

REPORT

| REPORT OF | MEETING | DATE | ITEM NO |
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| DIRECTOR STRATEGIC DEVELOPMENT SERVICES | POLICY & SERVICE REVIEW SCRUTINY COMMITTEE | 11 TH JUNE 2009 | 7 |

ASSET DISPOSAL AND ACQUISITION POLICY AND PROCEDURE

Public item

This item is for consideration in the public part of the meeting.

Summary

The report presents for members' initial consideration newly drafted procedures for the disposal and acquisition of land and property assets.

Recommendation

That Committee considers the draft policies/procedures and makes recommendations to Cabinet for their adoption and that where necessary these procedures are reflected in the next refresh of the Constitution.

Cabinet Portfolio

The item falls within the following Cabinet portfolios:
Corporate Resources and Finance: Councillor Roger Small

Report

1) Background

- a) Last year members considered reports on the disposal of land at Heeley Road for supported accommodation development. The proposals generated some interest from local residents and members rightly scrutinised the asset disposal process throughout. This raised questions in relation to the sale at a perceived undervalue and that the method of disposal was not by auction or by open tender. As a result the Chairman asked for a report on asset disposal policy to be prepared.
- b) In addition last year the council's internal audit team undertook an audit of land transactions and came up with a number of improvement actions. These included the need for specific procedure rules for land transactions be developed, adopted and applied.

- c) The purpose of this report is to deal with both requirements and present for members' consideration initial draft policies/procedures for the disposal and acquisition of land and property assets.

2) Asset management

- a) The council's approach to asset management is defined in the asset management plan (AMP) which is reviewed each year by the Performance Improvement Scrutiny Committee. At an operational level land and property assets are managed by the council's Principal Estates Surveyor which is a new role established in late 2008 following a realignment of resources and priorities in the Strategic Development Services Directorate.
- b) Previous reviews of land and property assets have been undertaken by the Asset Management Group (AMG) which is made up of relevant officers from each directorate and attended by the asset management champion. Its findings are reported to members for consideration and decision. In 2007 a member task and finish group was formed to look at a number of assets which concluded in a series of recommendations which Cabinet considered.
- c) The actual processes for undertaking disposal and acquisition have not previously been defined except that the Constitution includes certain minimum requirements in relation to probity and value for money.
- d) Attached to this report are the first draft of procedures based on best practice to make clearer how land and property assets should be disposed of or acquired whether by freehold sale/purchase, lease or licence.
- e) However the attached documents simply set out 'how' and not 'why' assets should be disposed or acquired.

3) Adopting best practice

- a) Meanwhile FBC has been successful in being accepted onto the third round of assistance under the demonstration programme of 'Advancing Assets for Communities'. The programme provides technical support and assistance to selected local authorities and local community-led third sector organisations to develop joint plans for asset transfer, in line with the recommendations of the Quirk Review, and to begin to implement them within specific projects.
- b) The two key projects within the accepted assistance are St Annes swimming pool and Park View playing fields/Park View4U. The demonstration programme is funded by Communities & Local Government as part of implementing the conclusions of the Quirk Review 'Making Assets Work' [2007], and forms a key component of the work to be progressed by the Asset Transfer Unit. It is led by the Development Trusts Association and delivered in partnership with Community Matters, the Local Government Association and Action with Communities in Rural England (ACRE).
- c) As this work progresses reports will be brought to members in relation to these projects which should provide a useful template for why and when the council should consider disposal to community led third sector organisations.

4) Conclusion

- a) Members are asked to consider the attached draft procedures for disposal and acquisition of land and property assets and make recommendations to Cabinet and that where necessary these procedures are reflected in the next refresh of the Constitution.

| Implications | |
|-------------------------------------|---|
| Finance | No direct implications |
| Legal | Any proposed new procedures for disposing of or acquiring land and property assets will need to be reflected in a refresh of the Constitution |
| Community Safety | No direct implications |
| Human Rights and Equalities | No direct implications |
| Sustainability | No direct implications |
| Health & Safety and Risk Management | No direct implications |

| Report Author | Tel | Date | Doc ID |
|-----------------------|----------------|---------------------------|--------|
| Paul Walker/Gary Sams | (01253) 658431 | 2 nd June 2009 | |

| List of Background Papers | | |
|--|------------|---|
| Name of document | Date | Where available for inspection |
| Advancing Assets for Communities - Round Three | April 2009 | http://www.dta.org.uk/activities/campaigns/communityassets/advancingassets1/aa3.htm |

Attached documents:

Appendix 1 Draft asset disposal procedure

Appendix 2 Draft asset acquisition procedure

APPENDIX 1

Fylde Borough Council – Draft Asset Disposal Procedures

This document sets out the procedure to be adopted when disposing of Council land and buildings, whether by sale, lease or licence. A separate policy document will be prepared relating to the process for deciding whether to dispose of Council land and buildings. There is a separate procedure document relating to the acquisition of assets.

All disposals of Council land and buildings will be referred to the Council's Principal Estates Surveyor, who will recommend a method of disposal and marketing strategy for the approval of the Director of Strategic Development. The principal methods of disposal to be considered will be tender, private treaty and auction.

Method of Disposal

The disposal process will give all prospective purchasers a reasonable opportunity to view the property and submit an offer/tender, unless a 'special purchaser' or 'partner' has been identified, in which case direct negotiations will take place.

A 'special' purchaser is a person who realistically is the only potential purchaser, or who is 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 his existing property, or an established Council tenant who wishes to lease contiguous land or buildings which are not reasonably capable of separate occupation.

A 'partner' is a body who wishes to occupy Council land and buildings for a purpose which is considered to be in accordance with the Council's policies or objectives. An example would be the disposal of Kirkham Baths to the YMCA.

Use of External Agents

Where considered appropriate by the Director of Strategic Development an external firm of agents may be instructed to negotiate a disposal on behalf of the Council. The Principal Estates Surveyor will supervise the work of these agents with a view to ensuring compliance with this policy so far as is reasonably practical.

The Conduct of Negotiations

The Principal Estates Surveyor or agent will conduct negotiations with interested parties in a manner which, as far as is reasonably possible, provides each such party with an equal opportunity to be the successful bidder. In doing so he will have regard to s.123 of the Local Government Act which states that the best consideration should be obtained, and also to the additional provisions in the Local Government Act 1972 and the General Disposal Consent 2003 which permit the disposal of land for less than best consideration in some circumstances.

Therefore, the return from any disposal is to be maximised unless there are overriding factors identified by an operational department which take precedence over the receipt of capital. Where a sale at less than best consideration is recommended, that recommendation will be accompanied by a statement from the relevant operational department setting out the case in support of this course of action, and the budgetary implications.

Disposal by Tender

If a tender procedure is used, then prior to issuing tender documentation, the approval will be obtained of the Cabinet, or where appropriate the Director of Strategic Development

under delegated powers. The tendering process will be in accordance with contract procedure rule 6 as set out in appendix 3 of the Council's standing orders.

Disposal by Private Treaty

Where the private treaty procedure is used, the Principal Estates Surveyor or agent will negotiate with interested parties. He will then agree provisional terms with the preferred party, which will then be submitted for approval of the Cabinet, or where appropriate the Director of Strategic Development under delegated powers. His report will include details of all other offers received, with an explanation of why they have been rejected.

Disposal by Auction

Where the auction procedure is used, the Principal Estates Surveyor, will obtain authorisation from the Cabinet, or where appropriate the Director of Strategic Development under delegated powers, before entering the property in the auction. Such authorisation will include the terms and conditions under which the property is to be offered for sale, and the level of any reserve price.

Completing the Disposal

Once disposal terms are approved by the Council, the Principal Estates 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.

Where the disposal is by way of a lease, a schedule of condition will be prepared prior to the lease commencement date, and agreement reached with the tenant as to who will be responsible for necessary works. Any costs identified as a result will be factored into the property maintenance budget.

Valuation

The Principal Estates Surveyor will undertake or obtain a valuation of any land and buildings which are considered for disposal. Where required by cabinet or by the Director of Strategic Services this valuation will be undertaken by an external, independent Chartered Surveyor experienced in the valuation of the type of property concerned.

Documentation

The Principal Estates Surveyor will be responsible for maintaining a file for each property disposal. All relevant documents should be kept on file and available for audit. This will specifically include:

- Authority to dispose of the land and buildings

- Instructions to external agents where appropriate

- A valuation of the land/buildings

- All correspondence relating to the disposal, including offers and expressions of interest.

- The terms agreed for the disposal

- Authorisation to accept those terms

Instructions to the legal services department or external solicitors.

Compliance

In implementing this procedure officers should have regard to the Council's standing orders, and in particular Appendix 8 - Officer's Code of Conduct.

APPENDIX 2

Fylde Borough Council – Draft Asset Acquisition Procedures

This document sets out the procedure to be adopted when the Council is acquiring land and buildings, whether by purchase, lease or licence. A separate policy document will be prepared relating to the process for deciding whether to acquire new land and buildings. This procedure applies once a decision to acquire a new property has been made, and authorised.

There is a separate procedure document relating to the disposal of assets.

All acquisitions of land and buildings will be referred to the Council's Principal Estates Surveyor, who will undertake negotiations and recommend terms for the approval the Cabinet, or where appropriate the Director of Strategic Development under delegated powers.

Method of Acquisition of a Specified Property

When the Principal Estates Surveyor is notified that the acquisition of a new property asset has been authorised, he will identify, in consultation with the relevant operational department, the most appropriate means of achieving that acquisition.

Where a specific property has been identified by the operational department as meeting their requirements, the Principal Estates Surveyor will inspect the property and prepare a written valuation report which will normally include:

- An opinion of value

- A description

- A schedule of accommodation including sizes of land and buildings

- A general comment on condition

- Comments on the terms under which the property is being offered

- A recommendation as to whether:

- a) to proceed with the acquisition on the terms offered
 - b) to seek to negotiate improved terms
 - c) to reject the proposal and, where appropriate, to seek to identify more suitable accommodation.

Method of Acquisition of a Non-Specified Property

Where the acquisition of a property has been authorised, but no suitable premises have yet been identified, the Principal Estates Surveyor will undertake a search for premises. Once one or more suitable properties have been prepared he will consult with the operational department in order to identify a preferred option or options.

Once one or more suitable properties have been identified the Principal Estates Surveyor will prepare a valuation report or reports and proceed in accordance with the preceding paragraph.

Use of External Agents

Where considered appropriate by the Director of Strategic Development an external firm of agents may be instructed to negotiate an acquisition on behalf of the Council. The Principal Estates Surveyor will supervise the work of these agents with a view to ensuring compliance with this policy so far as is reasonably practical.

The Conduct of Negotiations

Where potentially suitable premises have been identified, The Principal Estates Surveyor or agent will conduct negotiations with the vendor/lessor/licensor with a view to reaching a provisional agreement on terms which he considers to be the most advantageous reasonably available.

These terms will then be submitted for approval of the Cabinet, or where appropriate the Director of Strategic Development under delegated powers. His report will include 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.

Completing the Disposal

Once the terms of acquisition are approved by the Council, the Principal Estates 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.

Where the acquisition is by way of a lease, a schedule of condition will be prepared prior to the lease commencement date, and agreement reached with the landlord as to who will be responsible for necessary works. Any costs identified as a result will be factored into the property maintenance budget.

Where the acquisition is by way of a purchase, a schedule of condition will be prepared prior to completion of the acquisition. Any costs identified as a result will be factored into the property maintenance budget.

Where 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 will be referred back to the Cabinet or the Director of Strategic Development as appropriate for further approval.

Valuation

Where required by cabinet or by the Director of Strategic Services the valuation will be undertaken by an external, independent Chartered Surveyor experienced in the valuation of the type of property concerned.

Documentation

The Principal Estates Surveyor will be responsible for maintaining a file for each property acquisition. All relevant documents should be kept on file and available for audit. This will specifically include:

- Authority to acquire the land and buildings

- Instructions to external agents where appropriate

- A valuation of the land/buildings

- All correspondence relating to the acquisition, including other properties considered and any negotiations relating to the properties under consideration.

- The terms agreed for the acquisition.

- Authorisation to accept those terms

- Instructions to the legal services department or external solicitors.

Compliance

In implementing this procedure officers should have regard to the Council's standing orders, and in particular Appendix 8 - Officer's Code of Conduct.