

Name of meeting: Cabinet
Date: 2nd May 2017
Title of report: Update of the Council's Estate Management Policy for non-operational land and buildings

Purpose of report:

The report sets out the proposals to update the Council's current Estate Management Policy for the non-operational land and property portfolio which was approved by the Education and Peoples Service Cabinet Committee on 22nd March 2006.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes – the decision will have a significant effect on all wards.
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Key Decision – Yes Private Report/Private Appendix – No
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by <u>Director</u> & name	Paul Kemp – Service Director for Economy, Regeneration and Culture
Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?	N/A
Is it also signed off by the Assistant Director (Legal Governance and Monitoring)?	Julie Muscroft
Cabinet member portfolio	Asset Strategy, Resources & Creative Kirklees (Arts)– Cllr Graham Turner

Electoral wards affected: All

Ward councillors consulted: All ward councillors were sent a copy of the report and updated policies for information on Friday 24th March 2017

Public or private: Public

1. Summary

- 1.1 It is considered good practice for local authority's to publish policies relating to the management and disposal of non-operational land and property assets for the benefit of elected members, officers, members of the public and all other stakeholders.

1.2 The current Estate Management Policy dates from 2006 and is in need of update to reflect current practices and the significant financial constraints facing the Council.

2. Information required to take a decision

2.1 The current policy comprises a single document which covers:-

- Sale of land and property
- Commercial portfolio
- Non-commercial portfolio
- Agricultural land and buildings
- Letting to community groups and voluntary organisations
- General issues

The updated policy has been split into two separate documents – the Corporate Estate Management Policy and the Corporate Disposals and Acquisitions Policy to reflect the increased importance of land and property to the Council's overall asset strategy. Both new policies will operate alongside the Asset Transfer Policy.

Corporate Estate Management Policy (CEMP)

2.2 This policy document covers the Council's non-operational land and property holdings comprising the commercial estate portfolio (shops, offices, industrial property and ground rents etc.), the non-commercial portfolio (garage sites, garden land, grazing land etc.) and agricultural land and buildings.

The Commercial Estate

2.3 The Council's commercial portfolio comprises, on average, of 493 individual lettings generating an annual income of approximately £2.2 million. The estate is managed on a commercial basis having regard to prudent commercial practices. With current pressures on the corporate revenue budgets it is becoming increasingly important to keep the commercial estate under review to ensure that investments remain viable and to identify disposal or alternative opportunities for underperforming assets.

Non-commercial portfolio

2.4 The current policy recognised that there is a community benefit from the use of Council land for domestic garage and garden purposes. Due to the high costs of management when compared to the overall income produced, it is no longer considered to be a sustainable form of business. On this basis Cabinet on 16th December 2014 agreed to withdraw from the management of non-essential portfolios. Accordingly, the new policy will be to no longer offer new lettings for these uses on Council owned land except where there is a change of owner or it is necessary to protect the long term interests of the Council.

2.5 Existing tenancies will be reviewed and those which are considered suitable for development will be terminated without compensation and the sites brought forward for disposal. Sites which are not required for strategic retention or are unsuitable for development may be subject to disposal as going concerns (i.e. subject to the existing tenancies) with appropriate covenants to protect the long term use.

Agricultural land and property

- 2.6 The Council will support the disposal of all non-strategic agricultural holdings to sitting tenants in the first instance or on the open market. For those holdings which are to be strategically retained the Council will seek to negotiate mutually beneficial changes to existing tenancies including rent reviews where cost effective to do so. Changes to the terms under which holdings are occupied can only be agreed mutually as the tenant has an element of statutory protection regarding their existing terms of occupancy.

Corporate Disposals and Acquisitions Policy (CDAP)

- 2.7 Disposal of land and property is a key element in meeting the Council's financial targets e.g. capital receipts and revenue savings whilst also complementing the Council's economic resilience policy and asset strategy. Disposals can also bring social, community and environmental benefits to local areas.

Statutory Background

- 2.8 Members will be aware of the Council's statutory duty to obtain best consideration when disposing of land and property assets. Best consideration generally means the best price obtainable where the principle aim is to maximise the value of the receipt. Consideration however is not limited to the purchase price; it may also include disposal terms which have an identifiable commercial value to the Council.
- 2.9 The Local Government Act 1972 General Disposal Consent (England) 2003 allows the Council to dispose of any interest in land and property held under the Local Government Act 1972 which it considers will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the area at less than best consideration, providing the undervalue does not exceed £2m. For proposed transactions where the 'undervalue' will exceed the £2m threshold specific consent from the Secretary of State will be required.
- 2.10 It should be noted that the Council's power to sell at less than best consideration is subject to the European Commission Communication on State Aid elements in sales of land and buildings by public authorities – also known as the 'State Aid Rules'.
- 2.11 Disposals undertaken through the Council's Asset Transfer scheme will generally be at less than best consideration utilising the General Disposal Consent.
- 2.12 Further statutory procedures exist in relation to the proposed disposal of certain categories of land and property e.g. public open space, land used for school playing fields and former school buildings.
- 2.13 Land and property which is owned by the Council as charitable trustee is excluded from the policy. All disposals of charity land and property are subject to the provisions of the Charities Act 2011.

Methods of disposal

- 2.14 As a general rule, all land and property released for disposal will be fully marketed. Methods of disposal will include public auction, formal tender and informal (or negotiated) tender. The method of disposal adopted in each case will depend on the individual property characteristics and the prevailing market conditions.
- 2.15 The Council may from time to time, dispose of land 'off market' by private treaty to special and nominated purchasers. A special purchaser is one to whom a particular asset has special value because of advantages arising from its ownership that would not be

available to general purchasers in the open market. Such 'special purchasers' will include adjoining owners and parties with an interest in the property where a disposal will release additional, or marriage value, to be shared with the Council. Disposals to nominated purchasers will be considered by the Council where this meets an identified regeneration, social or community need. All disposals to nominated purchasers will be subject to an independent external valuation to determine best consideration.

Disposal and planning permission

- 2.16 As a general principle, and in order to support the Council in the discharge of its statutory planning function, the Council's policy will be that disposals will not normally be completed until planning permission (if required) is obtained. The Council will also not be obliged to complete a disposal where an appeal has been lodged against a decision of the Local Planning Authority (LPA). This is particularly relevant to disposals involving significant or sensitive developments and where the Council wishes to secure additional regeneration benefits from the proposed development.
- 2.17 Prior to the marketing of land and property, the Council may seek planning permissions for alternative uses where this will help maximise the value of the asset and where it is cost effective to do so.

Disposal terms

- 2.18 Wherever possible, the Council will endeavour to keep land and property disposals simple and cost effective for both parties to deliver early completions. For certain disposals, it will be necessary for the Council to impose terms which are considered necessary to protect the Council's interests. Such terms may include overage and clawback and development obligations. This is particularly relevant for disposals to nominated purchasers and where the principal aim of the disposal is to deliver regeneration benefits from a particular scheme.

Acquisitions by the Council

- 2.19 Occasionally, the Council will acquire land and property in order to meet an identified operational or strategic need e.g. transportation and regeneration. The Council will acquire land or property from the open market or privately having regard to normal and prudent commercial practices.
- 2.20 Where the Council proposes to make a compulsory purchase order (CPO) it will attempt to acquire the necessary interests by agreement in the first instance having regard to the methods and procedures for assessing the correct amount of compensation commonly known as the "Compensation Code".

General Issues

Consultation with Local Ward Members

- 2.21 The policies will provide for Local Ward Members to be consulted in the following circumstances:-

- Before disposing of land or property
- As part of the process for advertising the disposal of 'public open space'
- Before submitting planning applications on Council owned land
- Before a report goes to Cabinet or Cabinet Committee – Assets on land and property within their Ward

Where Local Ward Members are to be consulted, they will be given at least 10 working days to respond and all comments whether in support or objection to the proposal will be included in the report to the decision making body.

Commissioning

2.22 The Council may, from time to time, commission external consultants in connection with the disposal and acquisition of land and property. Consultants will be procured in accordance contract and financial procedure rules and where appropriate the Council will use Kirklees based consultants in addition to utilising national and regional frameworks. The Council will ensure that the external consultants will possess the necessary professional and technical qualifications and experience.

Fee Recovery

2.23 The policies will provide for the Council to recover its legal, surveying and administrative costs incurred in dealing with all matters. In respect of disposal costs, these have been benchmarked against the level of costs being recovered by other local authorities. For other fees and costs, recent case law has confirmed the point that landlords should not profit from a process where consents are requested. The fee schedules are included in the appendices to the policy documents and are proposed to be reviewed on an annual basis.

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

There will be no impact

3.2 Economic Resilience (ER)

The implementation of the Corporate Estate Management and Disposals and Acquisitions Policies will support ER through the release of land and property assets to the business community as opportunities for economic use, investment and development.

3.3 Improving outcomes for Children

There will be no impact

3.4 Reducing demand of services

Effective management of the non-operational portfolio and the disposal of surplus land and property will help reduce pressures on the Corporate Landlord and other service budgets.

4. Consultees and their opinions

4.1 The revised policies were considered by the Council's Asset Liaison Group on 16th February and their comments have been incorporated.

4.2 Ward Councillors were sent a copy of the report and updated policies for two weeks consultation on Friday 24th March 2017.

5. Next steps

5.1 Following Cabinet approval, the updated policies will be published on the Council's website and will be implemented with immediate effect.

6. Officer recommendations and reasons

6.1 Cabinet are recommended to approve the replacement of the Estate Management Policy with the Corporate Estate Management Policy and the Corporate Disposals and Acquisitions Policy as attached at appendix (1) and to authorise their implementation with immediate effect.

7. Cabinet portfolio holder's recommendations

7.1 (To be appended)

8. Contact officer

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9. Background Papers and History of Decisions

Estate Management Policy for the non-operational land and property portfolio as approved by the Education and People's Service Cabinet Committee on 22nd March 2006.

Report to Cabinet 16th December 2014 - Disposal of surplus land and property assets.

10. Service Director responsible

Paul Kemp – Service Director for Economy, Strategy and Culture