

Disposal and Acquisition Protocol

2022-2025

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Foreword

Our Asset Management Strategy is a robust and forward thinking strategy for the management of our land and assets is critical to ensure that the right decisions are made regarding their future use, management, development or disposal. It sets the framework for managing our corporate property portfolio for the next five years, including how we make strategic property decisions which support our corporate objectives and ensure that our estate is sustainable, efficient and fit for the purpose of delivering excellent service.

The Asset Management Strategy is supported by the following suite of documents which further align the management of property and assets to deliver the Council, Departmental and Asset Management objectives:

- Property Maintenance Strategy
- Estate Management Strategy
- Facilities Management Strategy
- Disposal and Acquisition Protocol

These strategies define how we, using a corporate landlord approach, not only support frontline service delivery, but respond to and plan for future changes in the way that we deliver those services and also meet the needs of an increasingly flexible and agile workforce, embracing opportunities to collaborate with services across the Council and with partners. The Council's corporate responsibilities are at the forefront of all our activities.

After our people, our property assets are our biggest resource and are key to transforming the way in which we deliver our services. Shrewd and effective asset management will not only ensure that our estate is sustainable and able to support future service deliveries, but that it can drive, support and contribute to wider Council priorities, including our carbon reduction agenda.

Introduction

Derbyshire County Council has an extensive and diverse land and property estate (the Estate) which offers opportunity to reimagine the asset base from which Council services are delivered. The Asset Management Strategy 2022-2025 sets a framework for the strategic management of the Estate to support our Corporate objectives and ensure that the Estate is sustainable, efficient, and fit for the purpose of delivering excellent service.

The Asset Management Strategy has set the following objectives:

- Ensuring that we have the right buildings in the right place to support excellent and dynamic service delivery
- Creating the right kind of flexible spaces that work effectively and efficiently for everyone who uses them
- Being ambitious and enterprising in how we manage our buildings to maximise value for money, income and savings

- Strengthening partnerships to support colocation, co-delivery of services and more resilient communities
- Responding to the climate change agenda by reducing our carbon footprint
- Underpinning all - Planned and preventative maintenance, asset challenge, performance benchmarking and performance monitoring

All land and property within the Estate will be subject to an asset challenge on a 5-year rolling programme. Asset Challenge is a systematic challenge and review process of the Estate appraising all assets against the above objectives and potential disposal to rationalise the Estate.

Through the Asset Management Strategy and supporting documents officers are encouraged to be ambitious and create value from surplus and underutilised land and property, delivering capital receipts, revenue savings and revenue generation opportunities.

Purpose

The Disposal and Acquisition Protocol is a key Appendix to the Asset Management Strategy with the driver to generate ambitious redevelopment and disposal opportunities whilst rationalising the Estate. This document provides:

- The core principles to be applied when considering land and property for disposal
- A consistent and considered approach to the appraisal of assets for disposal and the appropriate method to market
- Criteria as to how disposals will be prioritised to create the Disposals Programme
- Guidance to officers, elected members, businesses, and public.

A land or property will be deemed suitable for disposal if one or more of the following principles apply:

- The asset no longer makes a positive contribution to service delivery
- The asset is no longer financially sustainable
- The asset does not align to current or emerging Council strategies
- No potential to share use with Partners (OPE/Community)
- A community Asset Transfer request is received and accepted
- The disposal of an asset would make a bigger contribution Council's Financial Plan rather than retain for other purposes

Definitions

Asset Challenge – 5 year cycle to challenge the use of every asset within the Estate

Asset Plan – Robust plan for the use and management of an asset

Concertus (Derbyshire) Limited – A joint venture between the Council and Concertus

Develop Renew – Development partnership between the Council and PSP

The Estate – The Council's Corporate Estate excluding school Estate subject to

Disposal – A freehold sale or long lease of the property with or without future Covenants to restrict or protect future use

One Public Estate – A programme that promotes working together across the public sector and taking a strategic approach to asset management

Service Asset Management Plan – How the Council will manage and maintain our assets in line with Council and service priorities

Policy Approach and Process

5.1.1 Disposal Strategy

The Disposal Strategy is to be ambitious and add value from surplus and underutilised land and property whilst rationalising the Estate.

The Council will:

- Deliver ambitious redevelopment and disposal opportunities
- Generate income to support delivery of services
- Release capital from the Estate to deliver the Capital Strategy
- Rationalise the Estate in line with Council Plan key actions
- Embed enterprising and innovative methods to deliver the Council Plan
- Provide a consistent and considered approach to the appraisal of assets for disposal

5.1.2 Best Consideration

The Council has an obligation under the Local Government Act 1972 (as amended) to obtain best consideration when disposing of land and property. This includes any right in, to or over land. Best consideration is defined as the unrestricted market value considering 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 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.

Best consideration is not limited to the purchase price but may include a term or condition attached to the disposal which identifies a specific commercial benefit to the vendor. The Council will convert these benefits to a capital value for the purpose of quantifying best consideration.

Conditions or benefits arising which cannot be considered when calculating best consideration, include those which do not have a direct commercial or monetary value to the Council such as:

- Job creation;
- Social value – i.e. improved visitor numbers to a particular area;
- Using the land for a particular or desirable purpose

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.

Policy Approach and Process

5.1.3 Subsidy Control Regime Formerly State Aid

The EU state aid regime no longer applies to the UK following its departure from the European Union on 1st January 2021. Subsidy control within the UK is now based on the UK – EU trade and co-operation agreement, the UK’s other free trade agreements and the WTO’s rules on subsidies. These measures currently regulate in what circumstances a public body may provide a subsidy (typically a grant or loan but could include provisions such as a discounted rent) to a recipient until such time as the proposed Subsidy Control Act regime comes into force.

When considering disposals, consideration must be given to these requirements and whether or not they apply to the disposal in question and, if so, is the subsidy permitted. The requirements are extensive, but the key issues to consider prior to agreeing to a disposal will be whether or the award of a subsidy confers a benefit to a recipient in the form of an economic advantage that is not available on market terms and that the subsidy will distort or harm competition, trade or investment.

5.1.4 Asset Challenge

An Asset Challenge, detailed in the Asset Management Strategy, evaluates the strategic purpose for holding land and buildings and highlights opportunities to repurpose, redevelop or, the method of last resort, dispose of an asset to better deliver Corporate or Service objectives.

The Asset Challenge process incorporates expert property advice from across Corporate Property and its Partner to assess strategies on a qualitative and quantitative basis. The quantitative appraisal will assess the capital and revenue implications of each option. As a result of this increase the Council will prioritise disposals with asset plans that significantly contribute to the delivery of the Council Plan and Financial Plan objectives.

The Strategic Asset Review Board documents a decision in an asset plan which categorises into the following outcomes:

- Retain and manage in current form
- Retain and remodel
- Retain and redevelop

- Lease out (state whether commercial or community)
- Dispose – in short term (within 5 years)
- Dispose – in medium term (within 5-10 years)
- Dispose – in long term (10+ years)

Once all options have been appraised and sites are approved for disposal, the Council will seek Vacant Possession where possible and assets secured. The asset will then be added to the Disposal Programme which informs the Capital Strategy and captured on the Disposal Focus Group Tracker for performance reporting.

The Asset Management Strategy objectives will drive the rationalisation of the Estate creating a significant increase of land and buildings added to the Disposal Programme. As a result of this increase the Council will prioritise disposals with asset plans that significantly contribute to the delivery of the Council Plan and Financial Plan objectives.

Policy Approach and Process

Given pressures on resources within the Council Individual approaches for land and property will only be progressed if there is a supporting asset plan. The asset challenge programme is designed to prioritise asset plans which will significantly deliver Council Plan objectives and accelerating assets where an approach has been received takes resource away from delivering these objectives. When an approach is received the required use will be recorded centrally and considered when the asset challenge is scheduled in the programme.

5.1.5 Optimising Value

The asset challenge process will consider and weight options to deliver Council Plan priorities and maximising value through redevelopment or disposal. The following are methods for securing added value which may be considered.

Disposal with Alternative Use Planning Permission

Alternative use development will be considered and if deemed cost effective the Council may look to secure outline planning permission for an added value development. By the Council securing planning permission this reduces the risk and uncertainty for a potential purchaser and will provide an uplift in value above the existing use value. Where possible, and delivers Best Consideration, the Council will look to align development disposals to deliver Council Plan priorities.

Disposal for Existing Use

Where the current use provides Best Consideration or an added value opportunity has significant risk the Council will dispose at existing use value.

Special Purchase

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' may 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.

Ransom Strip

A ransom strip is an example of where a parcel of land in isolation may have limited to no value. However, by ransoming another parcel or parcels of land the value of the ransom could be worth up to half of the development value of the whole. Ransom strips mainly relate to access arrangements.

Policy Approach and Process

Restrictive covenants and other title restrictions

Previously owned land may provide an avenue for the Council to secure value. Where restrictions or other covenants are placed on title there is a benefit to the current or future landowner in releasing these clauses. The Council will look to maximise this value by aligning negotiations to the added value the release can generate for the new owner.

Overage / Clawback

Previously sold land may have been transacted with an agreement the Council would receive a percentage of the uplift in value on the back of a trigger event. These events could be the resale of a property or securing or implementing a planning permission. Often these agreements are used in circumstances where planning is deemed high risk for the Council to secure.

Minor Disposals

The strategic objective to rationalise the Estate has increased pressure on the internal resource within the Council. As a result, minor disposals will take less priority and be subject a minimum value of £25,000. If progressed the purchaser will be required to pay the Council's costs to enable external support to be commissioned.

Where a smaller parcel of land is carved from a larger parcel the value of the retained asset may be harmed. In these instances, the Council will not progress the smaller disposal.

Where the Council is disposing of 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.

5.1.6 Methods and Terms for Disposals

All issues relating to the land or property, including best consideration, sustainability, social, environmental and economic benefit and legal issues and agreements, will need to be considered when determining the method of disposal in addition to the Council's objectives.

Open Market or Auction

Open market disposals are the Council's preferred method for disposal as transactions are transparent and demonstrate best consideration. The decision to dispose on the open market will be taken in line with the scheme of delegation. Land and property will be advertised and bids invited by an agreed date or through open auction.

Independent agents will be appointed to manage the advertisement and the disposal of the land or property and report to the Council the value of the bids received and recommend which they consider to be the best consideration considering financial benefits.

Policy Approach and Process

Unconditional Freehold Sale

Where a purchaser offers a value with no conditions attached that meets the Council's expectations for best consideration.

Conditional Freehold Sale

Some disposals will benefit from the sale completion being subject to the purchaser successfully obtaining planning permission or the vendor providing vacant possession. This will secure the uplift in value generated by these events.

Long Leasehold Disposal

Long leasehold can be used where the Council wishes to retain control of the land and the future uses.

Option Agreements

An option agreement may be used to give a developer certainty over land by way of a legal document which allows the purchase of land at a future date. The option will look to identify the development value for the site.

Overage and Claw Back

Where appropriate, disposals may be sold at existing use value with provisions for securing a share of future enhanced values using overage and claw back clauses.

Development Agreements

Development agreements will be used for strategic development sites that require prolonged planning support and advice to promote the site through the local plan process. These agreements will have positive obligations on the promoter to pursue planning where the Council has deemed it high risk or costly for the Council to lead the promotion

Develop Renew

Where a project delivers social, environmental or socio-economic value the Council may dispose of land through the Develop Renew partnership to facilitate the promotion, development, asset management, rationalisation and economic regeneration of Council land. Develop Renew support the Council with regeneration, unlocking value from its land and property portfolios, utilising private sector funding, resources and skills. Partnership projects will endorse 'Blue Sky' thinking and value for money principles that consider social, economic and environmental well-being.

Notwithstanding the above, the Council will consider the use of the Partnership demonstrates best consideration before committing to a transfer. The decision matrix for the use of Develop Renew is detailed at 5.1.10.

Policy Approach and Process

Private Treaty

In certain circumstances the Council will consider disposing of an asset by Private Treaty. This involves the Council negotiating with a single third party to agree terms for the disposal. If Private Treaty can be justified, then an independent Agent / Valuer will be appointed to advise or negotiate on the Council's behalf and demonstrate best consideration. In these circumstances the Council will look for the purchaser to cover the Council's additional agent's fees.

Exchange of Land

A transaction involving Council owned land in exchange with another landowner. The land acquired by the Council will meet at least one of its corporate objectives and be commercially equal in value to the land exchanged, either from the value of land or additional payment at exchange.

General Consent

In principle the Council will choose the method of disposal which provides best consideration. However, disposal at less than best consideration may be considered in certain circumstances in accordance with the 2003 Act general consent provisions. This is where the Council considers that the purpose for which the land and property is to be disposed is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of the whole or any part of its area where the difference in value does not exceed £2m. Public Open Space and Town and Village Green (TVG)

The disposal of land which is, or forms part of an area of Public Open Space, Common Land (excludes amenity land) or land subject to a TVG application, are 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.

Community Asset Transfers (CATs)

The purpose of community asset transfer is to enable the transfer of land and buildings from the public sector to community ownership and management - helping organisations to develop those assets and deliver long-term social, economic and environmental benefits which may not otherwise be achieved. The Council will consider a request for an asset transfer to a community organisation where the organisation can provide an adequate business case and where the transfer would meet the Council's priorities and objectives. The Derbyshire County Council Community Asset Transfer Protocol can be found on the Council's website.

Policy Approach and Process

School Land

Disposal of school playing fields, former school sites and caretaker houses school sites are subject to the protection of Section 77 of the School Standards and Framework Act 1998. Where the Council wishes to dispose the whole or part 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. The Council will not consider third party approaches to purchase land from the active school estate where the value is less than £100,000.

Academy Conversions

School governing bodies have the right to apply to the Department for Education under the Academy Act 2010 to an academy. In some circumstances it may be appropriate for the Council to transfer the freehold interest.

5.1.7 Marketing Strategy

The Council preferred method of marketing is to expose a land or property to market conditions for a minimum 6 weeks through appropriate websites. During in this time the Council's agents will prepare marketing particulars detailing the terms of the sale as covered in 5.1.6. and the conditions for receiving offers. These are as follows:

Informal Tender

This is the Council's preferred method of receiving offers as it ensures best consideration is achieved. 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

It may be beneficial for the Council to dispose of a parcel of land or building quickly, for example to reduce management and security costs. The Council may use an auction which has the advantage of being open, competitive and allow transactions to complete quickly. Where land is sold through an open auction, available to anyone. Sales will be publicly advertised in advance.

Formal Tender

This is a structured process which does not allow for post submission discussions. This method may be used where the Council has strong demand for land or property and would like to complete on a set of terms that are not negotiable.

5.1.8 Estate Management of Sites Identified for Disposal

Assets held for disposal will be managed in line with the Council's Estate Management and Property Maintenance Strategies to ensure the Council protects the value of the asset and prevents unnecessary spend

Policy Approach and Process

5.1.9 Acquisitions

The Council may acquire an asset with a supporting business case covering the costs to acquire and the ongoing full life costs of retaining an asset. Appropriate terms will be negotiated which will enable the Council's proposed use and for flexibility for alternative development. The relevant approval will be sought in line with the Council's Constitution.

Where an acquisition is because of a Compulsory Purchase Order or S106 contribution the Council will require full fees and costs to be covered by the project.

A new asset will be managed in line with the Estates Management, Facilities Management and Property Maintenance Strategies.

5.1.10 Governance

The Disposal Programme is reviewed monthly at the Disposals Focus Group. The Group comprises Corporate Property Officers and key business partners such as Finance and Legal Services and reports to the Strategic Asset Review Board (SARB). Performance against revenue and capital targets is reported, monitored and challenged to ensure maximised value is delivered. Processes and decisions are reviewed and approved at the SARB to ensure a consistent and considered approach is maintained. Quarterly updates are provided to Corporate Asset Management Group. This forum monitors revenue savings, income generation and capital receipts realised from land and property rationalisation schemes and other property initiatives at a corporate level.

5.1.11 Scheme of Delegation

The Council's constitution delegates some issues and decisions to officers. The following have been delegated to the Director of Property:

Accept, grant, surrender or review any interests and rights over the Council's existing land and premises as may be deemed necessary or appropriate, subject to the value of the interest not exceeding £100,000.

To acquire or dispose of interests in land or property as may be deemed appropriate, subject to the value of the interest not exceeding £500,000.

Accept an auction offer within 10% of the reserve price on the day of the auction if the offer does not reach the reserve.

Agree payments or compensation up to the value of £100,000 due to landowners in respect of creation agreements, creation orders or compulsory purchase orders.

Policy Approach and Process

5.1.12 Commissioning

The Council may, from time to time, commission external consultants in connection with the disposal and acquisition of land and property. This will be procured through the relevant framework or partner. The attached decision tree at Appendix 1 demonstrates how the Council will secure additional resource through either a Framework, CDL or Develop Renew. Professional judgement may still be required where a procurement method is unclear.

5.1.13 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 based on the schedule of fees listed.

Transaction Type	Legal	Estates
Auction	1.5% of the purchase price	1.5% of the purchase price and the auctioneer's fees currently at £245 + VAT
Freehold Land Disposal	1.5% of the sale price subject to a minimum fee of £750	1.5% of the sale price subject to a minimum fee of £750
Option / Overage Agreement	A minimum fee of £750 or a hourly rate depending on the complexity of the agreement with a 1.5% fee at the time of a capital receipt	A minimum fee of £750 or a hourly rate depending on the complexity of the agreement with a 1.5% fee at the time of a capital receipt

Policy Approach and Process

5.1.14 Measuring Success and Performance

This protocol aligns to the Asset Management Strategy. The successful implementation will be monitored at CAMG quarterly. The following measures will be monitored:

Year 1:

- ✓ Plan to deliver the asset plans considered to be disposals
- ✓ Create a 5-year programme for disposals reporting corporate revenue savings and capital receipts
- ✓ Deliver in year disposal target – repeats annually

Year 5:

- ✓ Forecast 25-year revenue savings and capital receipts in line with the Asset Management Strategy

Implementation and Review

All council disposal and acquisition recommendations, decisions and disposals will be delivered following the criteria and principles covered by this protocol to ensure a consistent approach and professional rigour.

The income generated by land and property will be treated corporately and not earmarked by departments. This income will be used to fund the capital programme where it is considered to best utilised.

The Protocol will be circulated to all officers, stakeholders, Councillors and partners involved in managing the Estate and will be available on the Council's intranet to ensure there is a consistent message.

The Protocol will be reviewed in line with the Asset Management Strategy 2022-2025 cycle and any feedback and findings will be considered.

Redevelopment Commissioning Process

Redevelopment Commissioning Process

