

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1. Meeting

Report to the Cabinet

2. Date of Meeting

11 June 2003

3. Title

Council policy for disposal of land and premises (Continuous Improvement)

4. Originating Officer

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5. Issue

This report provides an update on existing land and premises disposal policy to incorporate best practice on asset management, to reflect organisational changes and refine reporting procedures.

6. Summary

See above.

7. Clearance/Consultation

Leaders Group 10 June 2003.

8. Timing

As soon as possible

9. Background

The current disposal policy and reporting procedures were last reviewed in June 2002. The policy and process implemented has proved successful in introducing a more corporate and structured approach to the way we deal with property disposals but can be further amended to shorten the time period between declaring an asset surplus to requirements and its eventual sale or re-use. Appendix 1 shows the proposed streamlined process for this. If the new procedure is adopted the fundamental principles previously agreed by Members (which have been subject to external and internal audit), will remain unchanged. These are as follows: -

- the time period between declaring an asset surplus to requirements are its sale/re-use must be minimised
- the marketing strategy will reflect the Council's need to produce capital receipts to finance the medium term Capital Programme, in an agreed timescale
- conditional contracts prior to marketing will be produced to minimise, as far as possible, the opportunities of third parties to make late bids
- an independent valuation will be obtained for private treaty sales where the estimated capital receipt is over £100,000

- a covenant in the sale of any land/premises for social housing or job creation will be imposed to ensure that the Council can buy back upon failure to develop in the manner for which the land has been sold
- the disposal process will comply with the probity requirements of the Council
- confidentiality will be maintained throughout the marketing period until legal completion
- offers to purchase will not be accepted from persons in debt to the Council unless that debt is cleared. Financial checks shall be made to ensure an applicant is able to pay
- in the event of an offer being made by or any person who is related to or has a business relationship with any Elected Member or senior officer of the Council or is a Member or senior officer of the Council then the decision to accept such an offer shall be made by the Executive Director, EDS or Cabinet Member, EDS, as appropriate
- a sale of an asset will be for the best consideration that can be achieved, except in certain defined circumstances which are set out below.

Service delivery is increasingly becoming a partnership with voluntary or other organisations and we must have a process that supports this in a transparent, equitable manner that is capable of being audited.

There are many instances throughout the Council where land and premises are being let at subsidised rents on many different kinds of tenancy and lease agreements. An audit is being carried out on such arrangements in all services to determine the extent of the practice and a further report will be brought to Members on the outcome.

¹⁰ **Argument**

A council may dispose (sell, lease or grant a tenancy) land and premises in any way it wishes providing it acts reasonably, with due regard to its financial duty to the taxpayer and as stated above, gets the best consideration (meaning income) reasonably obtainable. There are certain exceptions to this latter proviso – set out in brief in Appendix 2 – which permit a council to enter into disposal arrangements, generally for the public good, at less than best consideration. It is likely that these powers will be widened in the near future but greater freedom will make it even more important to demonstrate that decisions made are in an open, equitable and auditable way.

Business Case Approach

It is suggested that a business case approach is adopted when considering the disposal of land or premises to a community or similar group and that the following principles are applied:

- evaluate the potential of the asset by applying the evaluation model developed by the EDS, Asset Management Team which looks at the social, economic and environmental contribution the asset makes
- ensure that the decision making process leaves a clear audit trail
- ensure that the proposal minimises the financial burden and/or risk to the Council
- ensure that the sponsoring service, in consultation with the applicant, produces a business case to justify the action
- set time limits against any proposal to enable the Council to revisit at some future date if required
- lease rather than sell the asset, which secures the future use for the undervalue originally given.

Using these principles, it is suggested that, one of the following options should be considered and utilised as a conclusion to the business case:

Option 1

- Lease the asset on the basis of an open market value with the occupier being responsible for all repairs and running costs associated with the proposed use
- Impose a duty on the sponsoring service to ensure that the community group or voluntary organisation makes full use of any external grant available to pay for any building conversion works, running costs (i.e. rent, rates, utilities etc.) and reflect that financial contribution in the lease terms
- Impose a duty on the sponsoring service to ensure that the community organisation is capable of fulfilling its obligations under the terms of the lease

Only if the conditions of the preceding option can not be satisfied, the following option should be pursued:

Option 2

As above, but use any available internal grant the Council is empowered to make to support the project. This will always involve a lease at full market value, obligations as above, but the sponsoring service may wish to grant back to the organisation certain costs to support the use. While this could include the value of the rent, the subsidy will be clear and capable of review.

Option 3

If the sponsoring service confirms that it is impossible for external or internal funding to support the project then a lease shall be granted at the nominal rent of £50.00 to cover administration costs. This option shall only be selected in exceptional circumstances, with time limits if possible, because: -

- it will cause inequity across the Borough and all potential groups will assume they can obtain Council property at nil value almost as of right, which tends to happen now
- it sets the market value of rents for such property at £0, which when reviewed, may provide evidence towards disposing of the property anyway because the income can not support the liabilities of retaining the property
- as a principle, it does not support best practice in asset management planning as advocated by the ODPM
- it can lead to arbitrary decisions

In all three options the sponsoring service shall hold in its budgets the full costs of servicing the lease in the event that the tenant defaults and pays for all legal and estates costs in setting the agreements in place.

Adopting a corporate approach to dealing with community assets is fair and open and streamlining the process of asset disposal will support continuous improvement of our service

¹¹ **Risks and Uncertainties:** Community aspirations may be raised which can not be fulfilled if the application of the business case approach demonstrates that a particular project is not viable. Under these circumstances the sponsoring service may be faced with additional costs to make the project viable. The sponsoring service may also incur costs if the project folds or does not meet its obligations. In certain cases the business case may demonstrate that a high capital receipt could be forthcoming by a disposal on the open market and under these circumstances it is more appropriate to dispose of the asset to support the capital programme. In all cases a project management approach to using the asset should be taken to ensure outcomes are achieved.

¹² **Finance:** The implementation of a revised disposal process will support the medium term capital programme.

¹³ **Sustainability:** The adoption of a clear policy and procedure will safeguard the Council's property assets.

¹⁴ **Wards Affected:** All.

¹⁵ **References:** Capital Strategy and Asset Review Team on 13 February 03. Cabinet on 05 June 02.

¹⁶ **Presentation:** The proposals contained in this report, if adopted, provide a clear auditable trail on the decision making process for property disposals.

¹⁷ **Recommendations: that**

- (i) **the reporting process as set out in Appendix 1 will be adopted for property disposals and that delegation arrangements will be changed to reflect the streamlined process;**
- (ii) **the principles outlined in this report are approved and set out in the form of guidance notes to be presented to members of the Capital Strategy and Asset Review Team/ Property Board by the Executive Director, Economic and Development Service;**
- (iii) **the business case method of dealing with community disposals is adopted; it supercedes all previous resolutions of the Council and all cases are brought to the Capital Strategy and Asset Review Team for consideration;**
- (iv) **a report be brought to the Property Board on the extent of the assets currently let at less than market value and that these assets will then be scheduled for review.**

DISPOSAL PROCESS: KEY EVENTS

