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**Report to:** Overview and Scrutiny  
Committee (Regulatory,  
Compliance and  
Corporate Services

**Date of Meeting:** 3 November 2015

**Subject:** Disposal of Surplus Council Owned Land

**Report of:** Head of Corporate Support

**Wards Affected:** All

**Is this a Key Decision?** No

**Is it included in the Forward Plan?** No

**Exempt/Confidential** No

### **Purpose/Summary**

To advise the Overview and Scrutiny Committee of the current position in respect of the asset disposal policy and process, an overview of best value and an analysis of prior years' outcomes in terms of capital receipts and how this supports the Council's Capital Programme.

### **Recommendations**

Members are asked to note the report and the process by which the Council disposes of surplus assets.

	<b><u>Corporate Objective</u></b>	<b><u>Positive Impact</u></b>	<b><u>Neutral Impact</u></b>	<b><u>Negative Impact</u></b>
1	Creating a Learning Community		√	
2	Jobs and Prosperity	√		
3	Environmental Sustainability		√	
4	Health and Well-Being		√	
5	Children and Young People		√	
6	Creating Safe Communities		√	
7	Creating Inclusive Communities		√	
8	Improving the Quality of Council Services and Strengthening Local Democracy		√	

### **Reasons for the Recommendation:**

N/A

### **What will it cost and how will it be financed?**

#### **(A) Revenue Costs**

None.

## (B) Capital Costs

None.

### Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

<b>Legal</b> The Head of Regulation and Compliance completes the necessary documentation for the disposal. The relevant legislation is Sections 123 and 128 of the Local Government Act 1972 and the General Disposal Consent [England] 2003.
<b>Human Resources</b> Not applicable.
<b>Equality</b> 1. No Equality Implication <input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated <input type="checkbox"/>
3. Equality Implication identified and risk remains <input type="checkbox"/>

**Impact on Service Delivery:** None

### What consultations have taken place on the proposals and when?

The Chief Finance Officer has been consulted and notes the recommendations of the report present no direct financial implications for the Council. However the report highlights Council establishes a target for capital receipts from property asset disposals for each financial year. A disposals programme is then established to realise this figure. At present there are sufficient assets in the disposal pipeline to deliver the target for 2015/16, but any slippage in terms of Council decision making, or satisfying conditions of disposal such as planning, could cause the receipts to fall into the following financial year. Members will be advised if this situation should arise as year-end approaches. (F3855/15)

The Head of Regulation and Compliance has been consulted (LD 3138/15) and any comments have been incorporated into the report.

### Are there any other options available for consideration?

None

### Implementation Date for the Decision

N/A

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## **Background Papers:**

There are no background papers available for inspection.

### **1. Introduction**

- 1.1 Cabinet approved the adoption of a formal Asset Disposal Policy on 27<sup>th</sup> March 2014. The policy sets out the principles, methodology and procedural aspects of how the Council selects assets for disposal and proceeds to dispose them. A key element of the process is the identification and approval of a shortlist of assets to be disposed in any particular period.
- 1.2 However, it is recognised that there may be occasional requests from interested third parties, principally tenants of council owned freehold properties, to acquire the Council's land interest. If it is deemed to be in the Council's best interest to pursue these expressions of interest and that the disposal is in accordance with policy criteria then Cabinet Member Regulatory, Compliance and Corporate Services is consulted and agreement sought to make an addition to the active disposal list.
- 1.3 A list of assets potentially available for disposal is maintained by the Property and Building Services Department and from this long list a short list is produced each year in conjunction with the capital bidding process which ultimately determines the Council's Capital Programme. Dependent on the size of the Capital Programme, a target is set in terms of capital receipts required to contribute to the cocktail of funding that is identified to deliver the programme. The Capital Programme is developed in a considered way to arrive at the schemes that best support the Council's stated aims and priorities.
- 1.4 The disposal short list identifies the assets that could be brought forward for disposal within the next 12 to 24 months to form a pipeline of transactions which will aim to realise the identified receipts target. An appropriate disposal method is selected for each asset in consultation with Cabinet Member, Regulatory, Compliance and Corporate Services. The disposal terms for each asset will be reported in accordance with the Council's Asset Disposal Policy.
- 1.5 In the interests of improved transparency, an edited version of the disposal list, less any commercially confidential content, is available to the public on request.

### **2. Disposal Process**

- 2.1 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
  - Preliminary consideration of the case for disposal of all surplus assets and approval to proceed by the Strategic Capital Investment Group (SCIG).
  - Pre-disposal actions and activity (planning briefs or outline planning consent,

disposal terms, method of disposal, etc.) agreed 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 Intranet 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, if applicable, and undergo a value for money assessment, initially by the relevant Council Officers, before being reported as follows
  - Value: < £100,000 – Decision delegated to Head of Corporate Support.
  - Value: £100,001 to £499,999 – Decision made by Cabinet Member - Regulatory, Compliance and Corporate Services
  - Value: > £500,000 – Decision made by Cabinet.

2.2 After publication of the decision and progression through the call-in process (if instigated) the decision will be implemented and the Head of Regulation and Compliance instructed to deal with the requisite legal documentation and conveyance.

2.3 Progress of disposal activity monitored by the Cabinet Member and SCIG.

### **3 Disposals for Less Than Best Consideration**

3.1 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.

3.2 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).

3.3 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.

3.4 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).

- 3.5 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.
- 3.6 It will be for the Council to decide whether any particular disposal meets the well-being criteria, however the Council is obliged to ensure that best value is achieved and that any sacrifice of financial value is fully justified by the benefits sought or provided. In some cases this is achievable, in others not, despite a proposal being attractive at face value.
- 3.7 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 and could lead to legal challenge
- 3.8 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 Analysis of Prior Years Capital Receipt Achievement**

- 4.1 The Council establishes a target for capital receipts from property asset disposals for each financial year. A disposals programme is then established to realise the target figure. The following table provides a breakdown of achievement against target for recent years;

##### **Non-housing Capital Receipts (Net of HMR Receipts)**

<b>Year</b>	<b>Target</b>	<b>Achieved</b>	<b>Balance</b>	<b>Comments</b>
<b>2013/14</b>	<b>£1,000,000</b>	<b>£2,881,739</b>	<b>+£1,881,739</b>	<b>Inflated by Strand lease restructuring receipt.</b>
<b>2014/15</b>	<b>£1,000,000</b>	<b>£721,490</b>	<b>- £278,510</b>	<b>Insufficient pipeline of disposals due to disposal moratorium in 2013.</b>
<b>2015/16</b>	<b>£2,000,000</b>	<b>£116,425</b>	<b>-£1,883,575</b>	<b>Position as at 22/10/2015.</b>

- 4.2 Currently there are sufficient assets in the disposal pipeline to deliver the target for 2015/16, but any slippage in terms of Council decision making or satisfying conditions of disposal such as planning, could cause the receipts to fall into the following financial year.

#### **5 Asset Disposal Policy**

- 5.1 It is proposed to carry out a minor refresh of the Policy to take account of Government policy developments particularly concerning Custom/Self Build.

5.2 The proposed changes will be recommended to Cabinet Member - Regulatory, Compliance and Corporate Services in the first instance then Cabinet and Council in due course. It is not anticipated that the established principles and protocols in the current policy will be substantively changed.