

## ASSETS OF COMMUNITY VALUE

### Report of the County Solicitor

***Please note the following recommendation(s) are subject to approval by the Cabinet and confirmation under the provisions of the Council's Constitution before taking effect.***

#### Recommendation

- I. that Cabinet approve the process for disposal of assets of community value, set out in detail in section 2.2 of this report, which meets the requirements of the Localism Act 2011 and additionally incorporates a process for considering an asset transfer at undervalue where there is evidence of community or social benefit.
- II. that the Cabinet approves the methodology, set out in section 2.3 of this report, for evaluating social and community benefit
- III. that Cabinet approve the discount on open market value based on the total final score of the evaluation for social and community benefit where 0% score = 0% discount; 100% score = 100% discount etc., as set out in section 2.3.7 of this report.
- IV. that the revised Code of Practice for the Disposal of Surplus Property, embodying the requirements of the Localism Act at appendix 1 is noted

#### 1. Introduction

- 1.1. Property is now viewed as a corporate resource; the Council has a designated corporate property function which acts as a central reference point to check that all property transactions are aligned to the Estates Strategy.
- 1.2. Part 5 Chapter 3 of the Localism Act 'Assets of Community Value/Community Right to Bid' was fully enacted on 21 September 2012.

#### 2. The Code of Practice for the Disposal of Surplus Property

In line with the decision taken at Minute 51 of Procedures Committee of 1 February 2012, the necessary technical changes have been made to the Code to reflect the requirements of the Localism Act and the changes set out in this Report. The revised code is attached at appendix 1.

#### 3. Localism Act 'Assets of Community Value'

##### 3.1. Background

- 3.1.1. The purpose of this section of the Act is to provide communities with an opportunity to take control of assets and facilities which are of community value within their neighbourhoods by giving community groups time to develop a bid and raise money to bid to buy the asset when it comes onto the open market.

- 3.1.2. The provisions of the Act only apply once a listed asset is put up for sale; there is no compunction on the owners to sell it and there is no community right to buy or right of first refusal.
- 3.1.3. At the end of the moratorium period set out in section 3 of this report, the owner may sell to whomever they choose and at whatever price.
- 3.1.4. The scheme augments rather than replaces those powers given to communities and local government in the community empowerment white paper, published in July 2008 following the 2007 Quirk review, and sits alongside the work of the Asset Transfer Unit.

### **3.2. Community Benefit and process for evaluating bids and calculating discount**

- 3.2.1. The County Council's capital programme is dependent upon capital receipts from the sale of surplus property and the Council is required under Section 123 of the Local Government Act 1972 to obtain the best price for any property that is sold.
- 3.2.2. However, the County Council acknowledges that The Local Government Act 1972: General Disposal Consent (England) 2003 gives authorities the power (but not an obligation) to sell at undervalue where such a disposal would benefit the social, economic or environmental well being of area.
- 3.2.3. To this end, the Council acknowledges the wider benefits of assets being retained in community use and will entertain bids at less than Open Market Value if the proposed scheme provides evidence of community benefit, need or desire; for example a town, parish, or other community led plan; distance from equivalent services elsewhere; or housing needs survey.
- 3.2.4. The County Council has developed the following process for evaluating the community benefits of a bid and calculating acceptable discount on Open Market Values.
- 3.2.5. Bids will be assessed and scored against a standard evaluation matrix to determine how the proposal provides increased opportunities for or supports:
  - Location by County Council Priority Communities
  - County Council Strategic Aims
  - Employment, Enterprise and Community Wellbeing
  - Environmental Benefits
  - Economic and organisational sustainability
- 3.2.6. Scoring is on a points basis and not an assessment of monetary value with a maximum score of 100
- 3.2.7. The acceptable discount on Open Market Value will be based on the total points scored; i.e. a score of 100 points will result in a nil value transfer; a zero score no discount; and a score of 50 points a 50% discount on the open market value.
- 3.2.8. This process provides a mechanism for evaluating projects of widely differing scales from large and small communities in a way that is both consistent and transparent.
- 3.2.9. The results of the evaluation panel will be final; there will be no appeals procedure.

### **Equality/Sustainability/Legal Considerations**

This report has no specific equality, sustainability, legal or public health implications that are not already covered by or subsumed within the detailed policies or practices referred to therein.

### **Risk Management Considerations**

This policy/proposal has been assessed and all necessary safeguards or actions have been taken/included to safeguard the Council's position.

**Jan Shadbolt**

Electoral Divisions: ALL

### **LOCAL GOVERNMENT ACT 1972: LIST OF BACKGROUND PAPERS**

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Cabinet Member: Cllr John Clatworthy, Property and Resources

<u>BACKGROUND PAPER</u>	<u>DATE</u>	<u>FILE REFERENCE</u>
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Nil

## **Appendix 1**

### **Code of Practice for the Disposal of Surplus Property**

#### **1. General**

- 1.1. Strategic Directors/Heads of Service should seek to identify property that will become surplus to requirements and arrange for it to be declared permanently surplus to requirements at the earliest possible date. This is
  - (i) to avoid unnecessary expenditure on repairs, rates, security and other outgoings
  - (ii) to allow NPS(SW) Ltd the maximum time to obtain any planning permissions for alternative use / development prior to offering properties for sale
  - (iii) to minimise the length of time property is held by the authority after it is vacated.
- 1.2. Property forming part of the County Council's industrial estates portfolio which has been identified for disposal following a best value review and property which has been identified for disposal under the Finance Plan for the reorganisation of the County Farms Estate are deemed to have been declared permanently surplus to requirements. These properties do not require further approvals prior to disposal.
- 1.3. All capital receipts will be treated as corporate capital receipts unless specific approval is obtained from the Cabinet for an alternative treatment e.g. "in/out schemes". Heads of Service should forward any such proposals to the Capital Receipts Working Party at an early stage for consideration as to whether they meet the necessary criteria to be recommended for approval by the Cabinet.

#### **2. Procedure for Declaring Property Permanently Surplus to Requirements**

- 2.1. Heads of Service should seek approval to dispose of property in accordance with the Property Transaction Process approved by the Procedures Committee on 01 February 2012 (Minute 51) following consultation with NPS (SW), DCC's Corporate Asset Manager and the Portfolio Holder whose remit includes finance and property. That approval should indicate the likely timescales for releasing the property. A copy of the letter should be sent to the Local Member for information.
- 2.2. Heads of Service remain liable for the costs of holding property until such time as the County Council's interest is disposed of.
- 2.3. All revenue budgets associated with property which has been declared surplus to requirements will be transferred to Business Strategy and Support to contribute to the County Council's budget reduction targets.

#### **3. Disposal process for 'assets of community benefit'**

- 3.1. This process applies to all assets that have been included in the statutory list of assets of community value, which will be managed by the appropriate District Council.
- 3.2. The authority may also consider community interest in surplus assets that are not included on this list at the discretion of Cabinet.
- 3.3. DCC must notify the District Council when any asset which has been included in the list is declared surplus. The District Council will then notify the nominating organisation of any planned disposals of listed assets.

- 3.4. Any expression of community interest must be made by a 'qualifying organisation' as defined within the Act and determined by the Regulations<sup>1</sup>
- 3.5. The Act provides an initial moratorium on disposal of six weeks from the notification of intention to dispose within which local organisations may make a written request to DCC to be treated as a potential bidder.
- 3.6. At the end of the initial 6 week period, if no expressions of community interest are received, the property will be placed on the open market.
- 3.7. If a written expression of interest is received within the initial period the full six month moratorium on disposal will be applied, starting from the date of receipt of notification to dispose, to allow the organisation to prepare a bid.
- 3.8. Where more than one organisation makes an expression of interest, DCC would encourage them, through the Local Member, to prepare a joint bid.
- 3.9. DCC will consider any proposals for a discount on Open Market Value from the qualifying organisation during the six month moratorium. These bids will be evaluated according to the process which will be agreed by Cabinet from time to time; DCC may reach an agreement to sell at undervalue at or before the end of this period.
- 3.10. In this instance, Open Market Valuation is defined as the highest value that the authority could reasonably expect to achieve for the property and not necessarily the current use value. The Market Value will be assessed by NPS SW Ltd, as the Council's property services provider, based on the Valuation Standards of the Royal Institution of Chartered Surveyors.
- 3.11. Interested parties are advised that they must seek their own valuation when preparing their bid.
- 3.12. At the end of the full moratorium, if no acceptable bids are received from a qualifying organisation the property may be placed on the open market and the authority will be free to dispose of the property.
- 3.13. Where appropriate the sale would be subject to a covenant to ensure that the premises would be used for no other purpose than the specified use or that any discount would be repaid or overage payable if the premises were sold and/or use changed within a defined period.
- 3.14. Following any transfer of a former DCC premises to any local community organisation or Parish Council, DCC will have no continuing interest in or responsibility for the upkeep of the property. No additional funds will be made available for ongoing maintenance, including any unforeseen liabilities.
- 3.15. In some cases, properties are held in trust by DCC and cannot be sold or have restrictions on the sale or use of the building. In these instances, transfer to local community organisations may offer a realistic way for the property to remain in the community when it is no longer required for the provision of DCC services. However it should be borne in mind that such disposals may be subject to obtaining the prior approval of the Charity Commission.

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2012/2421/contents/made>

#### 4. Role of NPS

- 4.1. The County Council has established a joint venture partnership with NPS (SW) Ltd whereby the latter is authorised to exercise a broad range of property related powers on behalf of the Council.
- 4.2. The County Council's capital programme is dependent upon capital receipts from the sale of surplus property and the Council is under a statutory duty to obtain the best price reasonably obtainable on the sale of property. The timing of sales is often important in achieving the capital programme and in the case of "in/out schemes". It is anticipated that in most case properties will be offered for sale on the open market.
- 4.3. Prior to formally declaring a property surplus to the authority's requirements, NPS will notify any groups entitled to prior notification under current legislation and government guidance, for example Previous owners where land was acquired under a Compulsory Purchase Order in accordance with the Crichel Down procedures recommended by the Commission for Local Administration in England.
- 4.4. Where the property is held on the list of Assets of Community Value, NPS will notify the relevant district authority immediately following the decision to declare the property surplus to the authority's requirements and the authority will implement the process for disposal of assets of community value set out in section 3 of this code, which meets the regulations for Part 5 chapter 3 of the Localism Act 2011 'Assets of Community Value'.
- 4.5. Where the property is not held on a list of Assets of Community Value, prior to formally declaring the property surplus to the authority's requirements, NPS will also notify the following groups, who will be given the opportunity to purchase in advance of the property being declared surplus.

Special Category	Justification
Sales or leases to existing occupiers including freehold reversions	Such sales are likely to achieve values in excess of open market value i.e. the benefits of any marriage / merger value accrue to the County Council.
Sales or leases to adjoining owners/occupiers or superior landlords subject to all adjoining owners being approached and invited to bid	Such sales are likely to achieve values in excess of open market value i.e. the benefits of any marriage / merger value accrue to the County Council.
Exchanges of land.	In accordance with Good Neighbour principles where there is mutual benefit.
Sales to other public bodies	To assist other public bodies to achieve their objectives in providing services to the people of Devon.
Property held for employment generation purposes.	To achieve the County Council's employment generation objectives

- 4.6. NPS is authorised to notify the following organisations of the availability of surplus property in advance of offering it on the open market:

(i) Other Councils, Devon and Cornwall Police Authority, Devon Fire and Rescue Service, Health Care Trusts, Community Council of Devon.

(ii) Housing Associations nominated in writing by District Councils

(iii) Community Associations to assist with the provision of community facilities where there is proven need

(iv) Other relevant public bodies including appropriate signatories to the Devon Partnership Agreement

(v) Adjoining owners or occupiers where they can be identified

4.7. NPS cannot be expected to know of all the organisations which may potentially be interested in acquiring surplus properties and discretion will be used as to with whom and in respect of which properties it is appropriate to consult prior to offering properties on the open market. Local Members will often be aware of community needs and aspirations and NPS should consult them when handling the sale of properties that have the potential to be of interest for community use. County Locality Development Officers might also be consulted in appropriate cases.

4.8. Parties will be asked to express interest within 21 days. Any sale to an organisation within category (iii) would be subject to the approval of the Cabinet. Sales will be at open market value. If terms are not agreed, or a transaction is not concluded within the period required to meet the County Council's objectives, the offer to sell the property will be withdrawn.

## **5. Methods of Sale in Other cases**

5.1. In all other cases property shall be offered for sale on the open market following public advertisement using such method as will in the opinion of the NPS achieve the best price.

5.2. When property (other than small areas of non-operational land e.g. boundary adjustments and verges) is being sold NPS will notify the Local Member at the following stages:

(i) if a planning application is about to be made and again if an appeal is submitted against refusal of planning permission

(ii) when property is about to be put on the market

(iii) in the event of any significant or contentious event

## **6. Disposal for other than Full Market Value**

6.1. Section 123 of the Local Government Act 1972 (General Disposal Consent) requires the Authority to obtain 'best price' for any property that is sold.

6.2. In some limited circumstances it may be that benefits other than the cash value of the sale may be taken into account. When a disposal at "undervalue" is proposed the following procedures must be followed.

(i) a certified valuation of the property to be prepared by NPS and placed on the relevant file

- (ii) a full economic appraisal of the proposed non-cash benefits must be prepared
- (iii) a statement should be prepared comparing the certified valuation with the cash consideration and the capital value of any other benefits
- (iv) Any proposed disposal for other than full cash value must be approved by the Cabinet Member whose Remit includes Finance and Property.