

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 previously 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 Is it also signed off by the Service Director for Finance, Professional and Transactional Services? Is it also signed off by the Service Director for Governance and Commissioning Support?	Joanne Bartholomew, Service Director for Commercial, Regulatory and Operational Services, 20 April 2017 Debbie Hogg, 19 April 2017 Julie Muscroft, 19 April 2017
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 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.

3.5 Financial & Legal Implications

No additional implications, other than those outlined in Section 2.

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.

The following responses were received:

Cllr Eric Firth – “what happens to all our playing fields used by sports clubs?”

Comment: The playing fields are outside the scope of this policy as they are covered through the Playing Pitch Strategy that has been collated by Martin Gonzalez who is a Development Manager for Sport & Physical Activity team in the Communities Transformation and Change department.

Cllr Darren O'Donovan - All looks ok.

The only thing to mention / add is it would be helpful to ward members if we had a direct way to bring forward assets or sites for disposal. If we could offer our ward priorities for disposal to then allow sale or auction as swiftly as possible.

Comment: In terms of the bringing sites to our attention for disposal, we have already taken note from the previous disposal consultation meetings that were held before Christmas with members, including yourself, and have incorporated sites in line with corporate priorities where possible. Further to that Portfolio Holder Cllr Turner (Asset Strategy, Resources & Creative (Arts), with the Asset Committee and Officers, are planning ward reviews following the conclusion of the Local Plan later in the summer. This will provide another opportunity to discuss ward assets and highlight ward issues for Members.

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 current Estate Management Policy with the Corporate Estate Management Policy (Appendix 1) and the Corporate Disposals & Acquisitions Policy (Appendix 2) and to authorise their implementation with immediate effect.

7. Cabinet portfolio holder's recommendations

- 7.1 Cabinet are recommended to approve the replacement of the Estate Management Policy with the Corporate Estate Management Policy (Appendix 1) and the Corporate Disposals & Acquisitions Policy (Appendix 2) and to authorise their implementation with immediate effect.

8. Contact officer

Joe Tingle - joe.tingle@kirklees.gov.uk - (01484) 221000

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.
- Asset Transfer Policy, as approved at Assets Cabinet Committee on 7 March 2017.

10. Service Director responsible

Paul Kemp – Service Director for Economy, Strategy and Culture



CORPORATE ESTATE MANAGEMENT POLICY

Corporate Landlord

Economy, Regeneration & Culture

Civic Centre 3

Market Street

Huddersfield

HD1 1TG

Tel: 01484 221000

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INTRODUCTION

Kirklees Council owns an extensive non –operational land and property portfolio and recognises that through efficient and effective management, this valuable resource can support the Council's priorities by:-

- Complementing the Asset Strategy
- Supporting the Capital Plan
- Supporting corporate resilience
- Providing business and development opportunities
- Generating Revenue Income

The Service Director - Economy Regeneration and Culture has overall responsibility for management of the portfolio and the Estate Management Policy sets out how this will be achieved.

Whilst the primary focus of this document is to provide key policy guidance for officers, elected members, businesses and the general public, it is important to note that each individual case should be treated on its own merits and nothing in this document binds the Council into any particular course of action when dealing with the portfolio.

1. THE COMMERCIAL PORTFOLIO

The Commercial Portfolio consists of approximately 493 individual interests. These include shops, offices, industrial units, other properties and ground leases, and are let on commercial terms to produce revenue income to support the Council's budget.

OVERALL PORTFOLIO MANAGEMENT

Portfolio Review and Disposals

The commercial portfolio will be subject to continued review to ensure investments remain viable and to identify disposal or alternative opportunities for underperforming assets.

In addition to continual review process, decisions on disposal may be determined:

- When a tenant serves notice to quit and the likelihood of re-letting is limited
- When there is no increase on a rent review or lease renewal

Assets identified for disposal will be sold in line with the Acquisitions and Disposal Policy.

Planned Maintenance and Refurbishment

Planned maintenance and refurbishment will be carried out following portfolio review/condition surveys. Where appropriate, expenditure will to be recouped from tenant(s) via service charge provisions.

Funding

Planned maintenance/repair is funded from the Commercial Estate Trading Account (if the value is under £10,000) or the Facilities Management Service Capital budget (if over £10,000).

Capital receipts from the Commercial Portfolio will not be ring fenced for reinvestment but will support the Corporate Capital Receipts 5 year rolling target (2015/16) onwards.

Bids for substantial capital investment to fund procurement or wider developments of the commercial portfolio will be subject to a detailed business case to be considered via the approved Capital Delivery Board process.

GENERAL PROPERTY MANAGEMENT

Marketing

The marketing strategy for vacant properties will concentrate on the use of appropriate incentives to reflect prevailing market conditions.

New commercial lettings will generally be on a competitive basis, the final decision on which applicant to accept will be based on the proposed rent, the most suitable use, the tenants financial standing and the level of investment by the tenant.

New tenants (including assignees) must provide appropriate proof of identification and suitable references.

Where the new tenant is an individual or a limited company without an acceptable trading history a guarantor may be required. Where the new tenant does not provide an acceptable trading history or satisfactory references advance payment of rent may be required.

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

General lease terms

Legislation

Commercial tenants will normally have the right to renew their tenancy in accordance with the provisions of the Landlord and Tenant Act 1954. The Council retains the right to contract any lease out of these provisions if it is necessary.

Rents

Full market rents will be charged taking into account the proposed or agreed lease terms.

Repairs

The Council will negotiate full repairing terms wherever possible, which pass the full costs of property maintenance, repairs and other management to the tenant.

In multi occupied properties, the Council will use a service charge to recover all maintenance, repair, compliance with legislation and other management costs relating to the property. It may also incorporate a sinking fund to enable larger elements of repair and maintenance to be funded.

For existing tenancies, the Council will seek to negotiate full repairing terms wherever possible.

Insurance

All new lettings will be on full insuring terms, which pass the costs of insurance onto the tenant. On existing tenancies the Council will seek to negotiate full insuring terms wherever possible.

Properties which are insured by the tenant must be insured on a basis which is agreed by the Council's Insurance and Risk Management Section.

Where insurance is provided by the Council the premium will be recharged to the tenant.

The tenant to have appropriate public indemnity insurance.

Rent Review/Lease Renewal

Rent review provisions will generally allow for the review of rent every five years, on an upwards only basis. On lease renewal tenancies may be allowed to hold over if it is deemed uneconomic to review the rent.

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Use

The Council will adopt good estate management and commercial practices to restrict use where necessary to achieve an acceptable mix and ensure sustainability of businesses.

Alienation (assignment and subletting)

Agreements can generally be assigned unless there are good estate management reasons for imposing restrictions.

Sub-letting of the whole or any part of a property will be prohibited unless there are good estate management reasons to do so.

Dilapidations

The Council will generally inspect a tenanted property when the tenant vacates (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 lease/tenancy agreement.

If necessary a Schedule of Dilapidations will be served on the tenant.

The tenant will also be required to demonstrate legislative compliance for the demise (such as asbestos management, gas, electricity, glass etc.)

Consents

The Council's consent will generally be required for alterations/additions; the tenant will be responsible for satisfying statutory requirements such as building control, planning etc.

2. THE NON – COMMERCIAL PORTFOLIO

The non-commercial portfolio consists of a large number of garage sites, gardens, grazing land and long term ground leases.

Garage sites and Garden tenancies

The Council will not grant any new agreements to erect garages on Council owned land or use Council land for garden purposes, other than in the following circumstances:-

- Where it is necessary to protect the long term (strategic) interests of the Council.
- Where there is a change of owner of either the garage or dwelling house.

Any new agreements will be at full market rents taking into account the proposed terms of the agreement.

The Council will continually review all garage sites and garden tenancies to identify those with potential for development. Where housing or commercial development is possible the Council will secure vacant possession of the site via appropriate notices being served.

Licensees and tenants will be required to remove garages and any other structures in accordance with the terms of the agreements. No compensation or other payment will be made, these sites will be disposed of in accordance with the Acquisitions and Disposals Policy or retained in the interim until strategically required for release.

Sites which are not required for strategic retention or are unsuitable for development may be subject to disposal as going concerns (ie subject to the existing agreements) but may be subject to appropriate covenants protecting their long term use.

Grazing Land

The Council will only grant new grazing licences on Council owned land if it is identified as having strategic or operational benefits to the Council. In such cases, the land will be re-let on the open market, if it becomes available. The Council will dispose of all remaining grazing land in accordance with the Acquisitions and Disposals Policy.

Long term ground leases (999 & 2000 years)

The Council will continue to manage these interests in line with the clauses within the leases by invoicing the rent, dealing with registrations, assignments and legal charges and providing consent where necessary. The Council will charge a fee for carrying out these management tasks in accordance with the schedule of fees in Appendix 1.

Requests to purchase the freehold reversions of these leases will be dealt with on a case by case basis in line with the Councils Acquisitions and Disposal Policy.

3. AGRICULTURAL LAND AND BUILDINGS

The Council will support the disposal of all non- strategic holdings to sitting tenants. In the event of the tenant declining the property will be offered on the open market as an investment opportunity.

For those holdings which are to be strategically retained the Council will seek to negotiate mutually beneficial changes to existing tenancies. 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.

The Council will implement rent reviews on existing holdings when considered cost effective to do so in accordance with tenancy agreements and relevant legislation.

4. MISCELLANEOUS ASSETS AND LIABILITIES

The Council owns land and property assets which do not form part of the let estate e.g. heritage assets, woodland areas, embankments, bridges and cuttings etc.

For those assets which are not strategically required the Council will consider appropriate proposal for disposal or asset transfer.

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5. LAND BANK

The Land Bank is managed by the Head of Corporate Landlord for the overall benefit of the Council. Any land and property declared surplus by Services or following review, is subsequently managed, maintained and made secure through the Land Bank.

Land or property held in the land bank will be held for ultimate disposal (freehold, or by lease), asset transfer, demolition or lease as a temporary measure. Guardians may also be installed as opposed to employing a security firm.

6. TEMPORARY USE OF COUNCIL LAND AND PROPERTY

Subject to the merits of individual cases, the Council may permit temporary use of its land and property. In all cases, the use will be subject to:-

- Completion of a licence agreement.
- Payment of a licence fee (where appropriate) in accordance with the approved schedule in Appendix 1.
- Provision of risk assessment and method statements for the proposed use, if considered appropriate.
- A land management plan (where appropriate.)
- Evidence of public liability indemnity insurance to a minimum value of £5 million, or other value as required by the Council's Risk and Insurance officer.
- Where appropriate, a bond to cover the costs of reinstatement of the land and/or property.

7. GENERAL ISSUES

Decision-making process

The Estates Management Policy will be used as the basis for decision-making by Physical Resources and Procurement when operating the Delegation Scheme (Appendix 2) as amended and reissued from time to time. It will also be used as the basis for recommendations to Cabinet or Cabinet Committee - Assets where an Executive decision is required.

Value Added Tax (VAT)

The Council will elect to waive its exemption (opt to tax) on the disposal of land and property assets where the Council wishes to recover previously incurred input tax. The decision whether to opt to tax or not will be jointly made by the Service Directors responsible for (Physical Resources and Procurement) and Resources.

VAT will be payable on the disposal and letting of land used for car parking (including garages) and on rents, service charges and other charges where the Council has previously 'opted to tax'.

Debt Recovery

The Council will adopt good estate management and commercial practices for managing arrears of rent which may include individual payment plans, if such agreed payment plans are not met the Council will reserve the right to take the necessary legal action to forfeit the lease and recover possession of the property. The Council will reserve the right to charge interest on arrears where the lease permits.

Consultation

Local ward members will be consulted in the following circumstances:-

- As part of the process for advertising the disposal of 'public open space'
- Before a report goes to Cabinet 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.

Fee Recovery

Where appropriate, the Council will seek to recover from third parties, its reasonable legal, surveying and administrative costs incurred in dealing with all matters involving the non-operational portfolio. The fee recovery will be on the basis of the approved schedule of fees listed in Appendix 1.

Initial enquiries about the Council's land and property ownership will be provided at no cost.

Commissioning

The Council may, from time to time, commission external consultants in connection with the disposal and acquisition of land and property. The Council will procure consultants in accordance with its contract and financial procedure rules and where appropriate 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.

APPENDICIES

APPENDIX 1 – SCHEDULES OF FEES

APPENDIX 2 – GLOSSARY OF TERMS

APPENDIX 3 - DELEGATION SCHEME – To be updated as necessary

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APPENDIX 1 - SCHEDULE OF FEES

Schedule of fees to be recovered from third parties including legal, surveyor's and administrative / consent fees.

Management Task	Fees
<u>Commercial</u>	
New Letting	£500
Deed of Assignment	£750
Lease Renewal	£500
Landlords Consent	£500
Deed of Variation or Surrender	£550
Licence for site compound	£150 per week
Site licence	£250
<u>Non - Commercial</u>	
New Tenancies (garden, garage, grazing)	£50
Registration Fees (residential)	£50
Registration Fees (commercial)	£75
Landlords Consent (residential)	£75
Copy leases (up to A3 size)	£25
Certified leases (up to A3 size)	£50
Copy leases (larger than A3)	£50
Certified leases (larger than A3)	£100

*All fees exclusive of Value Added Tax and disbursements
All fees will be reviewed on an annual basis


APPENDIX 2 - GLOSSARY OF TERMS

Assignment	The legal transfer of a land or property lease from the existing tenant to a new tenant
Capital Plan	The Council's plan for capital expenditure over a period of one to three years.
Contract Out	The legal process by which a landlord and tenant voluntarily agree to waive the security tenure provisions afforded to a tenant by 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.
Full Market Value	The rent for which a property or land would let for on the date of letting and between a willing lessor and lessee on appropriate terms
Landlord and Tenant Act 1954	Provides security of tenure for tenants and entitles them, in most cases, to obtain new tenancies.
Opt to Tax	'Opt-to-tax' is a mechanism which enables to Council to recover VAT on expenditure relating to a property transaction (input tax; usually when there has been major expenditure on which a large amount of VAT has already been paid out) that would otherwise be irrecoverable. This can have significant positive effects on the Council's overall financial position.
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(s) of disrepair, the steps required and time in which to remedy the situation and the relevant clauses of the lease.

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KIRKLEES COUNCIL
DIRECTORATE FOR PLACE
RECORD OF POWERS DELEGATED BY THE DIRECTOR FOR PLACE
(Corporate Landlord Scheme)

DATE: 6 December 2016

<i>Date last reviewed</i>	<i>December 2016</i>
<i>Approved by Signature</i>	
<i>Date Approved</i>	<i>December 2016</i>
<i>Version No.</i>	<i>1.2</i>
<i>Review Date</i>	<i>December 2016</i>
<i>Directorate contact officer</i>	<i>Joe Tingle</i>

DIRECTORATE FOR PLACE

DELEGATED POWERS

Purpose:

To set out the delegations from the Assistant Director, Place in accordance with the requirements of paragraph 6 of Part 3 Section F of the Council's Constitution.

Related Policies & Documents

- Council Constitution (Part 2: Article 13: Decision Making) - <http://www.kirklees.gov.uk/you-kmc/constitution/articles/art13.pdf>
- Council Constitution (Part 3: Responsibility for Functions) - <http://www.kirklees.gov.uk/you-kmc/constitution/ConstitPart3.pdf>
- Council Constitution (Part 4.6: Financial Rules & Procedures – <http://www.kirklees.gov.uk/you-kmc/yourCouncil/pdf/constitutionPart46.pdf>

Key Statutes/Legislation

Legislation applied in the delegated decisions specified in this document includes the following:

Academies Act 2010
Access to Neighbouring Land Act 1992
Acquisition of Land Act 1981
Agriculture Holdings Act 1986
Agricultural Tenancies Act 1995
Civil Procedure Act 1997
Common Law Procedure Act 1852
Commons Act 2006
Commons Registration Act 1965
Counter Terrorism and Security Act 2015
Crime and Disorder Act 1988
Criminal Law Act 1977
Education Act 1996
Highways Act 1980
Housing Act 1985
Land Compensation Act 1973

Landlord and Tenant Act 1927
Landlord and Tenant Act 1954
Landlord and Tenant Act 1988
Law of Property Act 1925
Leasehold Reform Act 1967
Leasehold Reform, Housing and Urban Development Act 1993
Local Government Act 1972
Local Government Act 2000
Local Government (Miscellaneous Provisions) Act 1976
Open Spaces Act 1906
Planning (Listed Buildings & Conservation Areas) Act 1990
Road Traffic Regulation Act 1984
School Standards and Framework Act 1998
Town and Country Planning Act 1990
Tribunals, Courts and Enforcement Act 2007

AND all secondary legislation enacted thereunder

Who is governed by this policy?

The scheme of delegations will apply to all permanent, contract and temporary officers working for the Council.

Summary

The Council's Constitution requires that each Director will prepare service schemes of delegation which set out how decisions will be made in each of the Services for which they are responsible. Such schemes should clearly identify which officers have been authorised to make decisions under the delegated powers of the Director. All schemes of delegation will be lodged with the Council's Monitoring Officer and made available to the public on request.

Officers may only exercise the powers delegated to them in accordance with all relevant statutory requirements, the provisions of the Council's Constitution, the revenue and capital budgets of the Council, its Procurement Code, Financial Regulations and other relevant policies and procedures.

Delegation is simply a way of allocating matters to the levels appropriate to ensure that the Directorate's business is dealt with in the most efficient way possible. Delegated power will normally be exercised at the lowest level to which it has been given. However, all such powers will also be held by the Director.

Where an officer post to which any function has been delegated is renamed or is affected by a staffing reorganisation, then the relevant delegation shall be treated as applying to the renamed post or, as appropriate, to the post which has been allocated the same or substantially the same relevant duties as the original post following that reorganisation.

In exercising the powers delegated to them officers must observe any additional procedural requirements that apply within their services e.g. any requirement to consult local ward councillors, cabinet members and/or the leader. It is also good practice to keep local ward councillors informed of decisions made and implemented under delegated powers that significantly affect members of the community in their ward.

Scheme of Delegation & Decision Making (Corporate Landlord)

Responsibility	Officer A	Officer B	Operational Manager	Senior Manager	Assistant Director
APPROPRIATION OF LAND					
LOCAL GOVERNMENT ACT 1972					
Authority to appropriate land Section 122 - Local Government Act 1972 Section 19 – Housing Act 1985 Town & Country Planning Act 1990 – Section 229 & Section 232	✓	✓	✓	✓	✓
Authority to instruct the Assistant Director – Legal, Governance & Monitoring to advertise the proposed appropriation of Public Open Space or Common Land Section 122	✓	✓	✓	✓	✓
DEDICATION OF LAND					
HIGHWAYS ACT 1980					
Authority to instruct the Assistant Director – Legal, Governance & Monitoring in connection with dedication of land as public highway	✓	✓	✓	✓	✓
OWNERSHIP INFORMATION					
LOCAL GOVERNMENT (MISCELLANEOUS) PROVISIONS ACT 1976					
Authority to issue notices requiring information as to interest in land Section 16	✓	✓	✓	✓	✓
TOWN & COUNTRY PLANNING ACT 1990					
Authority to issue notices requiring information as to interests in land Section 330	✓	✓	✓	✓	✓
HIGHWAYS ACT 1980					
Authority to issue notices requiring information as to ownership of land Section 297	✓	✓	✓	✓	✓
DISPOSAL OF LAND & PROPERTY					
Authority to negotiate terms for & instruct the Assistant Director – Legal, Governance & Monitoring concerning disposals of all land, property & rights up to the value of £500,000, subject to terms over £250,000 being noted in the Forward Plan.			✓	✓	✓
PUBLIC OR QUASI OPEN SPACE, COMMON LAND OR VILLAGE GREENS					

Scheme of Delegation & Decision Making (Corporate Landlord)

Responsibility	Officer A	Officer B	Operational Manager	Senior Manager	Assistant Director
Authority to negotiate terms for & instruct the Assistant Director – Legal, Governance & Monitoring to advertise the proposed disposal of Public or quasi Open Space, Common Land or Village Greens subject to no objections from members of the public.	✓	✓	✓	✓	✓
ACQUISITION OF LAND & PROPERTY					
Authority to negotiate terms for & instruct the Assistant Director – Legal, Governance & Monitoring concerning the acquisition of all land, property & rights by agreement or compulsory purchase on behalf of the Council up to the value of £500,000, subject to terms over £250,000 being noted in the Forward Plan			✓	✓	✓
COMPENSATION					
Authority to determine, negotiate terms & instruct the Assistant Director – Legal, Governance & Monitoring concerning compensation payments on behalf of the Council up to the value of £500,000, subject to terms over £250,000 being noted in the Forward Plan			✓	✓	✓
RIGHT TO BUY					
Housing Act 1985 – Part V					
Authority to determine Right to Buy applications & discount. Authority to serve Notices in connection with the process. Authority to instruct the surveyor to value the properties. Authority to instruct the District Valuer in connection with determination & redetermination of value. Authority to serve Notices admitting or denying the Right to Buy. Authority to instruct the Assistant Director – Legal, Governance & Monitoring to conclude the disposal of the property.	✓	✓	✓	✓	✓
Authority to appear as a witness at First-tier Tribunal Property Chamber (Residential Property) to represent the Council's case (whether written representations or oral hearing)			✓	✓	✓
Authority in conjunction with the Head of Housing Services to determine whether the Council should exercise its discretion with regard to the repayment of discount	✓	✓	✓	✓	✓
PLANNING APPLICATIONS					

Scheme of Delegation & Decision Making (Corporate Landlord)

Responsibility	Officer A	Officer B	Operational Manager	Senior Manager	Assistant Director
Authority to make applications for planning permission on Council land	✓	✓	✓	✓	✓
NOTICE TO QUIT					
Authority to sign and serve all Notices to Quit and all Notices under the Landlord and Tenant Act 1954.	✓	✓	✓	✓	✓
LETTING OF LAND & PROPERTY					
Authority to approve applications for the assignment of leases	✓	✓	✓	✓	✓
Authority to authorise formal Deeds of Apportionment of ground rents of leasehold properties	✓	✓	✓	✓	✓
Authority to negotiate terms for & sign standard forms of agreement in respect of site compounds, site licences, licences, wayleaves, rights of way, privileges & tenancies (not including tenancies in respect of Council Houses)	✓	✓	✓	✓	✓
Authority to give landlords consent in respect of long leases, where the long term interests of the Council are not prejudiced	✓	✓	✓	✓	✓
Authority to negotiate terms for & instruct the Assistant Director – Legal, Governance & Monitoring to complete the letting of all commercial land and property.			✓	✓	✓
Authority to serve necessary Notices, negotiate rent reviews & in Leases & to authorise the Memorandum of Rent review			✓	✓	✓
Authority to instruct a third party in accordance with the Arbitration Acts where necessary to determine the rent review		✓	✓	✓	✓
Authority to negotiate terms for & instruct the Assistant Director – Legal, Governance & Monitoring to complete lease renewals.			✓	✓	✓
Authority to approve changes of use, extension to user clauses or variations to covenants within Leases & instruct the Assistant Director – Legal, Governance & Monitoring to complete the documentation			✓	✓	✓
Authority to negotiate the surrender of Leases & instruct the Assistant Director – Legal, Governance & Monitoring to complete the documentation			✓	✓	✓
Authority to institute proceedings for & where necessary instruct the Assistant Director – Legal Governance & Monitoring take the necessary action to recover rent or other monies due to the Council under the provisions of tenancies or leases		✓	✓	✓	✓

Scheme of Delegation & Decision Making (Corporate Landlord)

Responsibility	Officer A	Officer B	Operational Manager	Senior Manager	Assistant Director
including the power of distraint, forfeiture and suing on the personal covenant					
EASEMENTS					
Authority to negotiate terms for & instruct the Assistant Director – Legal, Governance & Monitoring to grant or take easements whether for a term of years or in perpetuity.			✓	✓	✓
LANDS TRIBUNAL CASES/COURT APPEARANCES					
Authority to present the Council's case (whether written representations, at informal hearing or public inquiry)		✓	✓	✓	✓
TRESPASSERS/SQUATTERS					
LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012					
Authority to instruct the Assistant Director – Legal, Governance & Monitoring to recover possession of squatters from a residential buildings		✓	✓	✓	✓
CIVIL PROCEDURE ACT 1997					
Authority to instruct the Assistant Director – Legal Governance & Monitoring to regain/obtain possession of any land or premises, owned, leased or occupied by the Council which are occupied without the consent of the Council.		✓	✓	✓	✓
Authority to determine the scale of fees & charges relating to costs for administration & valuation work			✓	✓	✓
COMMUNITY RIGHT TO BID					
To determine procedures from time to time and comply with Section 87-108 of the Localism Act 2011 and the non-statutory guidance and the Assets of Community Value (England) Regulations 2012.				✓	✓
To consider the validity of the applications and to determine whether they are successful or not and inform all relevant bodies of the decision		✓	✓	✓	✓
Consider and determine valid request for listing review from owners.			✓	✓	✓
Consider valid applications for compensation for loss and expense incurred through the asset being listed or previously listed and to agree payment of compensation to affected owner/former owners.				✓	✓
To consider and determine valid applications from owner or former owners of land				✓	✓

Scheme of Delegation & Decision Making (Corporate Landlord)

Responsibility	Officer A	Officer B	Operational Manager	Senior Manager	Assistant Director
listed as an ACV for a review as to whether compensation should be made; and the amount of compensation and to give reasons for the review decision.					
To approve application of register and removal of local land charges and enter into restrictions on title at HM Land Registry for registered land to prevent disposal by the owner in breach of the regulations.				✓	✓
TERRORISM/EMERGENCY PLANNING - PREVENT					
To take all necessary steps to deal with an emergency in accordance with the Kirklees Emergency Plan and the Physical Resources & Procurement Service Business Continuity Plan.				✓	✓

Additional delegation approved by Cabinet 2016:

Implications of school category changes for land and premises – an extension of delegation to senior officers to dispose of Council assets.				✓	✓
That approval is given to the delegation of powers to the Assistant Directors Place and Assistant Director Legal and Governance to deal with the disposal of Council assets either as a result of school expansion, historic or otherwise and also when a school changes category.					

Underpinning all activity:

Terrorism/Emergency Planning – Prevent:

To ensure the Council's policies, procedures and resources in the leasing/letting[disposal] of property have due regard to 'Prevent' duty under s26 of the Counter Terrorism and Security Act 2015 and Home Office Guidance to prevent people being drawn into terrorism [and that Contractors support the Council to discharge the 'Prevent duty'].

Scheme of Delegation & Decision Making (Corporate Landlord)

Key to roles:

Responsibility	Post Title, Section
*Assistant Directors, Place	*This delegation applies to all Assistant Directors in the Place Directorate
**Senior Managers (Grade 17-19)	Head of Corporate Landlord Capital Development and Capital Delivery Schools Facilities Manager Head of Building Services
Operational Managers (Grade 13 -16)	Asset Strategy Officer Disposal and Acquisition Team leader
Officer A	Asset Management Officer (Land) Right to Buy Officer Disposal and Acquisition Officers
Officer B	Corporate Facilities Manager Asset Strategy Officer Disposal and Acquisition Surveyor

** Records of all delegations taken 'of significant public interest' will include the designated post holder taking the decision.

* The Scheme of Delegation will be reviewed periodically to take account of organisational change



CORPORATE DISPOSALS AND ACQUISITIONS POLICY

Corporate Landlord
Economy, Regeneration & Culture
Civic Centre 3
Market Street
Huddersfield
HD1 1TG

Tel: 01484 221000

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INTRODUCTION

Kirklees Council owns an extensive land and property portfolio and recognises that through efficient and effective management and disposal, this valuable resource can support the Council's priorities by:-

- Supporting the Capital Plan
- Complementing the Asset Strategy
- Complementing the Councils economic resilience policy
- Providing social, community and environmental benefits

The Service Director – Economy, Regeneration & Culture has overall responsibility for disposal and acquisition of Council land and property assets and the Disposals and Acquisition Policy sets out how this will be achieved.

Whilst the primary focus of this document is to provide key policy guidance for officers, elected members, businesses and the general public, it is important to note that each individual case should be treated on its own merits and nothing in this document binds the Council into any particular course of action when dealing with the portfolio.

Date of document 3 March 2017 v4.0

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1. GENERAL PRINCIPLES FOR DISPOSALS

The Council will dispose of land and property assets on the following key principles:-

- The disposal does not prejudice the longer term interests of the Council
- The proposed use of the land and property will generally be supported by the Local Planning Authority
- The consideration is the best that can reasonably be obtained unless the disposal is through the Council's Asset Transfer scheme
- The terms of the disposal protect the Council's adjoining and retained land and property
- The terms of the disposal recover the Council's reasonable costs of sale, where possible

Best Consideration

Under the Local Government Act 1972 (as amended) the Council is obliged to obtain the best consideration that can reasonably be obtained when disposing of land and property. Best consideration is defined as the unrestricted market value taking into account any additional amount which might be obtained from a purchaser with a special interest. Unrestricted market value generally means the best price obtainable where the principle aim is to maximise the value of the receipt. The unrestricted value should take account of whatever uses might be permitted by the Local Planning Authority.

Consideration is not limited to the purchase price; it may also include disposal terms which have an identifiable commercial value to the Council but this should be converted to a capital value for the purpose of establishing what the best consideration is.

Where the Council is disposing of key strategic development land, it will evaluate the regeneration benefits arising from the disposal together with the financial considerations. The Council will also take account of the financial strength of the proposed purchaser and the purchaser's commitment to a proposed scheme.

The Local Government Act 1972 General Disposal Consent (England) 2003 allows the Council to dispose of land and property 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.

Disposals undertaken through the Council's Asset Transfer Scheme will generally be at less than best consideration utilising the General Consents and will be subject to the requirements of the Scheme.

In circumstances where the Council is mindful to dispose at an under value it will have regard to the following:-

- Circular 06/03: Local Government Act 1972 General Disposal Consent (England) 2003 and General Housing Consents 2005 published by the Department of Communities and Local Government (DCLG), particular regard being had to the Technical Appendix which explains the issues outlined earlier in more extensive detail
- European Commission Communication on State Aid elements in sales of land and buildings by public authorities (97/C 209/03) – also known as the ‘State Aid Rules’.
- RICS Valuation – Professional Standards 2014 UKGN 5 – Local authority disposal for less than best consideration.

In determining whether or not to dispose of land for less than best consideration, 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 in accordance with the Technical Appendix. Any decision to sell at an undervalue will be made by the Council’s Cabinet.

Methods of Disposal

All land and property assets which are released for disposal will be fully marketed with the exception of disposals to nominated and special purchasers (see below), which will be sold by private treaty negotiation.

Disposal of land and property can be undertaken in a number of ways and it is for the Council to determine the most appropriate sales mechanism for their asset, but potential approaches include:

- **Formal Tender** – where the sale is publicly advertised and tenders submitted by a given date.
- **Informal or Negotiated Tender** – where informal tenders are invited by a given date subject to contract. Negotiations may continue after tenders are received, with the possibility that different bidders may compete to offer the most advantageous terms. This approach enables the seller to continue to negotiate after the closing date for tenders to ensure the best possible terms and outcomes.
- **Public Auction** – where land is sold through an open auction, available to anyone. Sales will be publicly advertised in advance. Auctions have the advantage of being open, competitive and allow for transactions to be completed quickly.
- **Private sale** – where the sale of land is negotiated with one or a small number of potential buyers at a price agreed between the parties. Private sale has the advantage of being straightforward, but is likely to be appropriate only in certain circumstances (for example for smaller lots of land, where sitting tenants have rights to purchase and also farm tenants, etc.).

Disposals to Nominated Purchasers

Disposals to nominated purchasers will be considered by the Council where this meets an identified regeneration, social or community need. All 'off market' disposals to nominated purchasers will be subject to an independent external valuation to determine best consideration.

Disposals to Special Purchasers

The Council may dispose to purchasers 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.

A single tenant who occupies more than 50% of a multi-occupied property maybe considered as a special purchaser (otherwise the property will be sold on the open market as an investment).

Disposal Terms

Wherever possible, the Council will endeavour to keep land and property disposals simple and cost effective for both parties. For certain types of disposals, it may be necessary for the Council to impose terms which are considered necessary to protect the Council's interests. Such terms may include:-

- *Development Obligations*
The Council generally will only dispose of strategic development land for identified development proposals. Where appropriate, the Council will impose obligations to commence and complete the proposed development within a reasonable timescale backed up with an option for the Council to re purchase the land.
- *Development Agreements*
Development agreements will be used for the disposal of strategic development sites where the principal aim of the disposal is to facilitate regeneration benefits from a particular scheme.
- *Overage and claw back*
Where appropriate, disposals will include provisions for securing a share of future enhanced values through the use of overage and claw back clauses.

Disposal and Planning permission

As a general principle, and in order to support the Council in the discharge of its statutory planning function, disposals will not normally be completed until planning permission (if required) is obtained. The Council will not be obliged to complete a disposal where an appeal has been lodged against a decision of the Local Planning Authority.

Prior to the marketing of land and property, the Council may seek planning permissions for alternative uses where this will help maximise value and where it is cost effective and expedient to do so.

Asset Transfer Scheme

The Council's Policy on Asset Transfer is contained in a separate document which can be accessed via the following link:-

<http://www.kirklees.gov.uk/community/yourneighbourhood/communityAssetTransfer.aspx>

Release/variation of covenants

The Council has the benefit of restrictive covenants placed on previous freehold and leasehold disposals. These covenants usually restrict the use to which land and property can be put, although they could also relate to other forms of restriction.

Any request to release or modify covenants will be considered having regard to the original purpose of the covenant and its current relevance. Where the Council is mindful to agree to a release or other modification, it will seek a reasonable commercial return by way of compensation if the release or modification is considered to have a value, otherwise just fee recovery.

Public Open Space and Common Land

The disposal of land which is, or forms part of an area of Public Open Space or Common Land, is subject to special rules and procedures. Before disposing of such areas, the Council is obliged to publish the intention to dispose and consider any representations which are subsequently received. The provisions regarding the disposal of Common Land require consent from the Secretary of State and replacement land to be made available where the area of land to be sold exceeds 200m².

Disposal of School Playing Fields

Where the Council wishes to dispose of land forming part of a school playing field it will be necessary, in all but a minority of cases (area less than 50m²) to seek consent from the Secretary of State. The Department for Education will usually only agree to the sale of school playing fields if the sports and curriculum needs of schools and neighbouring schools can continue to be met. The Secretary of State expects Local Authorities to have first investigated and exhausted all other possible sources of funding before considering the sale of school playing fields. Even if the school is closed it is extremely difficult to secure consent to dispose of playing field land.

Disposal of Former School Sites and Former School Caretaker's Houses

Where the Council wishes to dispose of a former school site it will be necessary to seek consent from the Secretary of State, if the closure was in the last eight years.

There are various criteria to be met, including having advertised the school as being available for use as a free school.

Vacant caretaker's houses may only be sold with the consent of the Secretary of State.

Land Exchanges

The Council will consider a disposal by way of an exchange of land when it is advantageous to the Council and the other parties. The disposal will be on the basis of an equality of exchange and any inequality in land value will be compensated for by a balancing payment or other means of consideration as appropriate.

Easements and Wayleaves etc

The Council will not grant any new easements, private rights of way or privileges over Council owned land unless this is necessary to protect or promote the long term interests of the Council.

Any existing rights will remain until such time as the subject land may be released for development whereupon the land will be sold subject to the existing rights.

Where permitted under the terms of the agreement, the Council will undertake a review of any payments due to the Council.

The Council will continue to grant easements and wayleaves to statutory undertakers who have compulsory powers and rights to requisition services.

2. GENERAL PRINCIPLES FOR ACQUISITIONS

The Council may from time to time acquire and interest in land and property in order to meet and identified operational or strategic need eg transportation and regeneration.

The Council will acquire land or property from the open market or privately having regard to normal and prudent commercial practices.

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".

3. GENERAL ISSUES

Decision-making process

This Disposals and Acquisitions Policy will be used as the basis for decision-making by Physical Resources and Procurement when operating the Delegation Scheme (Appendix 3) as amended and reissued from time to time. It will also be used as the basis for recommendations to Cabinet or Cabinet Committee - Assets where an Executive decision is required.

Value Added Tax (VAT)

The Council will elect to waive its exemption (opt to tax) on the disposal of land and property assets where the Council wishes to recover previously incurred input tax. The decision whether to opt to tax or not will be jointly made by the Service Directors responsible for Physical Resources and Procurement and Resources.

VAT will be payable on the disposal and letting of land used for car parking (including garages) where HMRC guidance states it must be charged and on rents, service charges and other charges where the Council has previously 'opted to tax'.

Consultation

Local ward members will be consulted in the following circumstances:-

- Before disposing of surplus land or property and the release or variation of restrictive covenants
- 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.

Fee Recovery

Where appropriate, the Council will seek to recover from third parties, its reasonable legal, surveying and administrative costs incurred in dealing with all matters involving the non-operational portfolio. The fee recovery will be on the basis of the approved schedule of fees listed in Appendix 1.

Initial enquiries about the Council's land and property ownership will be provided at no cost.

Commissioning

The Council may, from time to time, commission external consultants in connection with the disposal and acquisition of land and property. The Council will procure consultants in accordance with its contract and financial procedure rules and wherever possible 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.

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APPENDICIES

APPENDIX 1 – SCHEDULES AND OTHER INFORMATION

APPENDIX 2 – GLOSSARY OF TERMS

APPENDIX 3 - DELEGATION SCHEME – To be updated as necessary

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APPENDIX 1 – SCHEDULES AND OTHER INFORMATION

- Schedule of fees to be recovered from third parties including legal, surveyor's and administrative / consent fees.

Disposal Type	Fees	Minimum
Commercial disposals to nominated and special purchasers	3% of purchase price	£2,000
Competitive Disposals	2% of purchase price	
Sales of garden land	£625	
Asset Transfer	nil	
Transferor's consents	£500	

*All fees exclusive of Value Added Tax and disbursements
All fees will be reviewed on an annual basis

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APPENDIX 2 – GLOSSARY OF TERMS


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 special interest.
Capital Plan	The Council's plan for capital expenditure over a period of one to three years.
Compensation Code	The rights to compensation and methods and procedures for assessing the correct amount are derived from what is commonly referred to as the "Compensation Code". This is made up of Acts of Parliament, case law and established practice. The principal Acts are the Land Compensation Acts of 1961 and 1973 and the Compulsory Purchase Act 1965.
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.
Local Government Act 1972	Makes provision about local government and its functions. Section 123 relates to the disposal of land.
Opt to Tax	'Opt-to-tax' is a mechanism which enables the Council to recover VAT on expenditure relating to a property transaction (input tax; usually when there has been major expenditure on which a large amount of VAT has already been paid out) that would otherwise be irrecoverable. This can have significant positive effects on the Council's overall financial position.
RICS	Royal Institution of Chartered Surveyors
UKGN	United Kingdom Guidance Note

APPENDIX 3 - DELEGATION SCHEME

KIRKLEES COUNCIL

**DIRECTORATE FOR PLACE
RECORD OF POWERS DELEGATED BY THE DIRECTOR FOR PLACE
(Corporate Landlord Scheme)**

DATE: 6 December 2016

<i>Date last reviewed</i>	<i>December 2016</i>
<i>Approved by Signature</i>	
<i>Date Approved</i>	<i>December 2016</i>
<i>Version No.</i>	<i>1.2</i>
<i>Review Date</i>	<i>December 2016</i>
<i>Directorate contact officer</i>	<i>Joe Tingle</i>

DIRECTORATE FOR PLACE

DELEGATED POWERS

Purpose:

To set out the delegations from the Assistant Director, Place in accordance with the requirements of paragraph 6 of Part 3 Section F of the Council's Constitution.

Related Policies & Documents

- Council Constitution (Part 2: Article 13: Decision Making) - <http://www.kirklees.gov.uk/you-kmc/constitution/articles/art13.pdf>
- Council Constitution (Part 3: Responsibility for Functions) - <http://www.kirklees.gov.uk/you-kmc/constitution/ConstitPart3.pdf>
- Council Constitution (Part 4.6: Financial Rules & Procedures – <http://www.kirklees.gov.uk/you-kmc/yourCouncil/pdf/constitutionPart46.pdf>

Key Statutes/Legislation

Legislation applied in the delegated decisions specified in this document includes the following:

Academies Act 2010
Access to Neighbouring Land Act 1992
Acquisition of Land Act 1981
Agriculture Holdings Act 1986
Agricultural Tenancies Act 1995
Civil Procedure Act 1997
Common Law Procedure Act 1852
Commons Act 2006
Commons Registration Act 1965
Counter Terrorism and Security Act 2015
Crime and Disorder Act 1988
Criminal Law Act 1977
Education Act 1996
Highways Act 1980
Housing Act 1985
Land Compensation Act 1973

Landlord and Tenant Act 1927
Landlord and Tenant Act 1954
Landlord and Tenant Act 1988
Law of Property Act 1925
Leasehold Reform Act 1967
Leasehold Reform, Housing and Urban Development Act 1993
Local Government Act 1972
Local Government Act 2000
Local Government (Miscellaneous Provisions) Act 1976
Open Spaces Act 1906
Planning (Listed Buildings & Conservation Areas) Act 1990
Road Traffic Regulation Act 1984
School Standards and Framework Act 1998
Town and Country Planning Act 1990
Tribunals, Courts and Enforcement Act 2007

AND all secondary legislation enacted thereunder

Who is governed by this policy?

The scheme of delegations will apply to all permanent, contract and temporary officers working for the Council.

Summary

The Council's Constitution requires that each Director will prepare service schemes of delegation which set out how decisions will be made in each of the Services for which they are responsible. Such schemes should clearly identify which officers have been authorised to make decisions under the delegated powers of the Director. All schemes of delegation will be lodged with the Council's Monitoring Officer and made available to the public on request.

Officers may only exercise the powers delegated to them in accordance with all relevant statutory requirements, the provisions of the Council's Constitution, the revenue and capital budgets of the Council, its Procurement Code, Financial Regulations and other relevant policies and procedures.

Delegation is simply a way of allocating matters to the levels appropriate to ensure that the Directorate's business is dealt with in the most efficient way possible. Delegated power will normally be exercised at the lowest level to which it has been given. However, all such powers will also be held by the Director.

Where an officer post to which any function has been delegated is renamed or is affected by a staffing reorganisation, then the relevant delegation shall be treated as applying to the renamed post or, as appropriate, to the post which has been allocated the same or substantially the same relevant duties as the original post following that reorganisation.

In exercising the powers delegated to them officers must observe any additional procedural requirements that apply within their services e.g. any requirement to consult local ward councillors, cabinet members and/or the leader. It is also good practice to keep local ward councillors informed of decisions made and implemented under delegated powers that significantly affect members of the community in their ward.

Scheme of Delegation & Decision Making (Corporate Landlord)

Responsibility	Officer A	Officer B	Operational Manager	Senior Manager	Assistant Director
APPROPRIATION OF LAND					
LOCAL GOVERNMENT ACT 1972					
Authority to appropriate land Section 122 - Local Government Act 1972 Section 19 – Housing Act 1985 Town & Country Planning Act 1990 – Section 229 & Section 232	✓	✓	✓	✓	✓
Authority to instruct the Assistant Director – Legal, Governance & Monitoring to advertise the proposed appropriation of Public Open Space or Common Land Section 122	✓	✓	✓	✓	✓
DEDICATION OF LAND					
HIGHWAYS ACT 1980					
Authority to instruct the Assistant Director – Legal, Governance & Monitoring in connection with dedication of land as public highway	✓	✓	✓	✓	✓
OWNERSHIP INFORMATION					
LOCAL GOVERNMENT (MISCELLANEOUS) PROVISIONS ACT 1976					
Authority to issue notices requiring information as to interest in land Section 16	✓	✓	✓	✓	✓
TOWN & COUNTRY PLANNING ACT 1990					
Authority to issue notices requiring information as to interests in land Section 330	✓	✓	✓	✓	✓
HIGHWAYS ACT 1980					
Authority to issue notices requiring information as to ownership of land Section 297	✓	✓	✓	✓	✓
DISPOSAL OF LAND & PROPERTY					
Authority to negotiate terms for & instruct the Assistant Director – Legal, Governance & Monitoring concerning disposals of all land, property & rights up to the value of £500,000, subject to terms over £250,000 being noted in the Forward Plan.			✓	✓	✓
PUBLIC OR QUASI OPEN SPACE, COMMON LAND OR VILLAGE GREENS					

Scheme of Delegation & Decision Making (Corporate Landlord)

Responsibility	Officer A	Officer B	Operational Manager	Senior Manager	Assistant Director
Authority to negotiate terms for & instruct the Assistant Director – Legal, Governance & Monitoring to advertise the proposed disposal of Public or quasi Open Space, Common Land or Village Greens subject to no objections from members of the public.	✓	✓	✓	✓	✓
ACQUISITION OF LAND & PROPERTY					
Authority to negotiate terms for & instruct the Assistant Director – Legal, Governance & Monitoring concerning the acquisition of all land, property & rights by agreement or compulsory purchase on behalf of the Council up to the value of £500,000, subject to terms over £250,000 being noted in the Forward Plan			✓	✓	✓
COMPENSATION					
Authority to determine, negotiate terms & instruct the Assistant Director – Legal, Governance & Monitoring concerning compensation payments on behalf of the Council up to the value of £500,000, subject to terms over £250,000 being noted in the Forward Plan			✓	✓	✓
RIGHT TO BUY					
Housing Act 1985 – Part V					
Authority to determine Right to Buy applications & discount. Authority to serve Notices in connection with the process. Authority to instruct the surveyor to value the properties. Authority to instruct the District Valuer in connection with determination & redetermination of value. Authority to serve Notices admitting or denying the Right to Buy. Authority to instruct the Assistant Director – Legal, Governance & Monitoring to conclude the disposal of the property.	✓	✓	✓	✓	✓
Authority to appear as a witness at First-tier Tribunal Property Chamber (Residential Property) to represent the Council's case (whether written representations or oral hearing)			✓	✓	✓
Authority in conjunction with the Head of Housing Services to determine whether the Council should exercise its discretion with regard to the repayment of discount	✓	✓	✓	✓	✓
PLANNING APPLICATIONS					

Scheme of Delegation & Decision Making (Corporate Landlord)

Responsibility	Officer A	Officer B	Operational Manager	Senior Manager	Assistant Director
Authority to make applications for planning permission on Council land	✓	✓	✓	✓	✓
NOTICE TO QUIT					
Authority to sign and serve all Notices to Quit and all Notices under the Landlord and Tenant Act 1954.	✓	✓	✓	✓	✓
LETTING OF LAND & PROPERTY					
Authority to approve applications for the assignment of leases	✓	✓	✓	✓	✓
Authority to authorise formal Deeds of Apportionment of ground rents of leasehold properties	✓	✓	✓	✓	✓
Authority to negotiate terms for & sign standard forms of agreement in respect of site compounds, site licences, licences, wayleaves, rights of way, privileges & tenancies (not including tenancies in respect of Council Houses)	✓	✓	✓	✓	✓
Authority to give landlords consent in respect of long leases, where the long term interests of the Council are not prejudiced	✓	✓	✓	✓	✓
Authority to negotiate terms for & instruct the Assistant Director – Legal, Governance & Monitoring to complete the letting of all commercial land and property.			✓	✓	✓
Authority to serve necessary Notices, negotiate rent reviews & in Leases & to authorise the Memorandum of Rent review			✓	✓	✓
Authority to instruct a third party in accordance with the Arbitration Acts where necessary to determine the rent review		✓	✓	✓	✓
Authority to negotiate terms for & instruct the Assistant Director – Legal, Governance & Monitoring to complete lease renewals.			✓	✓	✓
Authority to approve changes of use, extension to user clauses or variations to covenants within Leases & instruct the Assistant Director – Legal, Governance & Monitoring to complete the documentation			✓	✓	✓
Authority to negotiate the surrender of Leases & instruct the Assistant Director – Legal, Governance & Monitoring to complete the documentation			✓	✓	✓
Authority to institute proceedings for & where necessary instruct the Assistant Director – Legal Governance & Monitoring take the necessary action to recover rent or other monies due to the Council under the provisions of tenancies or leases		✓	✓	✓	✓

Scheme of Delegation & Decision Making (Corporate Landlord)

Responsibility	Officer A	Officer B	Operational Manager	Senior Manager	Assistant Director
including the power of distraint, forfeiture and suing on the personal covenant					
EASEMENTS					
Authority to negotiate terms for & instruct the Assistant Director – Legal, Governance & Monitoring to grant or take easements whether for a term of years or in perpetuity.			✓	✓	✓
LANDS TRIBUNAL CASES/COURT APPEARANCES					
Authority to present the Council's case (whether written representations, at informal hearing or public inquiry)		✓	✓	✓	✓
TRESPASSERS/SQUATTERS					
LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012					
Authority to instruct the Assistant Director – Legal, Governance & Monitoring to recover possession of squatters from a residential buildings		✓	✓	✓	✓
CIVIL PROCEDURE ACT 1997					
Authority to instruct the Assistant Director – Legal Governance & Monitoring to regain/obtain possession of any land or premises, owned, leased or occupied by the Council which are occupied without the consent of the Council.		✓	✓	✓	✓
Authority to determine the scale of fees & charges relating to costs for administration & valuation work			✓	✓	✓
COMMUNITY RIGHT TO BID					
To determine procedures from time to time and comply with Section 87-108 of the Localism Act 2011 and the non-statutory guidance and the Assets of Community Value (England) Regulations 2012.				✓	✓
To consider the validity of the applications and to determine whether they are successful or not and inform all relevant bodies of the decision		✓	✓	✓	✓
Consider and determine valid request for listing review from owners.			✓	✓	✓
Consider valid applications for compensation for loss and expense incurred through the asset being listed or previously listed and to agree payment of compensation to affected owner/former owners.				✓	✓
To consider and determine valid applications from owner or former owners of land				✓	✓

Scheme of Delegation & Decision Making (Corporate Landlord)

Responsibility	Officer A	Officer B	Operational Manager	Senior Manager	Assistant Director
listed as an ACV for a review as to whether compensation should be made; and the amount of compensation and to give reasons for the review decision.					
To approve application of register and removal of local land charges and enter into restrictions on title at HM Land Registry for registered land to prevent disposal by the owner in breach of the regulations.				✓	✓
TERRORISM/EMERGENCY PLANNING - PREVENT					
To take all necessary steps to deal with an emergency in accordance with the Kirklees Emergency Plan and the Physical Resources & Procurement Service Business Continuity Plan.				✓	✓

Additional delegation approved by Cabinet 2016:

<p>Implications of school category changes for land and premises – an extension of delegation to senior officers to dispose of Council assets.</p> <p>That approval is given to the delegation of powers to the Assistant Directors Place and Assistant Director Legal and Governance to deal with the disposal of Council assets either as a result of school expansion, historic or otherwise and also when a school changes category.</p>				✓	✓
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Underpinning all activity:

Terrorism/Emergency Planning – Prevent:

To ensure the Council's policies, procedures and resources in the leasing/letting[disposal] of property have due regard to 'Prevent' duty under s26 of the Counter Terrorism and Security Act 2015 and Home Office Guidance to prevent people being drawn into terrorism [and that Contractors support the Council to discharge the 'Prevent duty'].

Scheme of Delegation & Decision Making (Corporate Landlord)

Key to roles:

Responsibility	Post Title, Section
*Assistant Directors, Place	*This delegation applies to all Assistant Directors in the Place Directorate
**Senior Managers (Grade 17-19)	Head of Corporate Landlord Capital Development and Capital Delivery Schools Facilities Manager Head of Building Services
Operational Managers (Grade 13 -16)	Asset Strategy Officer Disposal and Acquisition Team leader
Officer A	Asset Management Officer (Land) Right to Buy Officer Disposal and Acquisition Officers
Officer B	Corporate Facilities Manager Asset Strategy Officer Disposal and Acquisition Surveyor

** Records of all delegations taken 'of significant public interest' will include the designated post holder taking the decision.

* The Scheme of Delegation will be reviewed periodically to take account of organisational change.