

<b>PART 4c – LAND TRANSACTION PROCEDURE RULES</b>	
<b>Effective from 20 May 2015</b>	<b>Approved by Council on 30 March 2015</b>

**1 GENERAL**

Subject to Rule 1(ii), every contract to sell or buy land made by or on behalf of the Council shall comply with:

- (i) these Rules;
- (ii) the Council's Financial Regulations;
- (iii) all relevant statutory provisions, including in particular the Local Government Act 1972, section 123;
- (iv) any direction by the Council or the relevant committee, but
- (v) these rules shall not apply to the grant, surrender, or renewal of leases or tenancies.

These Rules shall not apply or may be varied where or to the extent that:

- (vi) the Council or the relevant committee so resolves; or
- (vii) statute or subordinate legislation prescribes otherwise.

**2 DEFINITIONS**

In these rules:

- "Buying" land includes receiving gifts of land and "selling" it includes disposing of it or granting an interest in it for no consideration;
- "Decision-Maker" means the person or body who has exercised the power to decide to sell or buy the land on the council's behalf;
- "Chief Executive" means the officer designated by the Council under section 4(1) of the Local Government and Housing Act 1989 as the head of its paid service and "his Deputy" refers to the officer designated by the Council under section 5(1) of the Local Government and Housing Act 1989 as its monitoring officer;
- "Disposal Plan" is defined in rule 4:
- An "Interest" in land includes any licence to use land for six months or more;
- "Land" includes buildings and anything on the land and any interest in land;
- "Surveyor" means the council's Estates and Asset Manager or (if that post is vacant or the Estates and Asset Manager is unable to act) any other appropriately qualified valuer or surveyor instructed for the purpose by the Chief Executive or his Deputy;
- "Valuation Report" is defined in rule 13.

**3 DECISIONS TO SELL LAND**

3.1 Only the Chief Executive or his Deputy may recommend that the council sell land.

- 3.2 The Chief Executive or his Deputy must, before recommending that the council sell land, obtain a Disposal Plan for the land and ensure that his report to the Decision-Maker includes sufficient reference to it.
- 3.3 If the Decision-Maker decides to sell the land other than in accordance with the Disposal Plan, it must record its reasons for doing so.
- 3.4 Nothing in this rule prevents the Chief Executive or their Deputy from exercising any delegated power to sell land, but they must only do so after obtaining a Disposal Plan for it and must have regard to the Disposal Plan in making their decision.

#### **4 DISPOSAL PLAN**

- 4.1 “Disposal Plan” means a document that makes recommendations, in relation to specified land, about:
  - (a) the method of disposing of it;
  - (b) how to market it; and
  - (c) any other matters the Surveyor considers relevant to the proposed sale
- 4.2 A Disposal Plan must be compiled by the Surveyor.
- 4.3 In compiling the Disposal Plan, the Surveyor must have regard to:
  - (a) the need to maximise the financial return to the council from its land assets;
  - (b) the need to give all prospective purchasers a reasonable opportunity to view the land and submit an offer or tender for it; and
  - (c) any special circumstances that apply to the proposed sale.
- 4.4 Special circumstances may include the existence of the following:
  - (i) a ‘special’ purchaser’ who would realistically be the only potential purchaser, or who would be prepared to pay a premium for the site over and above the value to the general market. Examples would be a person who wishes to acquire Council land to build an extension to their existing property, or an established Council tenant who wishes to lease contiguous land or buildings which are not reasonably capable of separate occupation; or
  - (ii) a ‘partner’, who would occupy the land for a purpose which would further the Council’s policies or objectives. An example would be the disposal of community facilities to a voluntary trust.
- 4.5 A Disposal Plan must include an open market valuation of the land and a valuation of the land on any other basis on which it is proposed to be sold.

#### **5 AGENTS FOR LAND SALES**

- 5.1 The Chief Executive or his Deputy may appoint appropriately qualified external agents to market and carry out negotiations for the sale of land, or may instruct the council’s Principal Estates Surveyor to do so.
- 5.2 The Surveyor will supervise the work of external agents with a view to ensuring compliance with these rules, the Disposal Plan (if applicable) and any specific instructions of the Decision-Maker.

#### **6 SALE BY TENDER**

- 6.1 Land may only be sold by tender if the Decision-Maker has expressly decided to do so.

- 6.2 Where land is to be sold by tender, the tendering process is as set out in 6.3 to 6.8.
- 6.3 Under this procedure the Surveyor must give at least 14 but no more than 28 days public notice in one or more local newspapers and on the council's website.
- 6.4 The notice must set out the nature and purpose of the contract, invite tenders, give instructions on how to submit a tender and state the closing date for tenders (including reference to the fact that tenders will not be accepted after 12.00 noon. on that date).
- 6.5 No tender may be considered unless:
- (i) it has been recorded as having been received no later than 12.00 noon on the closing date for the receipt of tenders; and
  - (ii) it has been received in a sealed envelope marked "Tender for sale of [description of land]" and the envelope had no marking identifying the tenderer.
- 6.6 All tenders must be opened together in the Town Hall or other Council offices.
- 6.7 The following persons must be present when tenders are opened:
- (i) the Leader of the Council, or a councillor nominated by them;
  - (ii) the Principal Estates Surveyor or an officer nominated by them; and
  - (iii) the Chief Executive or his Deputy or, if it is impracticable for either of them to attend, another member of the council's Management Team.
- 6.8 At the time of opening of the tenders, the Principal Estates Surveyor or his nominee must ensure that a record is made of all the tenders received and their values.

## **7 SALE BY PRIVATE TREATY**

A sale by private treaty will not be concluded until the Decision-Maker has considered a report containing the provisional terms for the sale negotiated by the Surveyor or external agent, details of all other offers received, and an explanation of why they have been recommended to be rejected.

## **8 SALE BY AUCTION**

- 8.1 Land may only be sold by auction if the Decision-Maker has expressly decided to do so.
- 8.2 The Decision-Maker must also decide the terms and conditions under which the land is to be offered for sale, and the level of any reserve price.

## **9 COMPLETING THE SALE**

- 9.1 Once disposal terms are approved by the Decision-Maker, the Surveyor will instruct the Council's legal services team to deal with the legal formalities. External solicitors may be instructed if, for any reason, the legal services team is unable to deal with the instruction within the required timescale.
- 9.2 No disposal by lease may be completed until:
- (i) a schedule of condition has been prepared and agreement reached with the tenant as to who will be responsible for any necessary works; and
  - (ii) any costs identified as being the responsibility of the council have been included in a relevant budget.

## **10 SALE DOCUMENTATION**

The Surveyor must maintain a file for each sale. All relevant documents should be kept on file and available for audit. This will specifically include:

- (i) Authority to sell the land;
- (ii) Instructions to external agents where appropriate;
- (iii) The Disposal Plan including the valuation;
- (iv) All correspondence, including offers and expressions of interest;
- (v) The terms agreed for the sale;
- (vi) Authorisation to accept those terms;
- (vii) Instructions to solicitors.

For the purposes of this rule, a 'file' may be maintained electronically in any appropriate way.

## **11 NEGOTIATIONS TO BUY LAND**

- 11.1 Where potentially suitable land has been identified by the Chief Executive or their Deputy (following consultation with the Surveyor) as meeting operational requirements, negotiations will be conducted with the vendor/lessor/licensor with a view to reaching a provisional agreement on terms which are the most advantageous reasonably available to the council.
- 11.2 The Chief Executive or their Deputy may appoint appropriately qualified external agents to carry out the negotiations, or may instruct the council's Surveyor to do so.
- 11.3 The Surveyor will supervise the work of external agents with a view to ensuring compliance with these rules.

## **12 DECISIONS TO BUY LAND**

- 12.1 Only the Chief Executive or their Deputy may recommend that the council buy land.
- 12.2 The Chief Executive, or their Deputy, before recommending that the council buy land, must obtain a Valuation Report for the land and ensure that the report to the Decision-Maker includes sufficient reference to it.
- 12.3 If the Decision-Maker decides to buy the land other than in accordance with the recommendations in the Valuation Report, it must record its reasons for doing so.
- 12.4 Nothing in this rule prevents the Chief Executive or their Deputy from exercising any delegated power to buy land, but they must only do so after obtaining a Valuation Report for it and must have regard to the Valuation Report in making their decision.

## **13 VALUATION REPORT**

- 13.1 "Valuation Report" means a document about specified land that has been identified by the Chief Executive or their Deputy (following consultation with the Surveyor) as meeting operational requirements, that includes:
  - (i) An opinion of its value;
  - (ii) A description;
  - (iii) A schedule of accommodation including sizes of land and buildings;
  - (iv) A general comment on condition;

- (v) Comments on the terms under which the property is being offered;
- (vi) Details of all other properties which have been considered, the terms under which they are available, and an explanation of why they have been rejected;
- (vii) A recommendation as to whether:
  - (a) to proceed with the acquisition on the terms offered
  - (b) to seek to negotiate improved terms; or
  - (c) to reject the proposal and, where appropriate, to seek to identify more suitable accommodation.

13.2 A Valuation Report must be compiled by the Surveyor or, if the Surveyor so advises, the whole or any part of it may be compiled by an external, independent Chartered Surveyor experienced in the valuation of the type of property concerned.

#### **14 COMPLETING THE PURCHASE**

14.1 Once acquisition terms are approved by the Decision-Maker, the Surveyor will instruct the Council's legal services team to deal with the legal formalities. External solicitors may be instructed if, for any reason, the legal services team is unable to deal with the instruction within the required timescale.

14.2 No lease or agreement for lease may be competed until:

- (i) a schedule of condition has been prepared, and agreement reached with the landlord as to who will be responsible for any necessary works; and
- (ii) any costs identified as being the responsibility of the council have been included in a relevant budget.

14.3 No freehold acquisition may be competed until:

- (i) a schedule of condition has been prepared;
- (ii) any costs identified have been included in a relevant budget; and
- (iii) if the schedule of condition reveals immediate repairs or maintenance costs which are significantly higher than would normally be expected given the nature and age of the building, the acquisition has been further approved by the Decision-Maker in the light of the issues raised by the schedule of condition.

#### **15 PURCHASE DOCUMENTATION**

The Surveyor must maintain a file for each purchase. All relevant documents should be kept on file and available for audit. This will specifically include:

- (i) Authority to buy the land;
- (ii) Instructions to external agents where appropriate;
- (iii) The Valuation Report;
- (iv) All correspondence, including other properties considered and any negotiations relating to the properties under consideration.
- (v) The terms agreed for the purchase;
- (vi) Authorisation to accept those terms;

(vii) Instructions to solicitors.

For the purposes of this rule, a 'file' may be maintained electronically in any appropriate way.