

KIRKLEES METROPOLITAN COUNCIL DESIGN AND PROPERTY SERVICE

ESTATE MANAGEMENT POLICY

Non-operational Land and Property Portfolio

**Approved at Education and Peoples Service Cabinet Committee
on 22 March 2006**

Design and Property Service

CONTENTS

1.0 Introduction

2.0 Sale of land and property

3.0 Commercial portfolio

4.0 Non-commercial portfolio

5.0 Agricultural land and buildings

6.0 Lettings to community groups and voluntary organisations

7.0 General issues

Fee recovery

VAT

EMAS (Eco-Management and Audit Scheme)

Equalities

Consultation

Customer focus

Professional standards and legislation

Decision-making process

Appendices

1. Glossary of terms

2. Delegation scheme

1.0 INTRODUCTION

- 1.1 The Council owns an extensive non-operational land and property portfolio which promotes and supports a thriving economy and a healthy, safe and sustainable environment. It produces income and also provides social, community and environmental benefits and so supports the Council's 'Vision'.
- 1.2 The Council recognises that this portfolio is a valuable resource that requires efficient and effective management in accordance with the Council's Strategic Asset Management Plan and industry best practice.
- 1.3 The primary aims of the portfolio are to:
- Provide rental income and produce an acceptable rate of return
 - Provide a source of capital receipts to assist the capital programme
 - Promote a stronger economy by providing sites and premises for development
 - Provide sustainable business and employment opportunities
 - Assist in the economic regeneration of the area through partnership and town centre redevelopment schemes
 - Provide brown field sites for development in accordance with Planning Policy Guidance No. 3
 - Provide land for residential development by private housing developers and housing association and other partnership organisations to meet housing and other accommodation needs in the district
 - Promote environmental and sustainable initiatives
 - Provide land for activities to meet the needs of local communities
 - Promote the requirements of the Crime and Disorder Act 1988
 - Enhance the role of listed buildings in providing accommodation for local businesses
 - Sustain specialist interest shopping and housing estate shops
- 1.4 The Head of Design and Property Service is responsible for ensuring that the strategic focus of the non-operational portfolio is maintained and that the portfolios are comprehensively managed.
- 1.5 The Estates Management Policy sets out how the portfolio will be managed and should be read in conjunction with the delegation scheme available to the Head of Design and Property Service (Appendix 2).

2.0. SALE OF LAND AND PROPERTY

The Council owns a wide variety of properties and a considerable amount of land throughout the area. Such holdings are sold if no longer required by the Council. They are generally sold on the open market, but can be sold by negotiation to meet an identified social or community need.

Objectives

- 2.1 Land and property is sold to achieve five main objectives:
- (a) To encourage sustainable regeneration and improve the local and global environment
 - (b) To provide housing, community and health facilities
 - (c) To provide commercial and industrial development
 - (d) To sell surplus property previously used by various Council Services
 - (e) To generate capital receipts to support the Council's capital plan.

General Principles

- 2.2 Land and property will only be sold where the sale does not prejudice the longer term interests of the Council. There will be a presumption against sale of agricultural land and land currently used by the Council for operational purposes. The presumption against sale of agricultural land links into Council priorities to maintain a diverse economy, including an agricultural sector.
- 2.3 On all sales regard will be had to the effect on Council-owned retained land and to the potential to share in future development gain. The use of restrictive covenants will be supported by clawback provisions whereby the purchaser will be contractually committed to sharing any future development gains with the Council.
- 2.4 Town centre and other high value sites will generally be disposed of on a long leasehold basis although the freehold may be available where the Council does not have any adjoining land.
- 2.5 The purchaser will obtain full planning permission from the local planning authority, where required, before a sale is completed.
- 2.6 If the local planning authority refuses planning permission for a proposed use, and planning permission is subsequently granted by the Secretary of State on appeal, there will be a presumption against the sale of the land in question for the proposed use.
- 2.7 Complex disposals supporting regeneration should be achieved through a development agreement incorporating the detailed planning permission and related conditions.

Legal background

- 2.8 Council policy is that all disposals should be agreed at 'best consideration'. If a purchaser wishes to make a case for suitable financial support, this will be approached by way of grant aid rather than reduction in purchase price. The purchaser must submit a case for financial support which will be looked at on its merits along with other bids for capital resources. This ensures that financial support is transparent and is only applied to otherwise non-viable schemes.
- 2.9 The Local Government Act 1972 allows the Council to dispose of land and property in any manner it wishes, including sale of a freehold interest, granting a lease or assigning any unexpired term on a lease and the granting of easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of leases less than seven years) unless the Secretary of State consents to the disposal.
- 2.10 However, the General Disposal Consent 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.
- 2.11 In determining whether or not to dispose of land for less than the best consideration reasonably obtainable, the Council will ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue. Any decision to sell at undervalue will be made by Cabinet or Cabinet Committee.

Sale methods

- 2.12 All sales specifically to achieve a maximum capital receipt will be on a fully open and competitive basis except where the maximum receipt would be achieved by selling to a special purchaser. Specialist advice will be obtained, where necessary, to assist the development process and to demonstrate compliance with legislation.
- 2.13 Sales direct to purchasers nominated and approved by the Council and some of its partners (for example to housing associations, health centres and surgeries, community centres and charities) will be negotiated at best consideration. In these cases land can be sold to them as 'special purchasers' contrary to the normal policy of selling property on the open market.
- 2.14 Land sold to adjoining owners is normally through private treaty and should reflect the benefits or burdens being transferred. Where the land may be of interest to more than one party, attempts will be made to identify them and the site divided if necessary. If this is impractical or agreement on the division cannot be reached, sealed bids will be requested.

- 2.15 Disposal of serviced industrial land to a purchaser nominated by Economic Development Service, following an open and competitive marketing exercise, will be at best consideration. A 125 or 999 year leasehold interest will be offered in return for a capital premium and nominal annual rent. On certain sites the freehold will be made available, depending on whether the Council wishes to control the longer term use of the activity on the land.

Land bank

- 2.16 The land bank is managed by Design and Property Service for the overall benefit of the Council. Any property declared surplus by Services is subsequently managed, maintained and made secure through the land bank. It is a record of Council owned land and property which has been declared surplus to the requirements of other Council Services.
- 2.17 As part of corporate asset management planning arrangements, Services will be required to assess their use of land and property and any considered to be surplus should be passed to the land bank, usually for disposal after considering the corporate need of other Council Services. Consideration is also given to retaining surplus land and property to contribute to an identified or potential regeneration scheme. If the Council has no potential use for the land or property, it will then be disposed of.
- 2.18 All maintenance, security and other costs will be funded through the land bank, including the costs of preparing the property for sale such as fees for planning applications and marketing and advertising.
- 2.19 Design and Property Service will obtain any necessary planning permission for alternative uses of surplus land and property to enhance its value and maximise the capital receipt to the Council.
- 2.20 Security can be a major cost to the land bank, particularly where the building is listed or is at risk of vandalism. It may be necessary to employ 24 hour security in order to protect the value of the Council's asset.
- 2.21 The benefits of the land bank include:
- (a) Reducing the Council's capital repair and maintenance programme
 - (b) Generating and monitoring capital receipts to support the capital plan
 - (c) Relieving Services of the costs of maintaining vacant property
 - (d) Providing a supply of land to support policies and initiatives on housing, regeneration and economic development
 - (e) Providing development opportunities for the private sector.

Release or variation of restrictive covenants

- 2.22 The Council has the benefit of restrictive covenants placed on previous freehold or leasehold disposals. These covenants usually restrict the use to which land or property can be put, although they could also relate to other forms of restriction.
- 2.23 If the current owner wishes to use the land or property contrary to the restrictive covenant, the Council will be approached to either release or vary the covenant, at which time it may benefit from a windfall capital receipt. However, it is not obliged to agree to the variation or release of any covenants imposed previously.
- 2.24 If the Council agrees in principle to variation or release, it may charge a reasonable proportion of any development value released by the granting of consent, although it should not profiteer from this. If it does not agree to variation or release, or if terms cannot be agreed, the owner may apply to the Lands Tribunal for the release or variation of the restrictive covenants. If the tribunal is persuaded that a covenant is no longer relevant it may order a release or variation with or without the payment of compensation to the Council.
- 2.25 The following principles will be adopted when dealing with such requests:
- (a) Compensation for release or modification of covenants in freehold or long leasehold interests will only be sought where there is likely to be a significant release of development or other value
 - (b) In assessing compensation, regards will be had to the likely outcome of a referral by the owner to the Lands Tribunal
 - (c) In all cases, the Council will recover all administration costs including legal and surveyor's fees
 - (d) The Council will consider requests for sales of freehold reversions on the merits of each case, including consideration of the impact upon Council Services and the community.

3.0 COMMERCIAL PORTFOLIO

The commercial portfolio consists of approximately 350 shops, offices, industrial units and other properties let on commercial leases to produce investment income to support the Council's budget (the 'Commercial Estate'). The portfolio also includes housing estate shops, social, leisure and community lettings, and industrial units managed on behalf of the Economic Development Service and Kirklees Metropolitan Development Company Limited.

In order to ensure that the portfolio is managed commercially and that the Council's objectives are delivered consistently, the policy outlined below will be adopted:

General lease terms

- 3.1 The Council will adopt 'A Code of Practice for Commercial Leases in England and Wales' which covers flexibility of lease terms, relationships between landlord and tenant and the outlawing of upward-only rent review clauses.
- 3.2 The Council will negotiate full repairing and insuring lease terms, wherever possible, which pass the full costs of property maintenance, repairs and other management to the tenant.
- 3.3 Properties which are insured by the tenant must be insured on the basis of total re-instatement of the property in the event of fire, storm, explosion and other commercial risks including loss of rent during a period when the premises are unusable. Other insurance requirements shall be agreed by Design and Property Service with the Council's Insurance and Risk Management Section before the agreement is completed.
- 3.4 The Council will prepare and implement an annual repair and maintenance programme covering both planned maintenance and annual service orders together with an allowance for unplanned maintenance. The planned maintenance programme will be determined by health and safety and contractual requirements and will follow priorities highlighted by condition surveys. Planned maintenance work on multi-occupied buildings will be the subject of consultation with the tenants before works starts.
- 3.5 In multi-occupied properties, the Council will use a service charge to tenants to recover all maintenance, repair, improvement, compliance with legislation and other management costs relating to the property. This charge will be based on actual expenditure in each year.
- 3.6 Commercial tenants will normally have a right to renew their tenancy in accordance with the provisions of the Landlord and Tenant Act 1954. If the Council is granting a new lease which it does not wish to renew at the end of the term, the new lease will waive the renewal rights. In this case both parties will agree to 'contract out' of the renewal provisions. Documentation to this effect will be completed before completion of the lease.

- 3.7 Agreements can generally be assigned unless there are good estate management reasons for imposing restrictions. Sub-letting of the whole or any part will be prohibited unless there are good estate management reasons to do so.
- 3.8 Where action is required to deal with a specific request from a tenant or as a result of a breach or default by the tenant, all legal or surveyor's fees from the work will be recovered by the Council from the tenant.
- 3.9 The Council will inspect a tenanted property when the tenant vacates (either at lease expiry, surrender or assignment), in order to ensure the property is in a good state of repair in accordance with the terms of the tenancy agreement. If necessary, a Schedule of Dilapidations will be served on the tenant in order to bring the property into a suitable condition. In addition, the tenant will be required to demonstrate legislative compliance in respect of asbestos, gas, glass and electricity and any other relevant regulations relating to occupation of property.
- 3.10 Acts of Parliament and other forms of statute will be enforced at all times.
- 3.11 The Council will produce a tenant's handbook which will provide a simple guide to the legal agreement between the Council and tenant, and will also provide key Council contact details. It will include details of any statutory requirements the tenant will need to comply with.
- 3.12 The Council will consult its tenants regularly and all tenants will receive an annual questionnaire on the standard of service delivery and suggested improvements. There will also be a regular newsletter. In addition, regular meetings will be held with the tenants of multi-occupied properties to discuss management issues.
- 3.13 Vacant properties will be made available to other Council Services provided that the proposed use is acceptable, the commercial rental can be paid, and the Service can comply with this policy. The occupying Service will need to ensure it can satisfy access requirements for staff and customers in accordance with the Disability Discrimination Act 1995.
- 3.14 A marketing strategy will be used to reduce the time a property remains vacant. This will include a regular review of the marketing and the use of incentives such as a rent free period, flexible terms, and stepped rentals. If it remains vacant for over 12 months, the Council may consider selling the property.
- 3.15 Properties held within the Commercial Estate will be reviewed regularly to ensure that they are still a viable investment. Any identified as liabilities will be disposed of, either on the open market or to the sitting tenant.
- 3.16 The Council will improve access to vacant properties and common parts of multi-occupied buildings to comply with the Disability Discrimination Act 1995 if the funds are available.

3.17 A 'Code for the Prevention of Unauthorised Parking on Private Land' will be included in new agreements for letting or leasing land. This code seeks to prevent the unscrupulous use of wheel clamping.

New tenancies

3.18 New commercial lettings will generally be on a competitive basis. Unacceptable uses will be identified before marketing starts. The final decision on which applicant to accept will be made on the most suitable use, investment by the tenant and their financial standing, and the proposed rent.

3.19 (a) New tenants (including assignees and sub-tenants) with a trading record of more than five years must provide one financial and two trade references. Those without a trading record must provide one financial and two character references.

(b) Where a new tenant is a private company which does not have a relevant trading record the directors of the company must act as guarantors or take the tenancy in their own name.

(c) If the new tenant does not have a trading record or is unable to provide satisfactory references they may have to pay an amount of up to six months rent in advance.

(d) Financial checks will be carried out on all new tenants to ensure they are suitable. These will include checks on bankruptcy and previous property agreements with other landlords. New tenants must also provide proof of identity such as utility bills, driving licence, or National Insurance Number.

3.20 The Council will be flexible about the length of tenancy agreements. The individual requirements of tenants will be considered if these are reasonable and meet the management policy for the property.

3.21 The length of an agreement will reflect the investment that the tenant proposes to make.

3.22 Tenants will not be allowed to occupy properties until agreements have been completed.

Rents

3.23 All rents will be at full market value and will reflect the security of the tenant and the terms and conditions of the tenancy.

3.24 Rent will generally be paid in advance and preferably by standing order or direct debit.

3.25 Agreements will generally be reviewed every five years or before and rents may go up or down according to the provisions in 'A Code of Practice for Commercial Leases in England and Wales.'

The Council will review the cost benefits before deciding to implement a rent review. However, under the code, the tenant may call for a downwards review of rent. This will only apply to certain new lease agreements.

3.26 The Council will regularly monitor rental and other payments and implement recovery action immediately if payments are missed. The action taken will be determined by whether the Council is seeking to recover arrears or take repossession of the property. Interest will be charged on late payment of rent where the lease allows this. New agreements will include provision for payment of interest.

3.27 If a rent payment has not been received within 14 days of the due date, a reminder letter will be sent requesting payment within 7 days.

If payment is not made within this extended period, a Letter Before Action will be issued before further recovery action. The action taken could include the use of distraint, court orders, statutory demand or bankruptcy.

3.28 If the tenant is unlikely to pay rent and arrears in the longer term or is in serious breach of its lease obligations, the Council will start action for repossession. Legal proceedings will be taken to forfeit the agreement as quickly as possible. Action will also be taken to recover the rent arrears, including the use of statutory demand or bankruptcy. Empty properties with the potential for re-letting to a new tenant are preferable to occupied properties where the tenant is unable to pay the rent.

Use

3.29 (a) In order to achieve an acceptable mix of tenants on housing estate shop parades, a user clause will be included in the agreement which restricts the range of goods which can be sold. The Council will not generally get involved in resolving minor breaches of user clauses.

(b) In other locations, a user clause will only be adopted if there are sound commercial reasons for it.

3.30 New industrial tenants will not be permitted to carry out processes which involve the storage, blending or manufacture of chemicals and other potentially dangerous substances if these are likely to result in contamination of the Council's land or property. In addition any process which is likely to have an adverse effect on the Council's insurance premium will not be permitted unless the tenant reimburses the Council for the additional premium.

Shops

3.31 (a) Shop fronts which are unacceptable through either design or condition will either be replaced by the Council or through agreement by the tenant.

The Council may carry out work when the property becomes vacant or whilst the property is occupied following agreement with the tenant.

- (b) The tenant may undertake works to the shop front following the grant of a rent free period at the start of a new lease, or as a condition of the lease.
- (c) In all instances, planning and other statutory requirements will need to be complied with including the requirements of the Disability Discrimination Act 1995. Landlord's consent for works will not be unreasonably withheld in such instances.

3.32 The Council will deal positively with requests to install security systems and shutters if planning and other statutory requirements are met before work starts.

4.0 NON COMMERCIAL PORTFOLIO

The non-commercial portfolio consists of land used for garage sites, gardens, grazing, rights of way, caravan storage and car parking spaces, easements and wayleaves, privileges, telephone kiosks, aerials and substations. These lettings provide a relatively small rental income. There are also areas of land and property within the portfolio such as embankments, tunnels, bridges, verges, water courses and footpaths which bring no income yet place an onerous legal and financial responsibility on the Council to maintain in a safe condition.

The portfolio is maintained to meet social needs and community uses. It benefits the local economy and helps the community work towards a better environment with a more sustainable way and quality of life.

The assets help achieve corporate benefits through environmental improvements and community benefits. They can also contribute to future development.

The guidelines for management of these holdings are broadly those already set out in the commercial portfolio with the following additions and exceptions:

Maintenance priorities

- 4.1 Maintenance is dictated by statutory obligations, necessity and demand from the public and ward members and work is prioritised as follows:
- (a) Health and Safety: Statutory Duty and Common Law. This includes the removal of materials and making safe land where there is an imminent foreseeable risk of physical harm to the public.
 - (b) Environmental Protection Act 1990. This requires an immediate response and removal of offensive and dangerous materials within five working days of notification.
 - (c) Trespassers and Travellers. Unauthorised Traveller encampments are managed in accordance with central government guidance. There is an immediate response after vacation of an encampment by cleaning up and securing the site.
 - (d) Crime and Disorder Act 1988. The introduction of measures to reduce crime or fear of crime and improve unfriendly or intimidating environments.
 - (e) Any other matters. A target response is determined by the available resources.

Garage sites

- 4.2 Garage sites are let to the public through a standard licence agreement at a standard annual fee exclusive of rates and subject to annual review (except for individuals qualifying for mobility allowances where a concessionary fee is charged).

- 4.3 Garage sites enable vehicles to be parked away from the road which helps reduce traffic congestion in residential areas. In order to avoid misuse, only one site will be offered per household on popular sites and individuals will only be allowed to take a tenancy of one garage site.
- 4.4 Any new garage must be of concrete panelled construction capable of accommodating a domestic vehicle for personal use and sited on a concrete raft. The prospective tenant is responsible for obtaining all necessary planning and building regulation approval before work starts.
- 4.5 Licences will be terminated if the garage falls into disrepair, if the licence agreement is breached, if it is not used for parking a domestic vehicle or if the site is needed for redevelopment.
- 4.6 If an asbestos garage is in a state of disrepair, notice will be served on the tenant to remove the garage. The works will need to be undertaken in accordance with asbestos regulations and at the tenant's expense. Advice is also provided to tenants on safe practice for removal, including the location of suitable licensed tips.

Garage site required for redevelopment

- 4.7 If the tenant is served notice to provide a vacant development site, compensation will be paid to help the garage be relocated. If this is impractical, an amount equal to the market value of the garage structure will be payable (disregarding its location and attachment to the garage base).
- 4.8 If a garage is not to be relocated, the tenant may leave it in situ and the Council or the developer will arrange its removal.
- 4.9 Compensation will only be paid if the terms of the licence are complied with. In particular, the garage should be in a good state of repair, in regular use and rent payments up-to-date.
- 4.10 Where possible, the tenant who is being displaced will be offered another garage site within reasonable proximity of their home on the following terms:
 - (a) The existing garage must be of concrete panelled construction - permission will not be granted to relocate garages of steel, wood or asbestos.
 - (b) The Council will clear the replacement site of vegetation and provide a new concrete base if necessary.
 - (c) The Council will apply for planning permission for the replacement garage site at its own cost.
 - (d) The Council will contribute 50% of the cost of relocating the garage subject to documentary evidence of the cost incurred.

- (e) If the existing garage is in good condition but cannot be relocated, the Council will contribute 50% of the cost of a new concrete panelled garage subject to documentary evidence of the cost incurred.

4.11 A rolling programme to upgrade garage sites will be carried out to comply with Council environmental policies and to meet the requirements of the Crime and Disorder Act 1988.

Garden tenancies

4.12 Land is let on garden tenancies to adjoining home owners when the land is currently unused and there are no immediate plans for development. The tenant will be responsible for obtaining planning permission for change of use prior to completion of the tenancy agreement.

4.13 A standard tenancy agreement will be granted at market value and will be subject to annual review in accordance with the retail price index. The agreement will include clearly defined maintenance standards for the land.

4.14 The tenancy will be transferred upon sale of the house to the new owner, provided that there has been no change in future intentions for the land.

4.15 The Council will consider disposal of land held on garden tenancy to the existing tenant provided that the land does not have development potential and that a sale does not prejudice the future of any adjoining Council-owned land.

Grazing tenancies

4.16 Grazing tenancies will be granted on suitable land to private individuals (including settled Travellers) for grazing of animals on the basis of a standard personal agreement for non-commercial use at market value.

4.17 When grazing land becomes vacant, it will be marketed by informal tender to those on a waiting list and through advertising in the local press.

Breach of agreements

4.18 If a tenant of garden land, garage site or grazing land is in breach of their tenancy agreement then the following action will be taken:

- (a) The site will be inspected and evidence will be recorded in a standardised format noting points of concern and remedial action required. Photographs will be taken.
- (b) The Council will write to the tenant setting out details of the complaint and the necessary remedial action to be completed within 28 days of the date of the letter.
- (c) The Council will re-inspect the land after 28 days to check whether the remedial action has been completed.

- (d) If the remedial action has not been completed, the tenant will be served with a notice to quit in accordance with the terms of the tenancy.
- (e) If the Council has been made aware of the breach following a complaint from a member of the public, details of the complaint will be recorded for future reference. If the complaint is related to race, this will be recorded in accordance with Council procedures.

Removal of Travellers from Council-owned land

4.19 If Travellers take unauthorised occupation of Council-owned land, the following action will be taken:

- (a) If the land is needed, court proceedings will be taken to obtain an order for possession which will be processed and executed as a matter of urgency
- (b) If the land is not required a policy of toleration will be followed in accordance with central government guidance on unauthorised encampments. An order for possession will be obtained from the court and the Travellers will be allowed to remain on site for a maximum of four weeks. The position will be regularly monitored and the possession order will only be enforced if they fail to leave by the agreed date or if there is sufficient justification for early possession.
- (c) Vacated sites will be cleaned and secured immediately.

Miscellaneous

- 4.20 Requests to enter Council-owned land to carry out investigation work such as site surveys or trial holes will be considered on their merits. A licence for the contractor to sign is available from Design and Property Service.
- 4.21 Site compounds will be allowed on Council-owned land provided they are approved by the Service which manages the land. A fee will be negotiated for this use on a weekly or monthly charge. Bonds may be considered to ensure the site is reinstated at the end of the agreement.
- 4.22 Requests for easements to cross Council-owned land (for example for access or to provide utilities) will be considered on their merits. A fee for this will be negotiated by Design and Property Service.
- 4.23 Easements for water utility pipelines will provide for compensation in accordance with statute.
- 4.24 Wayleaves for public utilities will be approved where they cross Council-owned land. There is generally an administration fee where the wayleave is for the benefit of third parties.

- 4.25 Land which the Council has a legal and potential financial responsibility to maintain in a safe condition, but which does not produce income, will be inspected on a regular basis to minimise risks of public liability claims.
- 4.26 The provisions in sections 7.6 and 7.7 relating to EMAS will be followed in the management of the non-commercial portfolio.
- 4.27 Requests for permission to hold occasional events such as bonfires, community events and funfairs on Council land will be considered on their merits. Permission granted will be subject to the organiser carrying out, at their own cost, a full risk assessment before completing a licence to occupy the land. A condition of the licence will be adequate public liability insurance which protects the Council against any claims.

5.0 AGRICULTURAL LAND AND BUILDINGS

The Council owns 26 parcels of land totalling around 366 hectares which are held on agricultural and grazing agreements.

A review in 2003 recommended the disposal of 10 agricultural holdings and the retention or amalgamation of the remainder to create more viable holdings. In addition, it recommended that repair and maintenance of properties was carried out as some were in disrepair.

5.1 The holdings will be managed as follows:

- (a) New agreements will be on full repairing and insuring terms where possible, passing on all responsibilities to tenants.
- (b) Rents will be set at market value and reviewed in accordance with the statutory framework.
- (c) Agri-environmental Schemes which help sensitive and sustainable management of the existing landscape and wildlife features will be promoted to tenants. Promotion includes raising awareness of these schemes with tenants and joint applications for external funding.
- (d) Requests from tenants to diversify their activities to make the holding more viable will be supported if they are compatible with the management of the estate. Support will include varying terms of agreements to allow the proposal and supporting grant applications for external funding.
- (e) A rolling programme of planned maintenance will be introduced on the basis of condition surveys in order to improve the tenanted properties which remain the Council's responsibility.
- (f) Surplus farm buildings will be disposed of with the minimum amount of land to maximise capital receipts.
- (g) Recreational and community use of the holdings will be promoted, subject to the existing rights of tenants.
- (h) The land will be considered for redevelopment in the long term, subject to changes in current planning policy.

5.2 Farm business tenancies will be granted on other areas of Council-owned land where agricultural stock (cattle or sheep) are to be grazed. Tenancies may be granted either on a personal or business basis. Tenancies may also be granted for arable farming.

5.3 The provisions of sections 7.6 and 7.7 relating to EMAS will be taken into account in managing the agricultural holdings and land subject to farm business tenancies.

6.0 LETTINGS TO COMMUNITY GROUPS AND VOLUNTARY ORGANISATIONS

The Council owns a number of sites and buildings which are occupied by community or voluntary organisations which provide a service to the community. Where exclusive possession of the facility is required, a lease or tenancy will be granted. The Council may also require the organisation to enter into a separate management agreement to ensure the facility operates in accordance with Council policy.

Community facilities should be capable of offering the broadest range of activities such as sports and leisure, cultural and arts, meeting rooms with good sized multi-purpose halls. Ideally there will be provision for children and young people's activities supporting communities to come together. These facilities may present an opportunity for a co-ordinated partnership approach to delivering services with other local facilities such as children's centres, youth clubs and schools, library and information centres, sports centres, church halls and other externally managed facilities.

Organisations responsible for the management of these buildings should adopt the most suitable legal structure for community organisations and may even be registered as charities with the Charity Commission. They will ideally be run by a management committee with a minimum of three members. These organisations will also have in place a governing document relevant to their adopted legal structure.

Recognised structures include:

- a) Unincorporated Organisations with a Constitution
- b) Incorporated Organisations with a Memorandum and Articles Association document
- c) Trust with a Trust Deed
- d) Industrial and Provident Society with a Rules document
- e) Community Interest Company with a relevant governing document

Lease or tenancy agreement

- 6.1 A licence will be granted for a period up to 12 months for use of specific space within a property (such as office space). Security of tenure after the agreed licence period will not be guaranteed.
- 6.2 A tenancy will be granted for a period of up to 12 months. The voluntary organisation will be given exclusive occupation and will normally have limited responsibility for repairs (such as internal repairs only).
- 6.3 A lease will usually be granted for a period between 12 months and three to five years. A longer lease may be granted to provide additional security of tenure to support an application for external funding.

The voluntary organisation will be given exclusive occupation and will usually take on the full repair and insurance liability.

- 6.4 The lease or tenancy will be granted at a full market rent, based on those paid for similar facilities by similar organisations, or determined by professional judgement. However, grant aid may be given by a sponsoring Council Service through a management agreement to assist with payment of the rent if the organisation can demonstrate how it meets the objectives of the Council.
- 6.5 There may be occasions when the market rental will be a peppercorn rental, usually when a lease is granted to an organisation which is going to invest a significant amount of capital into a non-commercial project for the benefit of the community. The development may subsequently pass into Council ownership at the end of the lease. The project will not be economically viable and will only proceed with significant grant aid. In such cases the market rental would truly be nil and therefore a peppercorn rent is appropriate.

Management agreement

- 6.6 To ensure the premises are operated according to Council policy, a management agreement may be required. This outlines the Council's reasons for supporting the occupiers and covers terms by which the organisation manages the property and how they meet Council objectives on user involvement, sustainability, community representation and meeting the needs of diverse communities.
- 6.7 The management agreement will be attached to the licence, lease or tenancy and will be reviewed annually, though it may not exist for the full life of the tenancy.
- 6.8 The management agreement will be between the organisation and a sponsoring Council Service (such as Community Support Service for community-based organisations, and Cultural and Leisure Services for amateur sports organisations).
- 6.9 Due to the financial constraints of many community organisations, the sponsoring Service may provide a grant or subsidy to help with running costs (including rent). This grant or subsidy will be subject to annual review and makes the Council's support explicit for both performance management and audit purposes. Any financial support will be time limited and should reflect the differing needs of individual organisations.
- 6.10 Access to grants and subsidies will be based upon the organisation's capabilities in the areas outlined in 5.12 through an open and transparent process. There will be clear eligibility criteria, including a requirement to demonstrate a basic level of competency in managing a community facility. Grant recipients will be obliged to sign a formal grant acceptance document agreeing to all grant conditions.

- 6.11 The management agreement may vary the liability of the organisation for repairs and insurance to be assessed against the capacity of the organisation to manage the premises. In this case, timescales will be identified showing milestones when additional responsibility will be expected to be undertaken by the organisation. These milestones will be based upon the organisation's growing capacity to manage the premises with reduced support from the Council.
- 6.12 The management agreement will require the organisation to demonstrate commitment to EMAS, Disability Discrimination Act 1995, equalities issues, customer focus and dealing with crime and disorder. It will also involve demonstration of financial sustainability, management capacity and compliance with health and safety.
- 6.13 Community Support Service will include the following core competencies in management agreements for community buildings:
- a) accounts that are properly audited in line with Charity Commission standards and regulations
 - b) policies listed in the "core standards" section are in place and monitored, or are being worked towards
 - c) officers of the organisation are selected through an open and transparent process involving the wider community
 - d) at least 3 officers of the organisation will undertake training in topics related to running a community building
 - e) a 'centre sustainability' plan is in place

7. GENERAL ISSUES

Fee recovery

- 7.1 When the Council enters into a land or property transaction at the request of a third party it will be a condition that the third party pays all the Council's legal costs, surveyor's fees and administrative charges.
- 7.2 When the Council seeks to dispose of property competitively or is negotiating the sale of land to special purchasers such as housing associations, health centres and surgeries, community centres and charities, each party will pay its own costs.
- 7.3 In other cases, the Council will seek to recover its legal costs, surveyor's fees and administrative costs if possible.
- 7.4 Initial enquiries about the Council's land and property ownership will be provided at no cost.

VAT

- 7.5 The Council will 'opt to tax' in respect of VAT on all relevant disposals to commercial organisations or where there is an ability for the purchaser or leaseholder to recover the tax, subject to liaison with Strategic Finance.

EMAS (Eco-Management and Audit Scheme)

- 7.6 An important objective of the Council's 'vision' is working towards a good environment and a more sustainable quality of life.
- 7.7 Land within the non-commercial estate and the agricultural holdings, provide an opportunity for the Council to promote best practice in environmentally sensitive and sustainable land management of the existing landscape and wildlife features. Enhancing biodiversity through woodland management plans and careful management of other land areas in accordance with EMAS and Agri-environmental Schemes will be promoted and investigated by Design and Property Service. This will be achieved as follows:
 - (a) Development of Agri-environmental Schemes on Council-owned farms with the Farming and Wildlife Advisory Group and the Council's Environment Unit to promote less intensive farming and the enhancement, restoration and preservation of landscapes and wildlife habitats
 - (b) Identifying land having environmental significance (with the Council's Environment Unit) to develop management regimes to ensure species and habitat preservation

- (c) Promoting schemes to tenants to promote sensitive and sustainable management of landscape and wildlife
- (d) Providing practical advice to tenants on how land and watercourses can be enhanced for local wildlife and have a positive effect on the food chain
- (e) Surveying Council-owned woodlands and preparing woodland management plans to develop a strategy for the future
- (f) Identifying and allocating land suitable for tree planting and woodland extension schemes (with the White Rose Forest initiative), provided this is not to the detriment of land having other environmental significance
- (g) Locating ancient hedgerows and helping to ensure their preservation
- (h) Commercial tenants will be encouraged through newsletters and the tenant's handbook to adopt environmentally-friendly work policies and procedures
- (i) The environmental implications of property transactions will be considered and documented at the approvals stage.

Equalities

7.8 The principles of the Local Government Equality Scheme and the Race Equality Scheme will be adopted in the management of the Council's non-operational land and property portfolio as follows:

- (a) A translation or interpreter service can be made available to ensure the customer understands what is happening in land and property transactions
- (b) Marketing literature will be made available on request in different formats and languages when land or property is being advertised for sale or lease; advertising will take place in minority press where appropriate; disclaimers on sales and letting particulars will be made available in different formats and languages; other communication such as the newsletter and handbook for tenants will be made available in different formats and languages on request.
- (c) Adjustments will be made to allow viewing of properties by people with disabilities where appropriate and feasible.
- (d) General staff training will be provided on cultural awareness, disability issues and dealing with customers who have translation and other special needs.

Consultation

- 7.9 Ward members will be consulted as set out in the Delegation Scheme (Appendix 2) available to the Head of Design and Property Service.

This provides for the following consultation:

- (a) Before submitting planning applications
 - (b) Before disposing of surplus land or property and the release or variation of restrictive covenants.
 - (c) As part of the process for advertising the disposal of 'public open space'.
- 7.10 In addition, ward members will be consulted before a report goes to Cabinet or Cabinet Committee on land and property within their ward.
- 7.11 Where ward members are to be consulted, they will be given at least fourteen days to respond and any comments opposing the proposal will be included in the report to Cabinet or Cabinet Committee.

Customer focus

- 7.12 The activities referred to in the Estates Management Policy are included within the Design and Property Service Quality Management Manual and therefore subject to regular audit.
- 7.13 Design and Property Service is committed to continuous improvement. This Estates Management Policy will be continuously reviewed and updated in accordance with best practice.
- 7.14 Design and Property Service is committed to customer care and has adopted the Council's Complaints and Compliments System.

The Service recognises that sometimes things can go wrong and that mistakes can happen. Comments and complaints provide us with an opportunity to review and improve current working practices and enhance services provided.

The Service also welcomes compliments on service received, which are also used to demonstrate good practice in service delivery.

Professional standards and legislation

- 7.15 The management of the non-operational land and property portfolio is subject to legislation which changes occasionally. The Estates Management Policy will be reviewed when these changes take place.
- 7.16 In between policy reviews, legislation takes priority over the contents of the Estates Management Policy.

- 7.17 The Estates Management Policy will be applied to the management of the non-operational land and property portfolio by professionally and technically qualified and experienced officers based in Design and Property Service.
- 7.18 These officers must obtain the best possible outcome for the Council, complying with legislation, professional standards and Council policies including the Estates Management Policy.

Decision-making process

- 7.19 The Estates Management Policy will be used as the basis for decision-making by Design and Property Service when operating the Delegation Scheme. It will also be used as the basis for recommendations to Cabinet or Cabinet Committee in instances where a member decision is required.

GLOSSARY OF TERMS

A Code of Practice for Commercial Leases in England and Wales	A document produced by the Commercial Leases Working Group in 2002 setting out best practice for landlords and tenants in connection with land or property leases
Agricultural Holdings Act 1986	Legislation governing agricultural tenancies granted before 1 September 1995
Agricultural Tenancies Act 1995	Legislation introduced governing all agricultural tenancies granted from 1 September 1995
Agri-environmental Scheme	Scheme introduced by central government aimed at developing environmentally-beneficial land management including sustainable landscape, beauty and diversity, creation of new habitats and landscapes and improved public access and enjoyment
Assignment	The legal transfer of a land or property lease from the existing tenant to a new tenant
Best Consideration	Best Consideration is the market value of land and/or property including any additional amount that is, or might reasonably be expected to be, available from a purchaser with a special interest
Capital Plan	The Council's plan for capital expenditure over a period of one to three years
Code for the Prevention of Unauthorised Parking on Private Land	A Code of Practice drawn up by Kirklees Metropolitan Council and the Huddersfield Daily Examiner in consultation with local businesses and approved by Council Cabinet on 3 July 2002. It sets out recommended best practice guidance for parking control on private land

Compulsory Purchase Act 1965	Provides a code of law relating to powers of acquiring land compulsorily
Contract Out	The legal process by which a landlord and tenant voluntarily agree to waive the security of tenure provisions of the Landlord and Tenant Act 1954. This effectively removes the tenant's statutory right to renew a commercial lease at the expiry of the lease term
Crime and Disorder Act 1988	This places a duty on local authorities to reduce unfriendly and intimidating environments and reduce crime and fear of crime
Disability Discrimination Act 1995	This outlaws discrimination against people with disabilities and obliges property occupiers to provide access for those with disabilities or to offer services in a different way
Distrain	A method of recovering debt by taking goods or stock which may be sold to pay off the debt
EMAS	A voluntary Eco Management and Audit Scheme which is designed to improve the organisation's environmental performance
Environmental Protection Act 1990	Legislature governing issues of pollution and the control of waste and hazardous substances
Full Market Value	The rent which a property or land would let for on the date of valuation and between a willing lessor and lessee on appropriate lease terms
General Disposal Consent (2003)	Provides a general consent removing the requirement for local authorities to seek specific approval from the Secretary of State for a wide range of disposals at less than best consideration
Health and Safety: Statutory Duty and Common Law	Regulations and codes of practice based on UK and EC directives governing the risks to employees and public arising from work activity

Highways Act 1980	Sets out the administrative procedure and law for dealing with highways
Housing Act 1985	Consolidates the Housing Acts and provides for the compulsory purchase of land to provide housing
Land Compensation Act 1961	Concerns the assessment of compensation where land, or some other interest in land, is being acquired by an authority by compulsory purchase or by agreement
Land Compensation Act 1973	Provides the right to compensation for depreciation in the value of properties as a result of highways or other public works and to confer powers for mitigating the effects of those works on their surroundings
Landlord and Tenant Act 1954 (Part II)	Provides security of tenure for business and professional tenants and enables them, in certain cases, to obtain new tenancies
Lands Tribunal	An independent judicial body set up to resolve disputes about land such as rating, compensation and restrictive covenants
Leasehold Reform Act 1967	Allows residential tenants with long leases at low rents to purchase the freehold or to extend their lease for up to fifty years
Local Government Act 1972	Makes provision about local government and its functions. Section 123 relates to the disposal of land
Opt to Tax	The 'opt-to-tax' is a mechanism which enables the Council to recover VAT on expenditure relating to a property transaction that would otherwise be irrecoverable. This can have significant positive effects on the Council's overall financial position.

Planning Policy Guidance Number 3 (PPG3)

Provides advice on the role of planning in relation to housing policy. In particular, it sets out the government's national target of securing 60% of additional housing on previously developed land. It also includes advice on affordable housing and sustainable development.

Schedule of Dilapidations

A notice served on a tenant who has failed to keep a property in repair in accordance with the terms of the lease. The notice will usually be served prior to the end of the tenant's occupation and must outline the area of disrepair, the steps required to remedy the situation and the relevant clauses of the lease.

Section 278 of the Public Health Act 1936

Compensation to individuals for damage resulting from powers under the Act which consolidates public health Acts

White Rose Forest Initiative

An initiative involving the West Yorkshire local authorities to create a genuinely sustainable well-wooded landscape which will benefit the people, economy and wildlife of West Yorkshire.

**DESIGN AND PROPERTY SERVICE
DELEGATION SCHEME**

It is recommended that this delegation scheme replaces the existing delegation scheme to improve the efficiency of the Estates Division and reduce the number of minor reports submitted to Cabinet or Cabinet Committee. The views of ward members will still be sought, and matters referred to Cabinet or Cabinet Committee if ward members do not agree with a proposed course of action.

HEAD OF DESIGN AND PROPERTY SERVICE/ESTATES MANAGER

1.1 The Head of Design and Property Service, the Estates Manager, or their nominee, will act on behalf of the Council in respect of all negotiations for the management, acquisition or disposal of land and properties as conducted by the Estates Division of Design and Property Service.

1.2 Compensation

The Head of Design and Property Service, the Estates Manager, or their nominee, will negotiate and authorise for payment:

- (a) Statutory compensation under the Landlord and Tenant Act 1954
- (b) Compensation in respect of Farm Business Tenancies and Agricultural Holdings
- (c) Compensation under Section 278 of the Public Health Act 1936 (compensation to an individual for damage resulting from exercising the powers under the Act)
- (d) Compensation under the Land Compensation Act 1973 including the payment of advance payments
- (e) Miscellaneous claims
- (f) Compensation arising out of the Housing Act 1985 (such as closing and demolition orders).
- (g) Compensation arising out of planning decisions such as revoking, modifying or discontinuing orders
- (h) Compensation under the Highways Act 1980 such as pedestrian and stopping up orders
- (i) Compensation relating to the compulsory acquisition of land and buildings in accordance with Land Compensation Act 1961 and Compulsory Purchase Act 1965.

1.3 **Planning applications**

The Head of Design and Property Service, the Estates Manager, or their nominee, will prepare all planning applications to be made regarding the Council's land and property and submit them for approval subject to the following:

- (a) Ward members are consulted at least fourteen days before the proposed application. Adverse comments will be submitted to Cabinet or Cabinet Committee as part of a report for consideration
- (b) Confirmation is obtained from Planning Services that the proposal is in accordance with the approved planning for the area.

1.4 **Landlord and tenant**

The Head of Design and Property Service, the Estates Manager, or their nominee, will:

- (a) Prepare and submit all notices and notices to quit under the Landlord and Tenant Act 1954, Agricultural Holdings Act 1986 and the Agricultural Tenancies Act 1995 for all Council properties.
- (b) Approve applications for the assignment of leases subject to satisfactory references.
- (c) Conclude terms for the letting of all commercial or surplus land and property and instruct the Solicitor to the Council.
- (d) Conclude terms and complete standard forms of agreement for licences and tenancies relating to sites for garages, caravans, access, gardens and grazing, and licences for site compounds and site investigations.
- (e) Conclude rent reviews contained in leases including arbitration as necessary, and instruct the Solicitor to the Council to make any endorsements on the lease.
- (f) Approve any changes of use or extension to user clauses within tenancies or leases.
- (g) Authorise formal deeds of apportionment of ground rents of leasehold properties.
- (h) Conclude the surrender of tenancies or leases as agreed in circumstances where:
 - (i) The tenant wishes to take the tenancy or lease of alternative Council-owned accommodation
 - (ii) Prolonging the contract will cause financial hardship to the tenant potentially resulting in financial loss to the Council

- (iii) The tenant agrees to reimburse the Council against losses incurred in both marketing the premises and interim rent until the new lease is concluded
- (iv) The premises are unlikely to be easily re-let and a commuted lump sum has been negotiated
- (v) Where it is in the Council's wider interests.
- (i) Take all necessary action to recover rent or other monies due to the Council under the provisions of tenancies, leases or licences including the powers of distraint, forfeiture and suing on the personal covenant.
- (j) Negotiate and conclude disturbance payments to tenants up to a value of £10,000 in consultation with the Director of Finance.
- (k) Conclude terms for leases in respect of sites or easements required by mains services providers of water, gas, electricity for installing apparatus and instruct the Solicitor to the Council to complete the documentation.
- (l) Conclude negotiations and authorise amendments or variations to covenants in tenancies or leases where such amendments or variations are not prejudicial to other policies or objectives of the Council or the interest of the other tenants.
- (m) Conclude terms for the restructure or renewal of long leases where this is in the longer term interests of the Council.

1.5 **Disposal of land and property by private treaty**

The Head of Design and Property Service, the Estates Manager, or their nominee, will:

- (a) Approve heads of terms and authorise instruction of the Solicitor to the Council concerning freehold or leasehold disposals in respect of the following, subject to consultation as indicated below:

<u>Type</u>	<u>Consultee</u>
Housing associations	Ward members and Housing Services
Industrial land:	
(i) Industrial estates	Head of Economic Development Service
(ii) Miscellaneous industrial	Head of Economic Development Service and ward members
Sitting tenants	Ward members
Adjoining owners	Ward members and Planning Services
Surplus land and property	Ward members and Planning Services

In the case of surplus land and property being sold on a competitive basis other than by way of formal tender, offers will only be accepted if they are more than 10% below the official estimate of value recorded for that purpose.

- (b) Approve heads of terms and instruct the Solicitor to the Council concerning negotiations for the conclusion of disposals of the Council's freehold reversionary interests in:
 - (i) Properties affected by the Leasehold Reform Act
 - (ii) Other properties held on long lease where such disposals will not prejudice the long term interests of the Council.
- (c) Conclude negotiations and complete the necessary documentation for:
 - (i) Grant of easements and other wayleaves
 - (ii) Amendments or variations to covenants contained in conveyances, insofar as they are not prejudicial to other policies or objectives of the Council, subject to consultation with ward members

1.6 Disposals to adjoining owners

Subject to consultation with ward members, the Head of Design and Property Service, the Estates Manager, or their nominee, will conclude the arrangements for the apportionment of sale proceeds and instruct the Solicitor to the Council.

1.7 Leases to the Council

The Head of Design and Property Service, the Estates Manager, or their nominee, will conclude negotiations and instruct the Solicitor to the Council in respect of new leases to the Council or the renewal of existing leases and the rent reviews incorporated within such leases, subject to appropriate consultation with the Director of Finance and approval from the appropriate Head of Service.

1.8 Acquisitions

The Head of Design and Property Service, the Estates Manager, or their nominee, will conclude terms and instruct the Solicitor to the Council, for the acquisition of land and property by agreement in advance of compulsory purchase and in cases arising out of the service of a purchase or blight notice for Council or Council-supported schemes where consultation with the relevant Head of Service or Service finance manager has been undertaken.

1.9 **Public open space**

The Head of Design and Property Service, the Estates Manager, or their nominee, will initiate procedures under Section 123 of the Local Government Act 1972 relating to the disposal of public or quasi open space subject to consultation with ward members.

Where objections to the proposed disposal have been received from members of the public, a report will be submitted to Cabinet or Cabinet Committee for determination.

1.10 **Provisions**

- (a) Where ward members are to be consulted, they will be given at least fourteen days to respond and any adverse comments on the proposal will be included in a report to Cabinet or Cabinet Committee for consideration.
- (b) The Head of Design and Property Service and the Estates Manager, will submit on a regular basis schedules of all new lettings, lease renewals, rent reviews, assignments, surrenders, planning applications and all disposals (including proposed disposals of public open space where no objections have been received from members of the public) to Cabinet or Cabinet Committee for information.

1.11 **Implementation of energy policies**