

Herefordshire Council

Asset Disposal Policy (Updated January 2016)



VISION

"To support the efficient, integrated delivery of public services across the county by providing modern, fit for purpose buildings, shared by Public Agencies"



ASSET DISPOSAL STRATEGY

1.0 INTRODUCTION

Herefordshire council holds land and buildings (property assets) for service delivery purposes and they are owned corporately.

Where property assets are not contributing to Council's objectives then a process of rationalisation and disposal should be adopted for surplus/under-performing assets in accordance with Locality (formerly the Department for Communities and Local Government) Guidance on Asset Management.

Property disposals will reflect the requirements of the current organisation and must secure the optimum benefit for Herefordshire.

For further details visit the Locality (former DCLG) publication "Building on Strong Foundations – A Framework for Local Authority Asset Management".
<http://communities.gov.uk/documents/localgovernment/pdf/20.pdf>

2.0 OBJECTIVES

The objectives of the strategy are to –

- 1) Only hold assets that meet the authority's operational property, socio-economic and investment objectives
- 2) Release actual and latent capital from surplus assets
- 3) Reduce or remove liabilities;
- 4) Unlock the benefits of regeneration;
- 5) Enable Local Development Framework policies to be realised and:
- 6) Optimise the proceeds or land use benefits of particular disposals for the benefit of the authority and its communities

3.0 DEFINITION OF A DISPOSAL

"The transfer of the freehold, or a leasehold interest for a period greater than seven years, to a third party or a Private Finance Initiative (PFI) scheme".

4.0 STATUTORY POWERS

In most cases the authority's power of disposal is a general power contained in Section 123 of the Local Government Act 1972. This provides that the Council obtains the best consideration that can reasonably be obtained (except with the consent of the Secretary of State).

For regeneration schemes appropriation for planning purposes may be considered.

For housing accommodation the Local Government Act 1988 Section 25 and its general consent regime apply (HCA General Consent 2015). Under these powers, disposals of land for the development of housing accommodation to registered social landlords may take place at less than the best price, provided this is a Freehold transfer or a leasehold interest with 99 years or more remaining. The accommodation to be developed must be

provided for the elderly or vulnerable and the authority must not enter into any service level agreement or management arrangement for the accommodation.

The recent “Power of General Competence (Localism Act 2011)” supports the use of disposals at an undervalue in order to further sustainable development principles. These are subject to the General Disposal Consent (Circular 06/03) which permits Councils to sell property at less than best consideration without the need to seek Secretary of State consent, subject to the undervalue being no more than £2,000,000 and the disposal helping secure the improvement of the economic, social or environmental well-being of its area.

<https://www.gov.uk/government/publications/disposal-of-land-for-less-than-the-best-consideration-that-can-reasonably-be-obtained-circular-06-2003>

Some property disposals are compulsory transfers driven by statute rather than through the identification of surplus assets. Examples are the creation of Academies (Statutory Duty Academies Act 2010); Foundation and Voluntary Aided Schools (Schools, Standards and Frameworks Act 1998); Right-to-Buy (Housing Act 1985). Whereas the housing provisions are no longer relevant to this authority, it is recommended that specific policies are created to cover other forms of statutory transfer.

5.0 DEFINITION OF SURPLUS/UNDER-PERFORMING ASSETS

Property should be declared surplus if –

- 1) It makes a poor or zero contribution to the delivery of the authority’s services, either directly or indirectly, or generates insufficient income and has little or no potential for future service delivery or community regeneration purposes;
- 2) An alternative site has been identified which would achieve a lower cost and/or more cost effective service delivery (i.e. has lower opportunity cost);
- 3) Following vacation there is no potential for future alternative service delivery or regeneration;
- 4) It suffers unsatisfactory condition, suitability, sufficiency, or environmental standards for service delivery, or has adverse running costs and the problems cannot be rectified by economic capital investment, so a replacement is required;
- 5) A change in service delivery methods results in the property no longer being required.

Property should be deemed to be under-performing if –

- 1) Part of it is vacant and likely to remain vacant for some time;
- 2) The alternative use value is higher and the service can be relocated elsewhere and still leave a net capital receipt;
- 3) The beneficial use or financial return (both revenue and capital growth) generated from it is below that which could be achieved from an alternative use, or a disposal and alternative investment opportunity;
- 4) It repeatedly scores poorly in property performance assessments, owing to unsatisfactory condition, suitability, sufficiency, or environmental standards for service delivery or has adverse running costs.

6.0 IDENTIFICATION OF ASSETS FOR DISPOSAL

6.1 The identification of a property asset for potential disposal will arise in a number of ways as follows –

- The Local Development Framework
- Asset Management reviews
- Value for Money reviews;
- Service reviews declaring property no longer meeting operational needs;
- It has potential for development or redevelopment and service can be relocated;
- The five yearly asset valuation process identifies development/alternative use;
- Approaches from outside parties (e.g. developers, adjoining owners);
- Entering into development partnerships such as Local Asset Backed Vehicles (LABVs) or Local Housing Companies (LHCs);
- Request from a community group or public body to the transfer of an asset;
- Statutory duty to transfer arises;
- Land registry Searches;
- Monitoring planning applications;
- Request for variation of covenants

6.2 Property Performance Reports

The assessment of property performance differs according to the property type concerned. The nature of the assessment is explained below –

Operational Property – assessed against criteria for condition, suitability, sufficiency, or environmental standards for service delivery and appropriate benchmarks.

Socio-economic Property – assessed against criteria for corporate goals and objectives for fostering sustainable communities, economic development and regeneration;

Investment Property – assessed against criteria for income and capital growth yield, rent arrears, property voids and appropriate benchmarks

6.3 Incentives to identify surplus assets

Property should be held centrally and managed as a corporate resource. Proceeds from disposals should go to the centre but services could be given incentives to identify and release assets, for example, by being able to retain a portion of the running costs if paid for by the service area. This portion should, however, reduce over a period of years.

The Council's Corporate Asset Management team will work directly with Service Commissioners in identifying surplus property assets.

6.4 External consents and formal notification of a disposal

External consents are required to effect the sale of certain types of surplus properties (e.g. Department of Education consent for the disposal of school playing fields and potential Academy land and public open space that has to be

advertised). These consents should be identified and the process commenced at the earliest opportunity, as it can take some considerable time to obtain these consents.

Ownership in a trustee capacity needs to be carefully considered as it may need the consent of the Charity Commission.

6.5 Decision-making process

The Council's Constitution clearly explains its governance arrangements, in particular the property decision-making process, both to declare property surplus and to deal with commercial procedure.

Details of the Disposal procedure can be found under Herefordshire Constitution Part 4 Procedure Rules; Section 7 – Financial Procedure Rules; 4.7.8 Asset Management; 4.7.8. 17-19 Disposals.

7.0 MANAGEMENT OF SURPLUS ASSETS

7.1 Data collection

A corporate schedule of the use and allocation of all property is maintained in accordance with CIPFA (Chartered Institute of Public Finance and Accountancy) guidance on local authority asset registers and as contained in the Statement of Recommended Practice. It is held by the Corporate Asset Management's Land and Property Information Service.

All surplus and potentially surplus property is identified within the Asset Register (and held by the Property Information Team). The schedule is updated on a continuous basis to reflect any developments.

7.2 Property holding costs

The costs of holding the property between declaration as surplus and disposal are met by the Service Directorate. Where an alternative use is identified from a third party, the property may be transferred to the Director of Finance and appropriated for use as an investment asset as opposed to an operational property.

7.3 Suitability for other council uses

Before land and buildings are formally declared surplus, opportunities for alternative use for other authority purposes should be considered. Where this is the case the Director of Resources needs to be satisfied that the Service Department has the necessary financial resources in place to cover its operational running costs.

7.4 Site investigation and Town Planning

Once a property has been identified as potentially surplus, the Director of Resources should establish whether there are any constraints on the site (e.g. Title, legal, planning, statutory authorities, etc).

8.0 DISPOSAL POLICY

8.1 Property disposals

All disposals should be arranged and managed by the Director of Resources. The authority should obtain the best consideration by the most appropriate method of disposal but consideration does not necessarily need to be financial.

There should be regular liaison with all stakeholders between a property being declared surplus and the completion of a disposal. In particular, the party responsible for the day-to-day management of the property should be kept regularly informed of developments to an agreed timetable.

Consideration should be given at all times to the confidentiality of a disposal, particularly until a property is formally declared surplus and until exchange of contracts.

8.2 Disposal at less than best consideration

The General Disposal Consent makes provision for an authority to dispose of land at less than full market value, where it considers that the purpose for which the land is to be disposed of, is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the whole, or part, of its community (or any person resident or present in its community); and the difference between the unrestricted or market value of the land to be disposed of and the disposal consideration or 'undervalue' (sale price plus monetary value of voluntary conditions imposed) does not exceed £2 million.

A valuation should be undertaken to identify the 'undervalue' and best effort should be made to financially value the economic, social or environmental benefits to the authority and community, which justify a disposal at less than best price. (The supporting evidence for such justification should come from a "sponsoring service").

In cases where the 'undervalue' exceeds £2 million then the consent of the Secretary of State will need to be obtained.

If the disposal is to be at less than best price then this shall be considered within the context of the authority's Capital Programme as the opportunity cost of a foregone open market disposal.

Where a disposal is undertaken at less than best price, then to protect the authority's interest in the event of subsequent disposals, there should be included where appropriate, an asset lock, claw-back or uplift clause, restrictive covenants, ransom strip retention, user rights, or right of pre-emption.

The overriding factor to be considered for disposals at below best price is whether it is within the authority's powers to do so and the reasons should be well documented and transparent. To avoid the possibility of a challenge to a decision to sell at less than best price (for example by a Council tax payer or other interested party), it is important that there is evidence of a clear link to the furtherance of Corporate objectives.

8.3 Method of disposal

For the majority of cases, the most appropriate method of disposal should be adopted from the following and dependent upon a formal options appraisal.

OPEN MARKET

Method	When to use -
Private Treaty	Limited interest and a narrow valuation band. A disposal can have a closing date and be by way of sealed bids in cases where considerable interest is shown after marketing;
Auction	Wide interest, no obvious purchaser and easy to allocate a reserve. Speed and best price can also be demonstrated;
Tender – Formal	Wide interest, land ownership not complex, no uncertainties regarding the granting of planning consent with obligations to be placed on a purchaser that are clear and capable of specification in advance. Also, appropriate where there is a wide valuation band;
Tender – Informal	To identify a preferred bidder and enable further detailed terms or proposals for development to be negotiated. Appropriate for sales where there are uncertainties, particularly planning and for large or complex development or regeneration sites and where the proposal may need to be developed in co-operation with the authority to meet corporate objectives and to achieve best consideration. Allows for the use of conditional contracts, including clauses which provide for further sums to become payable (claw-back) upon the granting of planning in the future, or improvement in market conditions (overage). Legal advice should be sought at the outset in respect of major disposals to ensure that they meet the authority's internal and external procurement rules and regulations.

SPECIAL PURCHASER

Sale to adjoining owners or lessees where special circumstances appertain. Typical examples are a conditional disposal where the authority is selling for a particular purpose (e.g. to a developer for regeneration, to a nominated housing association for social housing development) or where it is of limited size and value and the adjoining or local landowner is the only potential or likely purchaser (e.g. garden extensions). Such sales will only be considered where there is a clear benefit to Herefordshire Council in terms of disposal value and/or removal of maintenance liability.

Exchange of land may be appropriate where it will achieve the best consideration for an authority and is advantageous to both parties.

The Crichel Down Rules may require public bodies to offer land acquired by, or

under threat of, compulsion back to former owners, their successors or to sitting tenants.

<https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance-down-rules-circular-06-2004>

Circular 06/04 Compulsory Purchase and The Crichel Down Rules (DCLG).

The sale of property to 'Sitting Tenants' can be determined by legislation giving certain tenants' rights to purchase at a discounted value.

8.4 Disposal of non-surplus or under-performing assets for Community Regeneration

The authority may also dispose of property that is not formally classified as surplus or considered to be under-performing: to developers for community regeneration schemes by way of Local Asset Backed Vehicles (LABVs), or to Local Community Housing Companies (LHCs) or nominated registered housing associations for the development of affordable housing and extra care schemes.

In these cases it is recommended that appropriate policies be developed, in particular to determine whether disposals will take place at the best price that can be reasonably obtained, or whether prices are to be discounted to achieve the targeted outcomes of the proposed schemes. For example, the authority may choose to sell land to housing associations for a nominal sum to maximise the use of the housing corporation grant monies in exchange for nomination rights. Or it may choose to sell to a Registered Social Landlord at market value but provide a grant by way of subsidy so that the level of grant is transparent.

It is also beneficial in some circumstances to transfer land for a development by way of a building licence agreement transferring the legal interest in the land and taking the capital receipt upon completion of the development; or alternatively transferring the legal interest at the outset but reserving a right of pre-emption at historic cost should the development not proceed by a certain date.

One of the benefits of such disposals is that through appropriately worded conditions or covenants greater control can be exercised through the land transaction than through the authority's planning controls.

8.5 Private Finance Initiatives (PFI)

PFI is another form of disposal in which the control of the land and building asset, together with risks relating to availability and maintenance etc., are transferred to the contractor for the length of the contract. The local authority has service use of the asset and a reversionary property interest. Disposals of property under major PFI or other similar public sector works contracts will be subject to European Procurement rules.

8.6 Transfer to the community

Herefordshire Council has developed a separate strategy for the transfer of assets to the community, a charity or another public body. Such a transfer will only take place if it is supported by a robust business case, the transferee has sound long-term management and governance arrangements, the proposed use for the property meets the authority's objectives and community strategy and there is an agreed time-scale within which a disposal is expected to be completed and certainty of funding.

8.7 Tenure

In cases where the Council does not wish to exercise any control over the future use of the property (other than through the planning process) then the disposal of the freehold should generate the highest consideration. However, in many instances the Council will want to exercise some control of the future use of the land and in such cases a leasehold disposal is recommended for a term necessary to ensure the satisfactory completion of the scheme; (e.g. a leasehold transfer to the community may need to be for at least 25 years to obtain the necessary grant funding).

It is now becoming standard practice for major regeneration disposals to be negotiated by dedicated teams of valuation, finance and legal professionals representing the authority, the developer and funding bodies. Unless the Council has the necessary skills in-house it is recommended that it considers the use of appropriate private sector specialists for these types of disposals.

8.8 Late bids

Guidance from the Local Authority Ombudsman recognises the problems caused by late bids. The Guidance states that difficulties are less likely if exchange of contracts takes place as quickly as possible after a disposal decision is made. Until a legally binding contract has been entered into, the authority has a duty to consider a late bid. This should be explained to any purchaser when disposing of land by private sale or negotiated/informal tender.

In considering late bids the authority should assess the likelihood of the late bid proceeding to completion in a timely manner and consider the possibility of it being used as a spoiling or delaying tactic. It may in some cases be appropriate to ask the later bidder and other interested parties to submit their best and final bids in a sealed envelope by a set time.

A late bid may be rejected for sound commercial reasons; (e.g. if there is no real certainty of it leading speedily to a conclusion, or a contractor is suspected of using it as a spoiling tactic).

9.0 DISPOSAL PROCESS

9.1 Timing

This needs to be considered against the background of the council's budget and capital programme requirements, the prevailing state of the market, local and regional planning frameworks and the potential of property values increasing in the future. Consideration should also be given to the prospect of obtaining planning consent, particularly where there is potential for redevelopment, or investment in the property prior to disposal, to enhance its value and make it more attractive to the market.

In times when market conditions are not appropriate for a disposal, a temporary or meanwhile use should be found for a property as the authority will otherwise have to pay void rates and occupation will help with security. In cases where there is an external letting then this should be by way of a contracted-out lease under the Landlord and Tenant Act 1954, so that vacant possession can be easily obtained.

9.2 Marketing strategy

An appropriate marketing strategy will need to be developed for use by either the in-house or external consultants undertaking a disposal, with all costs (legal, consultants, marketing and agency) being charged to the appropriate property cost centre. Costs should also be recovered from the purchaser whenever possible.

9.3 Valuations

A valuation of the property for disposal should be undertaken at the earliest opportunity in the process and continually reviewed throughout the disposal process. Where it is decided to negotiate in-house a disposal to a single party, rather than offer the property on the open market, it may be appropriate to obtain a valuation from a professionally qualified third party (e.g. The District Valuer).

9.4 Negotiations

All negotiations for disposal should be conducted by a suitably qualified property professional, preferably a member of The Royal Institution of Chartered Surveyors.

Ombudsman guidance recommends that all negotiations should be conducted at the offices of the authority and with two people negotiating. Clearly both conditions may be unrealistic for every case but often there will be circumstances when one or both are appropriate to ensure and demonstrate that the authority's disposal policy is being adhered to.

10. PERFORMANCE MANAGEMENT

A disposal strategy should set milestones, manage risks and regularly report progress and each individual disposal should form part of a wider programme of disposals aimed at achieving Corporate Plan objectives.

11. EQUAL OPPORTUNITIES

The Council must ensure that any disposal complies with their equal opportunities policy.