



North
Northamptonshire
Council

Asset Disposal Policy

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****Make any additional comments as might be relevant here****

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1.0 Introduction / foreword

- 1.1 North Northamptonshire Council has a diverse and extensive service delivery requirement. This service need requires the Council to own a varied property and land portfolio held by the general fund. This asset base is constantly evolving to ensure it meets the corporate strategies and continues to remain value for money, therefore, at times, the Council will dispose of surplus and underutilised sites.
- 1.2 Whilst the Council's constitution delegates a broad range of powers to dispose of property and land, it is important that a co-ordinated approach is applied to ensure the Council has a systematic and transparent approach to disposals in line with statute and government policy.
- 1.3 The Constitution requires the Chief Responsible Officer, the Executive Director of Place & Economy (Deputy Chief Executive), to put in place detailed arrangements for the disposal of assets. This is delegated through to the Assistant Director of Assets & Environment.
- 1.4 This policy documents these detailed arrangements, defines the scope of disposals, internal consultation undertaken and provides a process to be used.

2.0 Scope

- 2.1 This policy applies to property and land described in 2.1, for disposals as defined in 2.2 and appropriation in land as defined in 2.3.
- 2.2 The policy provides details on the sharing of asset information, through the formation of an Asset Management Group. This forum will provide for a consultation period for service areas and Members (through the Executive Member for Highways, Traffic & Assets) to review disposals and appropriation of land.
- 2.3 Following this period of consultation, the Asset team will progress the next steps through the constitutional process.
- 2.4 **General Fund Property and Land Holdings**
- 2.5 The policy applies to all general fund property and land holding categories, including:

- Sports and wellbeing – Community Halls, Public Open spaces, Leisure and Sports Centres, pocket parks, libraries.
- Civic and Ceremonial – Formal meeting areas for council decision making, registrars, memorials.
- Residential accommodation, excluding dwellings forming part of the Housing Revenue Account - e.g., traveller sites held by the general fund.
- Housing estate land - e.g., requests for additional garden land.
- Social Care – accommodation for the Childrens Trust and Adult Social Care.
- Economic development and regeneration – business centres, build leases.
- Infrastructure – roads, paths.
- Operational – depots, recycling centres.
- Commercial units – to earn income to support the finances of the council to pay for service delivery.
- Assets to be developed.

2.6 Disposal definition for the purpose of this policy

2.7 The Local Government Act 1972 S123 defines a disposal as a lease granted for a term of 7 years or more and the Land Registry Act 2002 extended the requirements to register interests in land, lowering the qualifying period from 21 years to 7 years.

2.8 This policy is concerned with longer term contractual agreements and freehold sales and will apply to:

- Freehold Sales.
- Agreement for an option to sell or option to lease where greater than 21 years.
- New leases granted for vacant premises for a term of 21 years or an assignment of a term of a lease with more than 21 years left to run.
- New leases granted for vacant premises for a term over 7 years if there is an option for renewal that takes the lease over the 21-year period.
- Appropriation in common land – the change of use from unrestricted public open space to a lettable hereditament.

2.9 Leases for a term of 21 years or less remain subject to the delegations in the Constitution and the asset management team surveyors lead lease negotiations for service areas and deal with lease renewals and protected tenancies. A lettings policy covering the considerations for such leases will be brought to Executive for approval early in 2023.

2.10 Appropriation Definition for the purpose of this policy.

2.11 Where the authority has allocated land for specific purposes, such as open spaces, any changes of use will be considered as part of this process.

2.12 Certain categories are regulated by statute with strict process requirements. Open space is defined as “any land laid out as a public garden, or used for the purpose of public recreation, or land which is disused burial ground.”

2.13 Examples of appropriation may be a decision to turn part of an open space into a lettable hereditament, e.g., a football pitch on public land.

3.0 Policy outcomes

3.1 The outcomes of the policy are:

- To provide detailed arrangements for the disposal of assets as required in the constitution.
- To provide a process for asset review which will support decision making.
- To ensure there is a methodical forum for consultation with other service areas.
- To enable the asset management team to maintain a current property and land register.

4.0 Asset Disposal Policy

4.1 This disposal and land policy supports compliance with regulations and provides a methodical process for review which will assist decision makers as detailed in the constitution. The policy outlines the regulatory and governance requirements and then documents the detailed process that must be followed.

4.2 Disposals

4.3 The policy and process support not only the Council's constitution but also the legal governance framework.

4.4 The main powers to dispose of land are found in the following legislation:

- S123 of the Local Government Act 1972 and
- S233 Town and Country Planning Act 1990

4.5 These provide the requirement for the council to obtain best consideration for disposals, which is defined to include leases granted for a term of 7 years or more, option agreements, reversionary leases and freehold sales.

4.6 Exceptions to this requirement were permitted, provided the council adhered to a process of review, to balance the requirements of economic, social or environmental outputs against the need to ensure best consideration. Any less than best disposals required the permission of the Secretary of State to seek permission in all instances.

4.7 This requirement for permission from the Secretary of State was relaxed with the introduction of the General Disposal Consent 2003 (circular 06/2003) which provided for a council to authorise disposals of less than best consideration if the difference in (capital) value was less than £2m. Differences in capital value over £2m still require consent from the Secretary of State and the assets team provide lead in this process.

4.8 The relaxation of the process did not lessen the requirement for a council to exercise sound judgement in considering the economic, social and environmental benefits of a disposal at less than best consideration, weighed against the foregone value of the asset.

4.9 There has been much case law confirming a council must exercise its fiduciary duties reasonably (constitutional law case *Roberts v Hopwood* 1925). Added to this are the public law principles, requiring the council to have regard to the material consideration on the

financial accounts with respect to capital and revenue impacts of any decision. Procurement laws can also apply if the disposal includes an agreement to carry out work or provide the Council with an interest in land, such as a sale and leaseback. This is a complex area of law, and each decision would be considered with appropriate legal and asset advice.

4.10 **Appropriation**

4.11 The powers to appropriate assets are found in the following laws:

- S122 of the Local Government Act 1972 and
- S232 Town and Country Planning Act 1990

4.12 Appropriation in this context means transferring the allocation of the assets from one purpose to another.

4.13 Local authorities usually allocate assets for specific purposes under different statutory powers. They may have acquired the land pursuant to a statute which then regulates how the land must be allocated or managed (e.g., housing or public health purposes) or they may have acquired land for general purposes (e.g., under s.120 of the Local Government Act 1972).

If the local authority determines a need to transfer assets from one purpose or function to another, perhaps for redevelopment or service transfer, then it must document the appropriation of the asset.

4.14 The key procedural points are as follows:

- The land must already belong to the council
- The land must be no longer required for the purpose for which it is currently appropriated; and
- The purpose for which the council is appropriating must be authorised by statute.

4.15 **The Constitution**

4.16 The Council complies with the above legal framework through the governance process documented in the constitution. An extract of the constitution linked to disposals is attached on **Appendix A**.

4.17 The financial delegations set clear financial limits on disposals and the requirement that disposals are at market value and so represent best consideration. The constitution provides for the Chief Responsible Officer to document how these relationships interlink, which this disposal policy addresses.

4.18 **Asset Management Review Group**

4.19 To provide a forum for sharing information on surplus and underutilised assets, an Asset Management Review Group will be formed and chaired by the Assistant Director of Assets & Environment.

4.20 The sharing of information is a way to identify whether the Council has an alternative use for a site before being progressed further by the asset management team and as a forum for assets to be systematically reviewed.

4.21 The current ways of identifying surplus or underutilised assets are:

- The asset management team identify sites that may either be vacant, no longer meet the councils' objectives and/or are underutilised.
- The commercial estates team have a vacant property to let which has limited prospects of being relet or would require significant capital investment.
- The service areas inform the Asset Management team of a property they use which no longer meets their needs.
- Ward Councillors provide suggested uses based on local resident needs and community feedback.
- External parties, businesses, community organisations, other public sector organisations and residents contact the council expressing an interest in a site.

4.22 As part of the decision-making process the Asset Management team will undertake testing as below:

The Surplus Test

As a guide, land and property is considered as potentially surplus to the Council's requirements where:

- it is in a location that makes little or no contribution to the delivery of the Council's services, strategic or corporate objectives.
- it is not currently meeting its objectives and there is no realistic potential for achieving these objectives within a reasonable time frame.
- The cost of improving energy efficiency to meet the Council's strategy, including the Carbon Neutral commitment, outweighs the value for money test.
- it is required to contribute to the rationalisation programme to reduce operational costs.
- The transfer contributes to the specific community service provision.

The Under-Used Test

As a guide, land and property is considered as potentially under-used if:

- (a) part of the site is vacant and is likely to remain vacant for the foreseeable future
- (b) the income being generated from the site is consistently below that which could be achieved from:
 - (i) disposing of the site and reinvesting the income.
 - (ii) an alternative use.
 - (iii) intensifying the existing use.
- (a) only part of the site is used for service delivery and this could be delivered from an alternative site.
- (b) In the case of land, the contribution to protecting and enhancing the natural, built and historic environment, including helping to improve biodiversity, is outweighed by the

benefit of alternative use for social or economic purposes, such as development for commercial or housing purposes, or could be provided on another site with equal or greater benefit.

- 4.23 Information as above will be collated by the asset management team for review at the Asset Management Review Group (AMRG). Each service will have the opportunity to nominate a representative. Data to be considered will include, where relevant:
- Planning policy – current and potential use of assets
 - Asset Categorisation – the current use and reason for holding
 - Asset capital valuation for accounting purposes – current value and materiality issues
 - Revenue – impact of any changes to the revenue budget
 - Fabric Condition – repairs information, condition surveys
 - Energy Rating – to fit with the Councils carbon management plan
 - Social Value attributed to the asset – such as community use or support.
 - H&S information – fire risk assessments, water hygiene, asbestos, electrical
 - FWO strategy – need for rationalisation
 - Community asset transfer policy – if a community asset the wider opportunities
 - Service Strategies
 - Return on investment – value for money analysis
- 4.24 Each asset is held under a category and will support options considered for property and land. Commercial investment assets provide an important revenue stream, with the income used to support service delivery and achieve a balanced budget. Assets held in this category are unlikely to be available for operational service use or community use, unless there is limited market demand for the property and the return on capital investment required will not achieve the rental levels to justify the expenditure.
- 4.25 Assets held for operational or community use may provide more opportunities for service areas to consider as part of their service plans.
- 4.26 Government policy and statute requires surplus assets to be disposed within a reasonable time. The Housing and Planning Act 2016, Part 8 Section 208 places a duty on local authorities to prepare and publish a report of surplus land where the authority continues to hold the land two years from the decision-making date. Added to this, underutilised and surplus assets result in holding costs, such as maintenance, security, business rates, inspections, health and safety etc. It is, therefore, important that the council mitigates its revenue holding costs to a limited period, allowing sufficient time to allow a viable opportunity for change of use to be presented to the AMRG before it is progressed through the constitutional process and onto the wider market.
- 4.27 Preparing a site for wider marketing takes time, may incur procurement processes for marketing, requires legal review and ongoing asset management review of opportunities that add value.
- 4.28 For this reason, there will be a limited period for services to provide a robust business case to demonstrate a viable alternative change in use. The initial period that services will have to express an interest in a surplus or underutilised site will be four weeks from presentation of

the asset at the AMRG. They will then have a further three months to prepare a robust business case to include financial support for any plans.

4.29 If no service area can demonstrate a clear and robust business case for a property brought before the AMRG, then the asset management team will discuss wider opportunities for the asset via the Executive Member of Highways, Travel and Assets, in consultation with the Assistant Director of Assets & Environment, with recommendations made to the Executive on the next steps, as required by the consultation, which may include:

- Asset management team preparing the site for wider public sector partner review to determine whether the property and land meets their needs (for example via the one public estate partners). Alternative use by any North Northamptonshire partners must be supported by an approved business case and would be subject to purchase at market value.
- Asset Management team preparing the site to market to obtain best consideration.
- Regeneration team preparing the site to apply for a government funding bid opportunity for economic development, housing and regeneration opportunities for external parties.
- Asset Management team in consultation with community services progress the site to market through the assets of community value regime and/or community asset transfer policies.

4.30 A detailed process chart is provided at **Appendix B**, including when service area, Ward Member and Executive Member consultation takes place.

4.31 The Asset Management team will submit an annual surplus property progress report to Executive.

5.0 Next steps

5.1 Establish the AMRG meetings with appropriate Terms of Reference.

5.2 Publish the Asset Disposal Policy and share with appropriate stakeholders.

6.0 Glossary of terms

Term	Definition
Disposal	Freehold sale of land, lease over 21 years for vacant unit and or assignment, easement, wayleave