equivalent community benefit is made in the locality;
- b) the area in question no longer provides a valued opportunity for sport, recreation or leisure;
- c) there is an excess of provision taking into account the long term recreation and amenity value of such provision;
- d) sport, recreation and leisure facilities can be retained and enhanced through the redevelopment of a small part of the site;

- e) there is over provision in the area;
- f) the asset is required for the regeneration of the area.

The Council is required by law to advertise the disposal of land designated as 'public open space' in a local newspaper for two consecutive weeks and to consider any objections received. No final decision about the disposal will be made until any objections have been considered by Full Council, as the response may be material to the decision. Public response may also be an important factor in any determination by the Secretary of State of an application by the Council for specific consent to the disposal.

There will be a general presumption against disposal of local green space. However, this presumption does not rule out consideration of informal areas of green space on a case-by-case basis and particularly where they may unlock development potential that harmonises with the Bodmin Town Framework Plan, Masterplan, Local Plan or similar future replacement planning document(s).

5. Assets of Community Value

Every town, village, community and neighbourhood has buildings or amenities that play a vital role in the function of people and place. These can include village halls, libraries, post offices, village shops and pubs etc.

An asset of community value can be nominated by any constituted community group to Cornwall Council as the principal authority. Assets can then be listed if the authority considers the asset furthers social well-being or the social interest of the community. Social interests can include 'cultural, recreational, sporting interests' etc.

Cornwall Council will maintain a list of assets of community value.

Should a Bodmin Town Council asset be nominated and listed by Cornwall Council the Town Council will need to follow the relevant process as detailed in the Community Right to Bid legislation. Any moratorium period is triggered as and when the Town Council notifies Cornwall Council that the asset is for sale and should there be community interest in any asset. The moratorium period must expire before an open market disposal can be achieved.

A disposal to a community group might offer the best solution for the community and this model can be explored if the Council considers bids are viable and sustainable in the long-term. A disposal to a community group can occur during the moratorium period.

Should a moratorium be triggered the Town Council would be under no obligation to dispose of the asset to any community group and it would not preclude any active marketing of the property by the Council.

Further information is available from Cornwall Council – Community Right to Bid refers.

6. Budgetary pressure

The Council may find itself in a situation not of its own making which through budgetary pressure may force the Council to consider its services and property portfolio at its annual budget meeting.

An example of this can be central government intervention through changes to policy as experienced in 2013 following the Localisation of Council Tax. This policy led to the Town Council budget constricting by around £172k and the knock-on-effect was a necessity to carry out an assessment of services and buildings based on cost efficiency grounds which ultimately led to the closure of some buildings and a reduction in some levels of service provision.

7. Disposal of Property

The Council can and may from time-to-time dispose of buildings. A disposal includes not only an outright sale of the freehold, but also the grant of a lease or assignment of a term of a lease or an exchange of land. Section 127(1) of the Local Government Act 1972 provides that a council may dispose of any land held by them in any manner they wish. However, Section 127(2) of the Act provides that land must not be disposed for consideration less than the best that can reasonably be obtained.

'Best consideration' means achieving maximum 'value' from the disposal, not just maximum price.

Section 128 of the LGA 1972 Act allows the Secretary of State to make a general consent in respect of certain land transactions by local authorities.

Such consent has been made in the form of 'The Local Government Act 1972 General Disposal Consent (England) 2003'. This enables disposal of properties at an undervalue where:

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 promotions or improvement of economic wellbeing;*
- ii. The promotion or improvement of social wellbeing;*
- iii. The promotion or improvement or environmental wellbeing*

Where the Council does not seek to obtain the best that can be reasonably obtained, it should consider the following as a minimum:

- a) Does the project meet with any of the criteria as set out above and in line with the 'The Local Government Act 1972 General Disposal Consent (England) 2003';
- b) Obtaining a current market valuation for the building based on:
 - i. open market disposal; and
 - ii. disposal to account for any sitting tenant(s) / flying freehold etc;

The above will be on a case-by-case basis as each disposal will have its own unique circumstances.

- c) VAT must be paid by the purchaser and specialist advice should be sought by the Council's Responsible Finance Officer for the treatment of VAT on the sale where an option to tax has been made;
- d) Land Registry;
- e) A Schedule of Dilapidation / Statement of Condition being carried out unless legal advice indicates that a schedule or statement is not required and that 'caveat emptor' is reasonable;

- f) An appropriate overage mechanism being considered and which reflects the agreed sale price for the building (VAT treatment of selling a building at below market valuation);

Should the Council opt to dispose of a building for the best price that can reasonably be obtained, there are several options that could be considered. The first crucial step is to obtain a full market valuation from an independent RICS accredited surveyor / valuer.

8. Leases

Disposal under the Local Government Act 1972 deals with all types of disposal (freehold, leasehold and short tenancy agreements).

The grant of a lease, whether out of freehold or leasehold interest, is a part disposal.

The disposal of the Councils land and property could therefore be progressed in a number of ways and does not necessarily have to result in a freehold sale.

- i. Permanent grant of rights over land – i.e. easement in fee simple;
- ii. Leasehold disposal

Leasehold interest can be agreed for any time period. A leasehold interest of 7 or more years has to be registered as an interest in land with the Land Registry.

An independent RICS chartered surveyor / valuer should be engaged to provide the Council with a market rental valuation for any land or property;

Heads of terms can be discussed and agreed with prospective tenants on a 'subject to contract basis';

Authority to enter into those discussions should be approved by the relevant Committee which can include an 'in principle' basis;

A suitably qualified and independent solicitor should be engaged on behalf of the Council to formulate a draft lease for issue to

prospective tenants. A fixed fee approach might be more cost effective than utilising an hourly rate for legal work;

Any lease will need the relevant and minuted authority from the Council before any Members / Officers can sign any lease documentation, including easements, wayleaves etc;

The obligation to obtain best value contained in section 123 and 127 of the Local Government Act 1972 does not apply to disposals of land by way of a short tenancy i.e.

- i. The grant of a term not exceeding seven years; or
- ii. The assignment of a term which has not more than seven years to run.

9. Valuations

Although there is no particular prescribed route to achieve the best price reasonably obtainable, there may be circumstances in which a sale to the market is the only way to achieve it as opposed to one particular sale at a price according to an independent valuation.

Before disposing of any interest in land for a price which may be less than the best consideration reasonably obtainable, Officers will ensure that a market valuation of that interest is obtained.

This valuation will also assist with identifying the likely amount of the undervalue.

This will apply even for disposals by means of formal tender, sealed bids or auction, and irrespective of whether the Council considers it necessary to make an application to seek the Secretary of State's specific consent.

By following this procedure, the Council will be able to demonstrate that it has adopted a consistent approach to decisions about land disposals by carrying out the same step by step valuation process on each occasion.

Supporting documents will provide evidence, should the need arise, that the Council has acted reasonably and with due regard to current legislation.

10. Public Auction

A sale of land / property by open auction available to anyone. The sale will be publicly advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer. Reasons justifying sale by this method and how the reserve price is determined must be recorded in writing.

11. Formal Tender

A sale of land / property by a process of public advert and tenders submitted by a given date. This is a suitable mechanism where there are identified development proposals. A fair and transparent tender process will need to be adopted.

12. 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 commercial worth to the land exchanged whether from the value of the land itself or where a payment is made in addition to the land exchanged.

13. Informal Negotiated Tender

A transaction involving a public advert that requests informal offers or bids that meet a given specification or set of objectives agreed by the Council. The Council may then negotiate further or explore more detailed terms with one or more individuals who submitted the most advantageous bid or bids.

14. Consideration based on merit

Each asset disposal is treated on its own merits and nothing in this Policy will bind the Council to a particular course of action in respect of a disposal. Alternative methods of disposal not specifically mentioned in this Policy may be used where appropriate, subject to obtaining the necessary authority from the Council.

This Policy: sets out the procedure to be adopted in connection with the disposal of:

- a) surplus and under-used assets and ensures that requests to purchase Council owned assets are dealt with in a fair and consistent manner and that any person who may have an interest in making an offer to purchase, has the opportunity to do so in circumstances no less favourable than anybody else;
- b) distinguishes requests for small areas of land that may be considered for sale by private treaty and larger areas with development potential that should be sold on the open market.

Although this Policy will normally be followed, there will be occasions where the procedure may need to be changed, particularly for larger, more complex land/property sales.

In reviewing the future of any asset, the Council will assess all the options, to be sure that it obtains best value.

Options include using the asset in a different way, disposing of it on the open market or transferring it to a voluntary or community organisation at less than best consideration to achieve wider social benefits.

Community organisations operate on a business model, often using volunteer effort, community intelligence about local needs and sources of funding not available to local authorities.

They are in a position to run a community asset as a social enterprise. The business plan for the community asset transfer should demonstrate financial viability.

15. Timing

The timing of any marketing / disposals will need to be considered against the background of the current market conditions, potential for the site value to increase in the future, whether there is a need to raise capital receipts and current planning policies.

It may be more advantageous to auction properties in the summer months and an assessment will be made on a case-by-case basis.

16. Rights of way and other easements

It is important to establish the nature of any easements benefitting the land/property, so that any that are missing can be addressed, if possible. As well as access rights, the property may benefit from rights to run services over adjoining land, rights to light, rights of support or other property specific rights. It is also useful to check whether the land/property is subject to any rights which might adversely affect the proposed disposal and subsequent development, for example, public or private rights of way or rights of support.

17. Ransom strip

A ransom strip is an area of land which is owned by someone other than the Council. If access is only possible via a ransom strip, then the person with title to that strip will be instrumental to unlocking the development potential of the land and that may involve payment to the ransom strip owner, either in return for a formal right of way or transfer of ownership of the strip.

Legal advice should be sought regarding any conventional approach to valuing ransom strips as it has been known for negotiation with the ransom owner to include a model based on one third of the uplift in value of the land / property released by unlocking it for development.

However, any agreement will ultimately depend on market conditions and the specifics of the land/property and its locality.

It will generally be sensible to resolve ransom strip issues prior to offering the property to the open market. It is crucial if the property is to achieve full value on the open market that it has adequate access rights. If development is anticipated, then access may need to be by a different route than that used historically, where possible i.e. either because of a physical aspect, a defect with the existing access, for planning purposes or as a consequence of intensification of use.

A review should be carried out to establish whether any ransom strips are present.

18. Links with Other Policies

This Policy aims to provide the Council and its Officers with the guiding principles and parameters for factors associated with any disposal of land or property.

This Policy links with the Council's Financial Regulations

19. Alternative Formats

- a) The Equality Act 2010 - copies of this document in large print (A3 format) or larger font size, or recorded onto tape as a 'talking book' can be made available for those with sight impairment on request from the Council office or by telephoning 01208 76616 or via e-mail policy@bodmin.gov.uk
- b) The Council can also arrange to provide versions in other languages for staff whose first language is not English.

20. Freedom of Information

In accordance with the Freedom of Information Act 2000, this Document will be posted on the Council's Website www.bodmin.gov.uk and copies of this document will be available for inspection on deposit in the Council Office.

Annex

- 1. Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can be reasonably obtained;**