

Sefton Council 

# Asset Disposal Policy

1. Introduction
  - *Purpose*
  - *Objectives*
  - *Community Right to Bid*
  - *Scope of this Document*
  - *Other Development Initiatives*
  - *Document Structure*
  
2. The Council's Property Asset Base
  - *Background*
  - *Definitions*
  - *More information*
  
3. Asset Disposal & Development Principles
  - *Value for money*
  - *Working with local plans*
  - *Supporting economic development and regeneration*
  - *Promoting development and avoiding residual liabilities*
  - *Partner selection*
  - *Community led approaches*
  - *Self-build*
  - *Disposal process*
  - *Disposal for Less Than Best Consideration*
  
4. Key Development Sites
  - *Options for use and planning*
  - *Investment prior to disposal*
  - *Disposal routes*
  - *Disposal terms*
  - *Overage*
  - *Form of contract*
  
5. Other Land and Property Assets
  - *Market Sale Assets*
  
6. Disposal Programme
  
7. Policy Review

# 1. Introduction

## Purpose

Access to a supply of development opportunities is a vital ingredient in successful economic growth. A key role for the Council is to work with government, other public bodies, the private sector and the VCF sector to unlock and accelerate the release of surplus public land and assets for the creation of new homes and employment opportunities. As part of this agenda we have been considering how we can best use the Council's own land holdings and property assets.

The Council's property assets can play a significant role in helping our communities achieve their ambitions, generate economic growth and realise a contribution to the Council's financial needs. To provide some clarity on the processes, this policy sets out how we wish to take forward the identification and disposal of our surplus land and property assets.

The government has set out its objective to achieve strong, sustainable and balanced economic growth. It has stressed the importance of land and housing supply and included a commitment to accelerate the release of public sector land to encourage new homes and jobs. Government Departments that hold land have been instructed to publish their release programmes and be held to account for delivery of new homes and jobs created as a result. The Council will seek to play its part and aims to lead by example including through the publication of this disposal policy.

This is Sefton Council's established formal asset disposal policy which is an active publication that will be refreshed on an annual basis. It aims to:

- set out our broad objectives in relation to how we use our property assets;
- summarise the Council's property asset base;
- set out the principles we use when making disposal decisions; and
- identify a list of sites and other property assets that are available for disposal.

## Objectives

Recognising that land and property is a key enabler to promote economic, housing and community activity in Sefton, the Council has three key objectives in relation to our property and landholdings:

- being transparent about our property assets and our disposal principles and selling them in a way that creates a level playing field for potential end users to access sites when they are brought to market;
  - not holding land or buildings longer than necessary – making sure they are disposed of to support local growth,
  - that they are transferred to end users as quickly as possible,
  - carrying out disposals on terms that promote development, economic activity and growth.
- In disposing of assets, the Council will be guided by its obligation to secure value for money. Disposals are expected to be at market value predicated on the nature of the asset and any agreed mix of uses, however disposal at less than best consideration may be considered in exceptional circumstances.
- We expect to use our land and property assets effectively and in particular, to support the delivery of a range of housing to meet local needs. Such opportunities will be determined on a case by case basis taking account of the nature and location of the site.

## Community Right to Bid

Under the Localism Act 2011 the Council is one of the public bodies covered by the Community Right to Bid (CRTB) under which any properly defined and recognised organisation can ask the Council to list a specified land or property asset (in public or private ownership) as an Asset of Community Value and should that asset then be sold on the open market there is the opportunity for the qualifying community group to bid for it within a prescribed timeframe and set of regulations.

The Council currently maintains and publishes two lists; a list, scheduling assets that have been successfully nominated as Assets of Community Value and one showing unsuccessful nomination. Each request to nominate will be considered on its own merit in accordance with the regulations established by the Act. We hope that the disposal principles and information about how we identify and dispose of assets contained within this document will help to provide context for any CRTB applicants relating to Council owned assets.

## Scope of this Document

Although the Council has always worked in line with industry and professional best practise, this document formally documents the relevant process and practice. It is intended to monitor the effects of the policy and procedures with a view to carrying out a periodic review which takes account of any material changes in law, best practice and significant changes in the property market.

This policy focuses on disposal to end users (those who would carry out the development or long-term management/ownership of the asset). This policy does not consider how any capital receipts will be used as this area is governed by the Council's Capital Strategy.

## Other Development Initiatives

It is clear that all public landowners have been asked to accelerate land release to support economic activity and housing growth. The Council is effectively seeking to accelerate its efforts to this end with the publication of this policy and is also working with public and private sector partners to explore the synergies available from the combining of adjacent land sites to create viable development opportunities.

## Document Structure

The remainder of this document is set out as follows:

- Information about Council's landholdings;
- Core principles in disposal and development;
- Key development sites;
- Other land and assets – surplus operational assets and non-development assets; and
- Indicative schedule of sites available for disposal.

# 2. The Council's Property Asset Base

## Background

The Council's property portfolio covers a wide range of assets and liabilities. The original reason for the Council (or its predecessors) to own the land will have arisen from; accumulation following the merger of the composite authorities that now comprise the Council; because the Council (and its predecessors) were considered best placed to manage the risks associated with these buildings and landholdings; or to holistically plan and manage development opportunities, such as infrastructure and expansion of settlements to enable economic growth.

There is a concentration of assets in the main urban centres, but that aside there is no consistent pattern in terms of land distribution or type of site since the Council's inherited land and asset holdings are a reflection of the history of the Council and its predecessor bodies. The main categories of assets and in some cases liabilities are:

- The Council's operational property portfolio, including the Town Halls and other administrative buildings, schools, parks & green spaces and other specialist facilities;
- Various land and property interests across the Borough;
- The residue of the commercial ground rent portfolio (after disposal of the Industrial ground rents in 2007/2008);
- The residential ground rent portfolio (Including Chief Rents).

The breakdown of the portfolio between operational and non-operational properties as at the time of the publication of the policy document is as follows;

Operational	[380] Assets
Non-operational	[605] Assets
Residential Ground & Chief Rents	[2988] Assets

The portfolio is a dynamic entity and these numbers will change over time as assets are reclassified, acquired or more likely disposed.

### Definitions

In the remainder of this document we define the asset and landholdings as follows:

- **Key Development Sites:** sites suitable for development and identified as being of strategic priority. These may have either a positive or negative value in isolation so consideration will be given to packaging to create viable proposals to bring forward development.
- **Market Sale Assets:** other assets with a positive value which are not expected to play a strategically important role going forward (this includes smaller land sites, surplus operational properties and elements of the non-operational portfolio including the residential ground and chief rents).

### More Information

A list of the Council's property assets is published on the Council's website under the *Transparency section*

## 3. Asset Disposal & Development Principles

This section of the policy sets out the key principles the Council will use when considering disposals and development across all the categories of land referred to in the previous section. Their application needs to be considered on an asset by asset basis and will reflect local market conditions and any specific proposals for the use of the site.

### Value for Money

As a rule, the Council will seek to achieve a best consideration outcome given any agreed mix of uses. In exceptional or compelling circumstance the Council may agree to dispose at less than best consideration however this is unlikely to occur when the proposed transaction is set in a purely commercial context.

## APPENDIX 2

Where the Council is one of a number of landowners participating in a development scheme, we will work with them where possible, including to optimise the mix of uses and to get the best deal for the public sector as a whole.

### Working with Local Plans

The Council's approach to the maximisation of outcomes from the development and disposal of land will be determined by local planning policies. Where sites have a planning allocation, we will work within that, unless it is agreed that a revised approach is appropriate. Where there is uncertainty, the Council will work with its partners to consider options for use taking account of wider policies and objectives and site viability.

### Supporting Economic Development and Regeneration

The Council does not intend to hold assets longer than necessary. In considering the timing and nature of the disposal the Council will seek to ensure that its asset disposals complement the objectives for the economic development and regeneration of an area.

Factors that could influence the timing of disposal include:

- Strategic objectives for the area – for example if a major regeneration scheme is planned, the Council would not release its assets to market in advance of the wider scheme without appropriate contractual conditions;
- Local market and competing supply – the Council would not want to 'flood the market' if other land is already in the market and undeveloped; and
- Market appetite – where appropriate, the Council will carry out de-risking activities to improve the attractiveness of a site to potential purchasers and speed up its development once sold.

### Promoting Development and Avoiding Residual Liabilities

In disposing of sites in areas where market conditions are difficult, the Council will consider a flexible approach that will incentivise development. We will do that on our own land and encourage our partners to do the same.

When disposing of sites the Council will aim to achieve a clear, sustainable exit having secured the desired uses and achieved financial close. The Council will seek to avoid residual liabilities. The principal circumstance where the Council would anticipate an ongoing role post development and financial completion is through longer term joint ventures or Local Asset Backed Vehicles.

### Partner Selection

When disposing of developable land, the Council will seek to ensure that the purpose for which it is being developed meets the needs of the Council and the local community (using the planning system as the primary means to achieve this objective). The partner selection process should be transparent and identify the best placed organisation to develop the agreed use based on value for money and deliverability of proposals – both the construction phase and long-term management.

Given the inherent variability of each asset, each disposal is unique and whilst we set out below some of the core principles influencing the choice of disposal route, the Council will consider each case on its merits.

Disposals can be progressed by two broad methods:

- Competitively – there is a general presumption that such competitive disposals will be openly advertised and can include tender and auction; and
- Non-competitively – sales by private treaty or negotiated disposals.

## APPENDIX 2

The guidance for Local Government bodies is that a competitive process should be the norm and that disposal by private treaty is the exception. To go down the negotiated disposal route there is a requirement to demonstrate that a non-competitive disposal will result in a better overall outcome for the public sector. This could include compelling practical reasons relating to the nature of the site and/or the identified party's status as a special or unique purchaser capable of extracting the full development potential (in terms of value, quality or outputs as appropriate).

There are two options in respect of competitive disposals:

- Single Stage Disposal - For simple sales or sales requiring a quick process then a single stage process is possible with interested parties
- Multi Stage Disposal – For larger, more complex propositions, the alternative is to adopt a multi-stage process with the first stage being a quick and efficient process to enable short-listing of the interested parties.

The Council will continue to adopt a case by case assessment relating to whether disposal opportunities have characteristics which raise the potential for the opportunity to be considered as a Procurement of Works. This technical assessment in conjunction with the view of local stakeholders and consideration of challenge risk will inform the case by case assessment. The incorporation of the EU Procurement Directive into English Law establishes that property transactions are outside the scope of the Regulations however this position becomes less clear when a simple sale is not adopted and where there is potential for the disposal objective to fall within the Works and Services requirements.

### Community Led Approaches

The Council is committed to ensuring a level playing field in its partner selection, including community-led approaches. A community-led approach could compete on an even footing in a competitive market, either operating on its own or through partnership with a more experienced developer, Registered Provider or other private or public-sector partner. There is no defined set of circumstances in which a community-led approach should or should not work however there are some factors which are particularly beneficial to the success of the model:

- Local member support and / or a positive relationship between the group and the local Ward Members;
- A lead VCF organisation or other public body with time and resource to commit to enabling the community to come together and deliver the scheme;
- A shared commitment to a community led approach from all partners involved in the project;
- Availability of external expertise with experience in the sector;
- Strong and coherent community groups with a clear shared vision; and
- A business plan that clearly sets out a financially sustainable approach to the long-term management of the asset.

### Self-build

Where Council owned plots have been identified as suitable for self-build, the approach to disposal will depend on the nature of the site. Individual plots may be sold directly to market, e.g. auction or through local advertisement. Small sites may be sold to organisations that can help facilitate bringing forward self-build schemes for self-builders or groups of self-builders. These plots are likely to be single infill plots, or small sites that can accommodate a small number of plots, rather than allocations within larger sites, however the Council will explore any statutory obligation to secure self-build plots within larger third-party developments.

The Council has established a 'register of interest' for people who may seek a self-build or custom build solution. The Council may need to consider introducing a further Policy to decide whether to sell sites/plots by way of an open market disposal for best price, or whether it may wish to prioritise which households may be given first/priority refusal for sites/plots.

## Disposal Process

The main stages in the disposal process are as follows;

- Operational property closed, declared surplus to operational requirements and available for disposal by relevant Cabinet Member
- Non-operational property declared available for disposal by Cabinet Member Regulatory, Compliance and Corporate Services.
- Pre-disposal actions and activity (planning briefs or outline planning consent, disposal terms, method of disposal, etc) agreed by relevant Officers and implemented.
- The disposal will usually be handled by the Council's property team unless it is of a specialist nature that requires external expertise or resource
- In the case of open market disposals, the asset will be fully marketed using the Internet and more traditional advertising methods.
- The disposal process will take into account any moratorium periods under Community Right to Bid
- All offers will be considered for compliance with tender conditions and undergo a value for money assessment, initially by the relevant Council officials, before being reported as follows
  - Value: < £100,000 – Decision delegated to Head of Corporate Resources
  - Value: £100,001 to £500,000 – Decision made by Cabinet Member Regulatory, Compliance and Corporate Services
  - Value: > £500,001 – Decision made by Cabinet.
- After publication of the decision and progression through the call-in process (if instigated) the decision will be implemented and Legal Services instructed to deal with the requisite legal documentation and conveyance.
- Progress of disposal activity monitored by the Cabinet Member Regulatory, Compliance and Corporate Services

## Disposals for Less Than Best Consideration

Local Authorities were given power under the Local Government Act 1972 Section 123 to dispose of land in any manner they wished, the only constraint being that, except in the case of leases for less than seven years, the sale had to be for the best consideration reasonably obtainable. Any other disposal at less than best consideration requires the approval of the Secretary of State.

Section 123 applies to land held for most local authority functions, but notable exceptions are disposals of land held for housing purposes within the HRA or otherwise let on secure tenancies (governed by the Housing Acts), and for planning purposes (governed by planning legislation). Until recently the 1998 General Disposal Consents enabled disposals at an undervalue in certain limited circumstances, e.g. disposals to a named charity.

It is Government policy that Local Authorities should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, the Government recognises that there may be circumstances where an Authority considers it appropriate to dispose of land at an undervalue. However, when disposing of land at an undervalue, Authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people. Other specific consents/processes may be required for disposal of land held for particular purposes (e.g. charitable land, schools, allotment land or open spaces).

The General Disposal Consent (England) 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. Authorities are granted consent in circumstances where the undervalue does not exceed £2 million and where the disposing Authority considers the disposal is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the whole or any part of its area or all or any persons resident or present in its area. It will be for the Council to decide whether any particular disposal meets these criteria or continues to require specific consent under the 1972 Act.

## APPENDIX 2

All disposals need to comply with the European Commission's State aid rules. When disposing of land at less than best consideration, Authorities are providing a subsidy to the owner, developer and/or occupier of the land. Where this occurs, Authorities must ensure that the nature and amount of the subsidy complies with the State aid rules. Failure to do so would render the aid unlawful.

In Sefton, sales of land or property at an undervalue have only taken place on an exceptional basis and it is not envisaged that this approach will alter.

## 4. Key Development Sites

### Options for Use and Planning

Key sites will be identified through a periodic asset review. Thereafter, the Council may choose to agree a planning brief with the Planning Department (or in some circumstances seeking an outline consent if that process would resolve significant uncertainty about the use). Having achieved sufficient certainty, the Council would seek to dispose of the site and transfer the majority of the planning process to the developer, to allow them to bring their scheme through the local planning process.

Where assets are not yet allocated the Council will work with the Planning Department through the statutory planning process so that appropriate sites can be brought forward in due course with suitable infrastructure. The Council's planning policies will set out the requirements for sustainability and other elements of design and build quality on each site. If the Planning Department propose specific standards which relate solely to the Council's land holdings, we would seek further discussions around project viability.

Sites will predominantly be disposed of on a best consideration basis unless the provision of affordable housing has been prioritised in excess of the proportion required by current planning policies, subject to viability.

The Council will normally dispose of sites via open market means and invite bids however the Council is not bound to accept the highest financial bid. It may decide to accept a lower financial bid from a Registered Provider or equivalent, where they would seek to use a site to provide affordable housing, and the Council deems that the requirement for affordable housing outweighs the financial offer. Likewise the Council may limit the disposal of a site to offers from Registered Providers or equivalent only, where the Council is pro-actively seeking to secure the provision of affordable housing, or specialist housing to meet specific needs. Development briefs will be used to set out Council's specific requirements.

### Investment Prior to Disposal

The Council may invest to de-risk the site prior to disposal. As a principle, the Council proposes to undertake the minimum necessary pre-disposal work. Often for key development sites there will be some complexity relating to planning, title, site conditions or environmental status. As many as possible of the investigations relating to such matters should be transferred to the purchaser however when the return on investment can be demonstrated and the site de-risked further work will be carried out.

In order to promote development and reflect market risk, larger sites may need to be sub-divided into manageable development parcels and disposed in phases. If some primary infrastructure is required to achieve that division into phases, the Council will need to consider how it can be funded, given local government expenditure constraints. Wherever possible, the Council will look to development partners to provide this infrastructure and use land value and adaptable payment terms to support this, (e.g. an open book approach with the provision of infrastructure reflected in the land value paid).

The Council will consider undertaking infrastructure works which would help bring forward self-build schemes and sites. The ability of the Council will be dependent on availability of funding to carry out such work.

## Disposal Routes

Key development sites will generally be disposed of through a multi-stage disposal or through OJEU compliant procurement. We will generally dispose of strategic land on a single site basis. Smaller development sites may be best disposed of as a package of more than one site. In some cases, the best value for money route may be through a joint venture or Local Asset Backed Vehicle.

Joint ventures would normally be considered in the case of substantial or complex sites (with an expected construction phase of over four years) and an options appraisal would be carried out prior to selecting the preferred route. If local partners have developed or are developing a joint venture vehicle, the case for linking to or investing the Council's assets in that vehicle would be considered on a case by case basis and be subject to state aid and tax considerations.

The Council may also develop its own internal mechanisms to develop housing on land in its ownership. In this case the Council may choose not to expose the site to the market.

## Disposal Terms

The terms of disposal will be considered on a case by case basis and reflect the development economics of a particular site and the risks associated with its development. In deciding which of the following broad sets of terms to use, the Council will seek to maximise the rate of development on a site (given the local market) whilst ensuring value for money. The decision on terms will focus on the optimal risk transfer to balance those objectives.

In some situations, the terms will be set before the disposal process starts, in other cases the disposal process will be used to test different terms to assess which offers the best value for money for that site. For smaller, self-contained sites where infrastructure costs are low and / or sites where demand is strong, an upfront payment may be appropriate as the sole basis of going to market.

For other sites, we would typically ask bidders to respond on one or more of three principal bases:

- upfront payment with overage;
- payment on milestones, for example at agreement of building lease, start on site, completion of phase (with overage), subject to a longstop date; and
- percentage share of sale values as units are sold, subject to a longstop date with a specified payment sum at that date.

Generally we would look to dispose of sites or phases at a scale where the repayment period would be up to five years, but an extended period would be considered if the specific circumstances direct that the extended time period would deliver a better outcome for the Council. Where payment is in the form of a percentage of receipts (the third option above), the longstop date should be within a five-year period, but with the ability to extend if circumstances dictate.

Bids will be compared on consistent basis which may include a discounted cash flow analysis.

When the Council disposes of its own land for residential development purposes, it will consider including provisions that require developers to sell houses on a freehold basis. This provision will still apply if the developer subsequently disposes of the land to another company.

## Overage

Overage is usually defined as a method to capture, "an element of improved development value where there is a general uplift in the market or where the market value of the end development is not known at the time". The Council will seek to use overage alongside the base payment to capture value increases that were unexpected or uncertain at the time of disposal. This includes the situation where the market value at the end of the development exceeds that anticipated at the time of the disposal which may be as a result of

## APPENDIX 2

increased house prices, and/or improved planning permission, amongst other things. Overage will be applied to all sites with an expected value in excess of £0.25m and other sites where it is considered appropriate (e.g. large, low value sites in an uncertain market or sites where a change in planning is possible).

Contracts will also include provision for claw back, including in the circumstances where the scheme is in material breach and forfeiture provisions are triggered requiring the claw back of the undeveloped land.

### Form of Contract

In most circumstances where development outputs are expected, the Council's preferred disposal approach will be by way of Building Lease (or Licence). They will provide the Council with the ongoing legal interest in the land through to development completion thereby providing adequate protection in respect of any imposed conditions or any deferred payment arrangements.

Building Leases provide the following benefits;

- Building Leases are registrable legal interests and as such are preferred by the funders of developers. They are capable of being charged thus providing security to the funding process.
- Building Leases also afford funders adequate step in rights should a developer default.
- The Council will seek to adopt a fairly standardised format which will provide a consistency of approach to the market and should ensure disposal and transactional costs are kept to a minimum.
- The freehold may transfer to the developer or end purchasers after development completion/financial close, e.g. to a purchaser of an individual plot from a developer on completion of the sale.

The Council may also use a reversion clause in isolation or in conjunction with other control mechanisms to ensure that a preferred scheme is delivered.

## 5. Other Land and Property Assets

### Market Sale Assets

Market sale assets are those which have not been identified as making a strategic contribution to the Council's business and social objectives. These assets will generally be much smaller or less valuable than the strategic sites and / or their end use may already be clearly defined (e.g. agricultural land with little chance of achieving planning permission for development to enhance value).

The nature of these assets and the Council's requirement to reduce its financial commitment to the asset base means that we will move to disengage from these sites in as straightforward a manner as possible.

The Council will continue to engage positively to requests from existing tenants wishing to acquire the freehold of their property particularly where the transfer will support further investment and job creation. The principal considerations are as follows;

- For market sale assets a development brief would not usually be required. Subject to case by case consideration, the transaction is more likely to be a straight disposal than procurement.
- Freehold transfer would normally be used with the purchaser expected to invest or build out in accordance with planning and building regulations. Market sale assets will usually be disposed of using an upfront payment at freehold transfer.
- The Council will not hold these market sale assets longer than necessary. The prioritisation of selection of assets for disposal will be influenced by holding costs and income generated. The Council will seek to disengage early from assets with highest holding costs but may need to consider the timing of disposal of certain assets if their receipt or income is needed to balance the costs of other sites.
- Claw back provisions may be included for change of use from a prescribed purpose.

## APPENDIX 2

- For surplus parts of highways, grass verges, etc, we would generally seek to dispose on a freehold basis with a claw back condition in case of change of use. Disposal to private owners of adjacent properties may be considered if there is a clear indication that the transfer will not be contentious in the locality.
- For open space, there may be a range of potential recipients including the local Registered Provider and / or an associated community and not for profit organisations. In such cases, the Council would seek to transfer the land to such a body (preferably in perpetuity) with a clear specification of the level of ongoing management required, which will be tested for value for money and affordability. Such disposal would have due consideration to the relevant procurement rules.

Such transfers will have the benefit to the Council of reducing holding and management costs as well as ensuring that assets are managed sustainably in the future.

## 6. Disposal Programme

The Council will publish a list of the sites that it expects to bring forward for disposal over a rolling period of two years. These will be subject to review and due diligence and in practice it is likely that there will be additions and substitutions, but the purpose of publishing this information is to provide a transparent approach concerning potential disposals.

It will include a number of sites where disposal is being pursued on the basis of a review of Council assets based on the following criteria:

- Identification of strategic holdings;
- Development synergies;
- Demand from tenants or third-party interests;
- Reduction of holding costs

The listed sites are expected to be disposed over the relevant 24 months in accordance with the principles set out in this document with the aim of the realisation of capital receipts.

As set out in this document, sites will be disposed of or developers procured as appropriate. Opportunities will be advertised in due course as individual assets and sites are put forward in line with the agreed disposal programme.

## 7. Policy Review

This policy will be reviewed on a periodic basis to ensure that it takes account of any changes in professional and industry best practice and provides the Council with a fit for purpose means to review and rationalise the property asset base.