

**PERTH AND KINROSS COUNCIL****Property Sub-Committee – 9 January 2013****DISPOSAL OF LAND AND BUILDINGS POLICY****Report by the Executive Director (Environment) and Head of Legal Services**

This Report recommends the adoption of a Council policy for the disposal of Council land and buildings to provide a sound governance framework and guidance to individuals, businesses and communities interested in acquiring property. It also recommends that the current Disposals Process be revised.

**1. RECOMMENDATIONS**

1.1 It is recommended that the Property Sub-Committee agrees to:

- i) Adopt the Disposal of Land and Buildings Policy for the disposal of all Council land and buildings, as set out in the Appendix to this Report.
- ii) Remit to the Executive Director (Environment) to revise the current disposals process to take account of the Disposal of Land and Buildings Policy and organisational changes.

**2. GENERAL BACKGROUND**

- 2.1 Land and buildings are important assets of the Council. The Council is accountable for its use of these assets, both when they are part of its property portfolio and when they become surplus to requirements. As part of this, the Council must meet its statutory obligations when it disposes of land and buildings. These obligations generally relate to the requirement to obtain maximum value when they are sold or leased. However, it is possible to dispose of property for less than best consideration where this promotes objectives such as economic development or regeneration. The way in which the Council disposes of its land and buildings should also be clear to anyone who wishes to acquire property, or an interest in property, from the Council.
- 2.2 There is therefore a need for a policy on the disposal of land and buildings which acknowledges and reconciles these different issues and enables the Council to act lawfully and properly.
- 2.3 The Disposal of Land and Buildings Policy will also help individuals, businesses and communities to understand the legal framework within which the Council must operate when disposing of its property.
- 2.4 Central to the disposal of land and buildings is the accurate valuation of surplus property by suitably qualified Chartered Surveyors and the Council's Estates and Commercial Investments Team has a key role to play in carrying out these valuations or facilitating independent valuations where these are required.

### **3. LEGAL BACKGROUND**

- 3.1 In terms of section 74 of the Local Government (Scotland) Act 1973, the Council is obliged to achieve the best consideration that can reasonably be obtained when it disposes of land and buildings. However, this obligation is qualified by the Disposal of Land by Local Authorities (Scotland) Regulations 2010 which enable the Council to dispose of property at less than best consideration when it has carried out an appraisal and compared the costs and disadvantages with the advantages of the proposal.
- 3.2 Guidance to the Regulations explains how to carry out this comparison and after doing so, the Council may dispose of the property for less than best consideration if it is satisfied that disposal for that consideration is reasonable and that it contributes to one or more of the following purposes:-
- (a) Economic development or regeneration
  - (b) Health
  - (c) Social wellbeing; or
  - (d) Environmental wellbeing
- 3.3 The Council must also have regard to the need to obtain Best Value. In addition, it is bound by the EU State Aid rules, which seek to ensure that there is no subsidy to an economic undertaking which would distort competition. Where property held on the Council's Housing Revenue Account is being disposed of, Scottish Ministers' consent is required in addition to consideration of the above issues. Where property forms part of the Common Good it may, in certain circumstances, be necessary to obtain the consent of the Sheriff to a disposal in terms of section 75 (2) of the Local Government (Scotland) Act 1973. In terms of the Scheme of Administration, the disposal of common good property must be referred to the relevant Common Good Fund Committee.

### **4. PROFESSIONAL ADVICE**

- 4.1 The disposal of property may give rise to a range of issues and no disposal should take place without appropriate professional advice on legal, property and other relevant matters.

### **5. CURRENT DISPOSALS PROCESS**

- 5.1 The current approved common process for the Disposal of Surplus and Redundant Assets (Strategic Policy & Resources Committee 09/570) does not take account of the Disposal of Land and Buildings Policy and recent organisational changes. It is therefore recommended that it be remitted to the Executive Director (Environment) to prepare a revised Disposals Process which takes account of the Disposal of Land and Buildings Policy.

## **6. PROPOSALS**

- 6.1 The Property Sub-Committee approves the attached Disposal of Land and Buildings Policy, which reflects the Council's obligations in achieving best consideration, the requirements of the Disposal Regulations and the duty to achieve Best Value. Adoption of this policy is required to ensure good governance and a consistent and systematic approach to the disposal of Council property. It will also help individuals, businesses and communities to understand how the Council disposes of its property.
- 6.2 The Property Sub-Committee agrees to remit to the Executive Director (Environment) to prepare a revised Disposals Process as set out in Paragraph 5.1 above.

## **7. CONSULTATION**

- 7.1 The Head of Democratic Services, the Head of Finance, the Executive Directors of Education & Children's Services and Housing and Community Care have been consulted in the preparation of this report.

## **8. RESOURCE IMPLICATIONS**

- 8.1 There are no resource implications directly resulting from this policy paper.

## **9. COUNCIL CORPORATE PLAN OBJECTIVES 2009-2012**

- 9.1 The Council's Corporate Plan 2009-2012 sets out five objectives that provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. Those objectives are as follows:
- (i) A Safe, Secure and Welcoming Environment
  - (ii) Healthy, Caring Communities
  - (iii) A Prosperous, Sustainable and Inclusive Economy
  - (iv) Educated, Responsible and Informed Citizens
  - (v) Confident, Active and Inclusive Communities
- 9.2 The recommendations contained in this Report will advance objectives (i) and (iii) above.

## **10. EQUALITIES IMPACT ASSESSMENT (EqIA)**

- 10.1 An equalities impact assessment needs to be carried out for functions, policies, procedures or strategies in relation to race, gender and disability and other relevant protected characteristics. This supports the Council's legal requirement to comply with the duty to assess and consult on relevant new and existing policies.
- 10.2 The policy presented in this report was considered under the Corporate Equalities Impact Assessment process (EqIA) and was assessed as not relevant for the purposes of EqIA.

## **11. STRATEGIC ENVIRONMENTAL ASSESSMENT**

- 11.1 Strategic Environmental Assessment (SEA) is a legal requirement under the Environmental Assessment (Scotland) Act 2005 that applies to all qualifying plans, programmes and strategies, including policies (PPS).
- 11.2 The matters presented in this report were considered under the Environmental Assessment (Scotland) Act 2005 and no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

## **12. CONCLUSION**

- 12.1 This Report recommends the adoption of the attached Policy for the Disposal of Land and Buildings and also recommends that the common disposals process be revised.

**JIM VALENTINE**  
**Executive Director (Environment)**

**IAN INNES**  
**Head of Legal Services**

No background papers as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

**PERTH AND KINROSS COUNCIL**

<p><b>DISPOSAL OF LAND AND BUILDINGS POLICY</b></p>
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- (1) The Council has, subject to the Regulations referred to in paragraph 3 below, a statutory obligation to achieve the best consideration that can reasonably be obtained when disposing of land or buildings. This obligation will generally be met by disposing of land and/or buildings on the open market.
- (2) In certain circumstances, land and buildings may be sold or leased at a value deemed to be market value (as opposed to being placed on the open market) provided that Best Value is achieved. This means that a valuation is undertaken by a suitably-qualified Chartered Surveyor. Market value is as defined by the Royal Institution of Chartered Surveyors (RICS) Red Book . The duty to secure Best Value is explained in Section 1 of the Local Government in Scotland Act 2003.
- (3) The Council may only sell land and buildings for less than best consideration in accordance with the Disposal of Land by Local Authorities (Scotland) Regulations 2010. Where this is proposed, the appropriate Committee report will include a current market value of the subjects and the recommended consideration (if any) so that members are fully aware of value foregone in approving the disposal.
- (4) The Committee report will include an appraisal in terms of the Regulations, setting out the benefits and disbenefits of the proposal. This appraisal will be a summary of the assessment which must be carried out in terms of the Regulations. Comprehensive guidance on the criteria which may assist in drawing up the assessment is contained in Annex C to the Guidance to the Regulations. Annex C is attached to this Policy. Policies have been developed and will continue to be developed to support disposals for particular Service objectives and these will be referred to in the appraisal, where applicable.
- (5) Disposal at less than best consideration may be recommended to facilitate policies such the provision of affordable housing or the disposal of land and buildings to a suitable community body to achieve Council objectives in supporting local regeneration and community development.
- (6) In order to meet the statutory requirements for the disposal of land and buildings, the Council must be satisfied that any disposal at less than best consideration is reasonable and is likely to contribute to any of the purposes set out in the Regulations in respect of the whole or any part of Perth and Kinross or any person resident or present in Perth and Kinross. These purposes are the promotion of: (i) economic development or regeneration; (ii) health; (iii) social well-being; or (iv) environmental well-being.

- (7) In addition to the above, the Council must take account of other relevant legal issues, such as EU State Aid rules on the sale of public land and buildings which may affect the ability of the Council to dispose of land and buildings at less than market value, the common good status of land or buildings and the need to obtain Scottish Ministers' consent for land or buildings held on the Housing Revenue Account.
- (8) The issues referred to above are examples only and no disposal shall take place without appropriate professional advice by way of prior assessment of legal, property and other relevant matters. The Committee report will refer to any such advice.

## **Disposal of Land by Local Authorities (Scotland) Regulations 2010 - Guidance**

### **ANNEX C**

#### **EXAMPLE OF THE CRITERIA FOR CONSIDERATION WHEN MAKING AN ASSESSMENT OF A PROPOSAL TO DISPOSE OF LAND FOR LESS THAN BEST CONSIDERATION THAT CAN REASONABLY BE OBTAINED.**

Under Best Value obligations, local authorities are expected to demonstrate sound governance at a strategic, financial and operational level. The following criteria may be of help to a local authority in drawing up their assessment of a proposed disposal at less than the best consideration that can reasonably be obtained. This is a guide only and the local authority will want to determine what is appropriate and proportionate in each case.

1. A plan and/or written description of the site and buildings, its physical characteristics, location and surroundings.
2. Details of the current use of the land.
3. The best consideration that can reasonably be obtained for the interest as assessed by a qualified valuer (i.e. a chartered Member of, or is authorised to practice by, the Royal Institution of Chartered Surveyors) and the date that this assessment was obtained.
4. Details (where applicable) of the key terms and any restrictions imposed by the authority regarding the disposal, including any clawback provisions
5. Details about the purchaser: name of the person or organisation, aims and objectives, Board or governance structure, how it is funded and whether charitable status is held etc.
6. An outline of what the purchaser intends to do with the land and whether there has been involvement of local people/service users.
7. A copy of the most recent accounts (if available) or written evidence that the purchaser is financially able to maintain, renovate, etc. the land to be disposed of or leased.
8. Details of the options appraisal and cost/benefit analysis carried out by the local authority including any alternative use for the land, (e.g. a copy of the options appraisal report and Committee/Council decision/Minute).
9. Details of the inclusion of the proposed land disposal within the authority's asset management plan.

10. Details of how the disposal at less than best consideration that can reasonably be obtained, will contribute to one or more of the purposes set out in Regulation 4(2) of the Regulations.
11. An indication of the local demand for these services and details of any known opposition or support for the proposal and the measures (if applicable) taken by the authority to deal with the opposition.
12. Confirmation the disposal complies with the European Commission's State aid rules.
13. When using arms length organisations to deliver services, information on the reviews and option appraisals taking account of the COSLA/Accounts Commission Code of Guidance on Funding External Bodies and Following the Public Pound