

APPENDIX 7 - DISPOSAL, INVESTMENT AND ACQUISITION POLICY

1. Introduction

This document sets out the council's policies for the disposal of, investment in and acquisition of land and property. The scope of the policy includes sales, grant of leases, licences, occupation agreements and SLA linked property use and change of use.

The policy is set out in three parts:

- Corporate and Legal context and definitions
- Decision making and delegation
- Implementation - procedures and guidance on disposal, investment in or acquisition of assets

2. Corporate and Legal Context

2.1. The council's powers to acquire, appropriate and dispose of land are governed by statute.

2.1.1. Acquisition

Section 120 of the Local Government Act 1972 permits the council to acquire by agreement any land whether situated inside or outside its area for the purpose of any of their functions under that or any other enactment or for the benefit, improvement or development of their area.

Under Section 121 that Act the council may be authorised (subject to specified restrictions), for any purposes for which they are authorised by that or any other public general act to acquire land, by the minister concerned with that purpose, to purchase land compulsorily within or outside their area.

2.1.2. Appropriation

Under Section 122 of the Local Government Act 1972 the council may (subject to certain procedural requirements relating to common land and land forming part of an open space) appropriate for any purpose for which they are authorised by that or any other enactment to acquire land by agreement to appropriate its land which is no longer required for the purpose for which it was acquired. Apart from these general provisions, Acts conferring specific functions on authorities normally confer specific powers of acquisition of land and where a specific power is given it is usual for that power to be used rather than any more general power.

2.1.3. Disposal

Section 123 of the Local Government Act 1972 defines how principle councils may dispose of land and states that "a principle council may dispose of land held by them in any manner they wish. Except with the consent of the Secretary of State, a council shall not dispose of land under this section

otherwise than by way of a short tenancy, for a consideration less than the best that can be reasonably be obtained”.

In 2003, the Secretary of State issued The Local Government Act 1972: General Disposal Consent (England) 2003 (the General Disposal Consent). The General Disposal Consent applies to land disposed of otherwise than by a short tenancy and it applies where two conditions are satisfied, namely:

- a) 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 promotion or improvement of economic well-being;
 - ii) the promotion or improvement of social well-being;
 - iii) the promotion or improvement of environmental well-being; and
 - b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).
- 2.2. Within its legal constraints, Walsall Council holds property in order to carry out its functions, meet its corporate objectives and to deliver services. The policy should be considered alongside the Strategic Asset Plan and the Capital Strategy / Capital Programme which together set the overall framework within which the council manages its asset portfolio. The property portfolio is held in accordance with the Strategic Asset Plan the objectives of which are:
1. To plan and manage property as a corporate resource for the benefit of the people of Walsall
 2. To provide the right property, fit for purpose, in the right place, to meet current service needs and to plan for the future
 3. To manage and maintain property effectively, efficiently and sustainably, together with optimising financial return and commercial opportunities from the rationalisation and disposal of land and buildings
 4. To use land and buildings to stimulate development and growth, together with supporting local business needs and encouraging new business to the area
 5. To promote joint working where it will provide benefit for service delivery and in securing efficiencies

- 2.3. The council should only hold property to support the achievement of the goals and objectives set out in the Corporate Plan. Consequently property will be held in one of the following classes:

Operational Assets

These properties are held, occupied, used or contracted to be used on behalf of the council to provide services, whether statutory, discretionary or to meet the corporate objectives of the council.

Non-Operational Assets

These properties are held in order to support development or strategic regeneration schemes

Investment Assets

Investment (commercial) assets are held, where legally permissible, for the purpose of generating rental income and/or capital appreciation.

2.4. The council will consequently seek to dispose of property, where legally permitted, which:

- Will provide land to support corporate strategies,
- Will secure capital that will contribute towards the council's General Fund to support the Capital Programme,
- Can no longer accommodate the delivery of services in an economically, environmentally or culturally sustainable manner,
- Constitute significant future risk to the council, e.g. through accrued liabilities,
- Are longer required for delivery of a partnership programme, or
- Offer no real potential for long-term realisable capital appreciation.

2.5. The council will seek to invest in improvements to property where this satisfies the objectives in paragraph 2.2 above, and where:

- Investment will enable the property to accommodate or deliver services in an economically and environmentally sustainable fashion;
- Investment in the property offers the optimum solution in terms of value for money and service delivery; or
- Expenditure will improve the asset's performance through improved income return, reduced running costs and / or improved capital growth.

2.6. The council will seek to acquire property for operational purposes where this satisfies the objectives outlined above, and where:

- There is no alternative property readily available within the council or a partner agency's portfolio; or
- Acquisition offers a more advantageous solution than conversion or refurbishment of property already held within the portfolio; or
- The land is required to facilitate highways, education development and expansion needs that result in a need to acquire land and property by way of negotiation or CPO (see separate policy for CPO)
- The property is to be acquired as part of a partnership programme.
- There is a defined operational requirement for the property.

- There is an approved business case to support the operational requirement.
 - There is agreed funding for the acquisition and associated on-costs.
- 2.7. The council may seek to acquire property for non-operational purposes to support strategic regeneration schemes where there is / are:
- benefits that the council can add that the market cannot or will not
 - an absence of private sector demand for the property which will prevent or delay the property being brought into beneficial use
 - evidence of market failure
 - identifiable outputs – eg job creation / investment levels / land reclamation / development of floor space or housing units
 - evidence of demand from end users
 - the availability of funding to support the intervention / acquisition
 - a clear exit strategy for the council
 - alignment with existing spatial strategies
 - the ability to assemble a larger site
- 2.8. All proposals for retention, disposal, investment and acquisition of property assets should be submitted for initial consideration to the Corporate Landlord Board.

3. Decision Making and Delegated Authority

- 3.1. No acquisition, disposal or investment shall be progressed unless the proposal fully accords with the council's Financial Rules and scheme of delegations. It will also be necessary that any proposed disposal at an undervalue shall comply with the consent provisions set out in s123(2) LGA 1972 and any exceptional expenditure not otherwise justified shall be within the council's statutory powers under either s137 LGA 1972 or s2 LGA 2000 or with approval from the Secretary of State where less than best value applies. It should be noted that a disposal of a land or property asset at an undervalue should only be considered in special circumstances.

Disposal

- 3.2. Where an asset has been declared surplus to the council's requirements (see paragraph 3.1 below) Asset Management will make a recommendation to CLB about the disposal of the asset in the context of the Disposals Strategy. The recommendation will include proposals for the timing and method of sale. If CLB agrees with the recommendation for disposal, it will report the decision to SIB to enable the capital receipts projections to be noted, and Asset Management will seek the approvals to proceed in accordance with the council's Finance Rules and progress the disposal process.
- 3.3. In cases where a disposal is reasonably expected to have a capital value exceeding £500,000, or a rental value is exceeding £50,000 in any one year, Cabinet approval is required before the commencement marketing.

- 3.4. Where Cabinet approval is not required, the decision can be taken under delegated authority by the Executive Director for Resources and Transformation.
- 3.5. Where the terms of a transaction are significantly different from the approved terms or where the consideration falls outside budgetary parameters, the matter should be referred back to Cabinet (or Executive Director where the decision was taken under delegated authority).
- 3.6. As stipulated by s123 of the Local Government Act 1972, a disposal at less than best consideration requires Cabinet approval and must only be pursued in special circumstances and when the requirements of the General Disposal Consent (England) 2003 have been satisfied.

Acquisition

- 3.7. Proposals for property acquisition will be submitted to the Corporate Landlord Board for preliminary consideration and, if CLB considers the proposal is within the terms of this policy, it will make a recommendation to Strategic Investment Board, including the required level of business case, depending on the value of the proposed project. SIB will make recommendations to Cabinet (where the council's Constitution requires) or seek an officer decision under the appropriate delegated powers.
- 3.8. In cases where an acquisition is reasonably expected to have a capital value exceeding £500,000, or a rental value is exceeding £50,000 in any one year, Cabinet approval is required before the submission of an offer.
- 3.9. Where Cabinet approval is not required, the decision can be taken under delegated authority by the Executive Director for Resources and Transformation.
- 3.10. Where the terms of a transaction are significantly different from the approved terms or where the consideration falls outside budgetary parameters, the matter should be referred back to Cabinet (or Executive Director where the decision was taken under delegated authority).

Investment

- 3.11. Proposals for investment in assets will be submitted to the Corporate Landlord Board, for preliminary consideration and, if CLB considers the proposal is within the terms of this policy, it will make a recommendation to Strategic Investment Board, including the required level of business case, depending on the value of the proposed project. SIB will make recommendations to Cabinet (where the council's Constitution requires) or seek an officer decision under the appropriate delegated powers.

- 3.12. Where the proposal involves expenditure over £250,000, Cabinet approval is required.
- 3.13. Where Cabinet approval is not required, the decision can be taken under delegated authority by the Executive Director for Resources and Transformation.
- 3.14. Notwithstanding the above, where Heads of Terms agreed for a transaction are significantly different from the initial proposal or where the consideration falls outside budgetary parameters, the matter should be referred back to Cabinet (or Executive Director where the decision was taken under delegated authority).

4. Implementation

4.1. Identifying Assets for Disposal

- 4.1.1. Assets may be identified as potentially surplus by service areas in the course of normal business and through the Asset Challenge process.
- 4.1.2. Where an asset is identified as potentially surplus by a service area, the service area will report to Asset Management through its Directorate Asset Review Group.
- 4.1.3. Asset Management will liaise with other service directorates through their Directorate Asset Review Groups to ascertain whether the property can accommodate existing or future operational requirements within other service areas.
- 4.1.4. Where this consultation identifies an alternative operational use for a property, that service area should provide a business case to support the use of the building.
- 4.1.5. Asset Management will consult with relevant stakeholders, including the Leader and Deputy leader of the council regarding potential alternative uses for the property.
- 4.1.6. Following this consultation, the Property Manager will report to the Capital Asset Review Group setting out proposals for the disposal (or retention) of the asset in sufficient detail to enable the group to make a decision on the proposal. The report will (as a minimum) provide a brief description of the asset, the current ownership, the reason for it becoming surplus, the current use, details of any proposed alternative operational use (including the relevant business plans for those uses), an assessment of value, the link to corporate objectives, anticipated capital receipt (if applicable) and a recommendation on disposal or retention.
- 4.1.7. Where the proposal recommends retention for long-term investment or disposal at a later date, e.g. where development potential is not yet realisable but will be available in the foreseeable future, the report should also include:

- An analysis of investment return or long term capital appreciation,
- A summary of holding costs,
- A plan for securing capital appreciation including relevant planning and land assembly considerations,
- An indicative timetable to disposal where relevant, and
- Details of payback periods in respect of the invested amount against income or revenue savings.

4.1.8. CARG will consider the available options for the asset and decide whether an alternative use should be pursued or the asset is declared surplus. Where an asset is confirmed as surplus, the Disposal Strategy (Appendix 8) will be used to determine whether the asset is added to the disposal programme and the priority of the asset within the programme.

4.2. Identifying Assets for Acquisition

4.2.1. Potential property requirements may be identified in a number of ways including:

- By services in the course of normal business,
- By Asset Management and Service Departments during the Asset Management Planning process,
- By partnership programme managers, and
- By the Strategic Investment Board.

4.2.2. Once a property requirement has been identified this should be notified to the Capital Asset Review Group with a business case and basic specification to enable this requirement to be considered against surplus properties and the existing portfolio.

4.2.3. If the delivery of the property solution requires either capital expenditure on an existing building or the acquisition of property, the business case will be considered by Strategic Investment Board.

4.2.4. If approved by SIB, Asset Management will then refine the specification with the Service Area / Partner and undertake searches both within the council's portfolio and on the open market on receipt of the relevant recharge code.

4.2.5. Asset Management will report to Cabinet in sufficient detail to enable the Cabinet to make a decision on the proposal. The report will include:

- A brief explanation of the new requirement
- A summary of the specification and the key characteristics of a suitable property
- A report on suitable properties within the portfolio, if any and in the open market (including asking prices).

- The Capital and Revenue budgets required for the acquisition, to include the purchase cost, alteration / fitting out works, relocation costs and running costs.
- Confirmation of the funding source for the acquisition and impact on the council's Capital Programme.

4.2.6. Cabinet approval should be sufficiently detailed and robust:

- To allow the council to compete in the open market enabling those with delegated authority to make decisions at speed where required.
- To set clear parameters outside of which further reference to Cabinet is required.
- To enable democratic oversight without compromising the council's response to commercial situations.

4.2.7. The Capital Programme is prepared annually and any investment identified will be put forward through the capital programme bidding process which takes place in autumn each year. The Capital Strategy is agreed, usually in February of each year as part of the budget approval process.

4.3. Methods of Disposal and Acquisition

4.3.1. Asset Management will make recommendations to the Executive Director for Resources and Transformation who, in consultation with the Leader of the council will determine the most appropriate method of disposal for each asset, taking into account the nature of the asset, market conditions and the corporate objectives. This may include, but not be limited to the following:

- Auction,
- Private treaty,
- Private treaty with a named party (special purchaser),
- Private treaty followed by either a closed formal or informal tender,
- Community Asset Transfer

4.3.2. The disposal recommendations will include the following:

- The approach to alternative development where this is appropriate.
- Whether there would be sufficient merit to warrant applying for planning permission before disposal, and
- The method of disposal and anticipated time taken to dispose together with any significant holding costs/risk.

4.3.3. A sale to a named party will only normally be appropriate where there is a special purchaser, which might be a tenant or adjoining owner and where:

- The special purchaser may outbid the market.
- The special purchaser is the only party able to deliver a particular scheme, potentially due to their legal interests in adjoining land.

4.3.4. Where properties are offered for sale and negotiations are with a single party, the council should ensure that:

- Appropriate legal advice has been obtained to ensure that the proposed arrangement satisfies the council's responsibilities for financial prudence and the risk of challenge to the chosen disposal route is understood.
- A third party valuer has been instructed to:
 - provide a valuation of the property to reflect the circumstances and inform the level of value which represents best consideration,
 - conduct negotiations on the council's behalf, if required
 - confirm recommendations as to the proposed disposal

4.3.5. Where the proposal recommends disposal at less than best consideration this should be supported by a detailed business case identifying:

- The corporate objectives supported by the proposed disposal,
- The rationale for disposal at less than best consideration,
- The shortfall against best consideration and the consequential value foregone, and
- The value of the benefit in kind to the council in terms of revenue savings or added social value

4.4. Heads of Terms and Final Approval

4.4.1. Once Heads of Terms have been concluded for any transaction Asset Management should report to the relevant delegated authority:

- Confirming detailed Heads of Terms are agreed between the parties
- Reporting any departures from the indicative Heads of Terms anticipated in the initial proposal (where appropriate)
- Confirming the recommendation to proceed and the anticipated timetable.

4.4.2. Where the negotiated terms are significantly different from those originally reported the matter should be referred back to the original decision making for approval with a supporting statement.

4.5. Community Asset Transfer

4.5.1. As identified in the Quirk Review 1 in 2007, there are occasions when transfer of assets from councils to Third Sector Organisations can draw down funding and bring benefits to local communities in terms of local management arrangements and community empowerment.

4.5.2. Where surplus assets are being considered for disposal, and there is an identifiable and sustainable requirement for property from the community sector, a community asset transfer can be utilised for the disposal of the asset.

4.5.3. The council has an adopted Community Asset Transfer Policy which defines the process, and can be found at [\[insert link to CAT policy\]](#).