

Executive Report

Ward(s) affected: All

Report of Director of Strategy

Author: Mark Appleton, Asset and Property Manager

Tel: 01483 444364

Email: Mark.Appleton@guildford.gov.uk

Lead Councillor responsible: Joss Bigmore

Tel: 07974 979369

Email: Joss.Bigmore@guildford.gov.uk

Date: 21 January 2020

Asset disposal for less than best consideration

Executive Summary

The Council owns a large property portfolio, the majority of which is held either for investment purposes or for operational purposes such as the Millmead offices or the day centres.

The Council owns a small number of operational properties that it retains to enable other organisations to support the general wellbeing of our communities. Examples range from local sports clubs to organisations such as Guildford Action supporting our work with homeless people. These organisations are generally either third sector or voluntary in nature and have limited financial means. The Council, by allowing them to rent one of its properties at below market rental levels, enables services to be provided that might otherwise not be.

The decision to dispose of its property assets at less than market value currently rests in all cases with the Executive. For cases where the proposed reduction is relatively small the process is somewhat burdensome. This report proposes a streamlined approach to such cases and delegating the decision to officers in consultation with the Lead Councillor for Finance and Assets.

The Council would also benefit from introducing a clear process for assessing disposals of land and buildings where the disposal would be below market value. This report proposes the Council also adopts a new procedure to follow to provide a consistent approach to decision making in these circumstances.

Recommendation to Executive

That the Executive:

- (1) Approves the grant of the nine leases with terms as set out in **Appendices 3 and 4**.
- (2) Adopts a new procedure set out in **Appendix 1** for the Council to follow when considering and approving the disposal of land and buildings (including leases) for less than best consideration.
- (3) Authorises the Head of Asset Management, in consultation with the Chief Finance

Officer, the Lead Councillor for Finance and Assets, Customer Service and the relevant lead councillor, to accept terms for the disposal of assets for less than the best consideration that can reasonably be obtained where the undervalue (the difference between the market value and the proposed transaction) is £30,000 or less and the lease term is 15 years or less.

Reasons for Recommendation:

To secure the letting of various Council-owned buildings that will both generate an income for the Council and provide accommodation to community-based organisations that support the general wellbeing of our communities and apply a robust but streamlined approach for future disposal of assets for less than best consideration.

Is the report (or part of it) exempt from publication? No

1. Purpose of Report

1.1 To gain Executive approval for:

1. the Head of Asset Management to take immediate action to complete the leasing of ten Council-owned buildings for less than best consideration to generate an income for the Council and provide accommodation to community-based organisations that support the general wellbeing of our communities.
2. a proposed new procedure for considering and appraising disposals for less than best consideration.
3. delegated authority to the Head of Asset Management, in consultation with the Chief Finance Officer and Lead Councillor for Finance and Assets, Customer Service, to approve the disposal of assets for less than best consideration in certain, pre-defined circumstances so that cases can be dealt with in a faster and more efficient manner.

2. Strategic Priorities

2.1 Central to the Council's Corporate Plan is the Community theme and our strategic priorities to support older, more vulnerable and less advantaged people in the community and enhancing sporting, cultural, community and recreational facilities. Allowing appropriate organisations to deliver such services using some of our buildings can be an effective way of achieving the outcomes we seek. In appropriate cases, our support can be shown by selling or our assets at less than market value or leasing at rental levels that are affordable to them.

3. Background

3.1 The Council is in the position of a trustee in relation to the land that it holds on behalf of the community. It has a statutory duty under the Local Government Act 1972 ("1972 Act") not to dispose of its land or properties for a consideration less than the best that can reasonably be obtained (except in the case of short tenancies for a term of 7 years or less), except with the express consent of the Secretary of State.

- 3.2 However, legislation recognises that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue, that is, less than could be obtained on the open market without the need for Secretary of State consent.
- 3.3 The 1972 Act General Disposal Consent (England) 2003 provides that where an authority disposes of any interest in land and such disposals are at less than the market value, specific consent from the Secretary of State is not needed. To do so:
- 1) the Council must demonstrate that the purpose of the disposal is likely to contribute to the achievement in respect of the whole or any part of the Council's area or all or any persons or residents in its area of any one or more of the following ("the Relevant Grounds"):
 - the promotion or improvement of economic wellbeing;
 - the promotion or improvement of social wellbeing;
 - the promotion or improvement of environmental wellbeing; and
 - 2) the difference between the market value and the proposed consideration for the disposal must not exceed £2 million.
- 3.4 Circular 06/03¹ sets out the requirements of the General Disposal Consent with steps to follow when disposing of land or property for less than best consideration. It is recommended that local authorities comply with normal and prudent commercial practices associated with selling land and buildings and that they obtain valuations from a professionally qualified valuer to ascertain the likely amount of undervalue.
- 3.5 Whilst the Council already has a land disposals guidance document setting out the Council's own best practice for selling land and buildings at best consideration, it is proposed the Council adopts an additional procedure for appraising disposals of freehold interests, leaseholds and easements for less than best consideration.
- 3.6 The Council has around 30 assets within the property portfolio that are leased out to third party organisations on rental terms less than market rent. Typically, tenants benefit from a rent reduction in return for the community benefit and involvement they offer. Several are community and charitable organisations leasing properties from the Council who cannot afford to pay a market rent. To encourage the community benefits they bring to the area, the Council assisted these organisations at the time of letting by agreeing a reduced rent. **Appendix 2** lists current leases where the lease terms allow the rent received to be less than market rent.

4. Proposed procedure for disposal for less than best consideration

- 4.1 This report proposes the Council adopts a new procedure for all future disposals of land and buildings for less than best consideration that can be reasonably obtained. The procedure being proposed provides greater

¹ Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained

transparency for the community-based organisations that we look to help whilst safeguarding the wider interests of the Council taxpayer.

- 4.2 In most cases the disposal will involve granting a lease, but the procedure will also apply to the disposal of a freehold interest and the granting of easements for less than best consideration.
- 4.3 It will not apply in cases involving options or development land appraisal that could result in the Council accepting less than best consideration that can reasonably be obtained. Such assessments and valuations must comply with the requirements of the 1972 Act.
- 4.4 The proposed procedure is provided at **Appendix 1**.
- 4.5 The procedure requires key terms of the proposed transaction to be considered alongside an assessment of the undervalue provided in the form of a valuation report. When assessing the undervalue, Circular 06/03 sets out a detailed procedure that compares the capitalised value of the proposed transaction against the capitalised value of the anticipated consideration to be paid or reduced rental stream to be received, expressed at today's value².
- 4.6 For leases, the Circular sets out how to compare the income stream forgone over the life of a proposed lease at a reduced rent, to the income stream that would have been achieved if the property was let at market rent. An example of what the valuation might look like is shown below, where:

- 1) the capital value of the lease equals the reduced rental income for 10 years plus an assumed market rent from 10 years onwards:

Lease length	10 years
Market rent	£3,000 per annum
Rent reduction	100% for 10 years
Capitalised value (restricted value)	£15,610 in today's values

- 2) compared to the capital value equal to the rental income stream of leasing the property at a market rent in to perpetuity:

Lease length	Perpetuity
Market rent	£3,000 per annum
Rent reduction	0%
Capitalised value (unrestricted value)	£35,295 in today's values

- 3) Value of forgone income, equivalent to the undervalue:

Unrestricted less Restricted Value	£19,685
------------------------------------	---------

² Values expressed at today's value means that the calculation of value allows for a change in the value of money over time. For example, £3,000 today is not worth the same £3,000 in one year's time due to the impact of inflation and interest over the 12-month period. The capitalised income stream is calculated using a percentage reduction to allow for this.

- 4.7 The schedule of leases at **Appendix 4** illustrates the major factors that can impact the degree to which the unrestricted and restricted capitalised value of a lease differ. These include the:
- 1) length of term over which the reduced rent applies – the schedule shows leases ranging from 1 year to 50 years
 - 2) level of percentage discount to market rent – the schedule shows leases ranging from 14% to 100% discount
 - 3) level of market rent – the schedule shows leases ranging from £2,000 to £45,580 per annum
- 4.8 When determining the undervalue of a proposed transaction, the valuer is also required to take account of other non-property benefits to the Council that the authority chooses to impose. For example, these might include direct or indirect benefit to the Council such as operational savings, or income generated as a result of the transaction where the authority has an associated statutory duty. The Circular refers to these as 'voluntary conditions' monetary value of such benefits should be included in the valuers report.
- 4.9 The organisations supported by the Council have greatly different financial arrangements which means their ability to afford the market rent or premium of a property also varies. Under the new procedure, the Council team will assess an organisation's accounts to determine what they can afford to pay in rent and this in turn will determine the level of support by way of a reduced rent or premium that may be considered and offered by the Council.
- 4.10 In practice, community-based organisations such as sports clubs are least likely to be able to afford market rents and will see the greatest reduction. Organisations with greater resources or having ability to generate income will see the least reductions.
- 4.11 It is recommended the Council adopts this new procedure to enable a consistent, robust and transparent approach to decision making when disposing of assets for less than best consideration.

5. Proposed amendments to delegated authority

- 5.1 Whilst the scheme of delegation to officers currently authorises the Head of Asset Management, in consultation with others, to accept lease terms at best consideration reasonably obtainable, it does not extend to any granted at less than best consideration. Consequently, each case needs to be considered and approved by the Executive.
- 5.2 In order to deal with cases more effectively, it is proposed that the procedure for seeking Executive approval for disposal be streamlined. It is suggested that the scheme of delegation be amended to allow certain decisions, where the amount of income forgone is not too great, to be made under a delegated authority granted to the Head of Asset Management with appropriate consultation.
- 5.3 The procedure proposed in section 4 above is objective; however, any delegated authority should be limited in two ways:

- (i) The amount of assessed income forgone (the undervalue) should not exceed £30,000; Should the £30,000 be exceeded, the decision should remain with the Executive.
- (ii) The maximum length of lease to be considered under delegated authority would be 15 years, should a longer length of lease be required, this decision would remain with the Executive.

5.4 Executive is asked to approve the draft wording for the proposed amendment to the scheme of delegation as set out below:

The Head of Asset Management in consultation with the relevant lead councillor, the Lead Councillor for Finance and Assets, Customer Service and the Chief Finance Officer, be authorised to accept terms for the disposal of assets for less than the best consideration that can reasonably be obtained where the undervalue (the difference between the market value and the proposed transaction) is £30,000 or less and the lease term is 15 years or less.

5.5 The above delegation would not preclude any such decision which it was determined should be more properly taken by the Executive, in particular those that include an allowance for non-property financial benefits the Council obtains through the organisation delivering a service to the community.

6. Proposed grant of leases for ten Council-owned operational buildings

6.1 Asset Management officers have agreed terms for nine new leases across ten buildings, some of which are lease renewals for existing tenants. All are leases to community organisations at a rent less than the market rent achievable for the property.

6.2 In seven cases, the proposed tenants are sporting and/or community clubs that provide facilities for the local community and promote and improve the social, economic and environmental wellbeing of the Council's area. There is also a retail unit for use by The Bike Project, office space for the Community Foundation for Surrey at Millmead and an historic barn for use by Wanborough Barns Management Committee. All support the Council's Community fundamental theme and strategic priorities with further detail provided at Appendices 3 and 4.

6.3 In accordance with current arrangements, the Executive is asked to approve the proposed leases on terms that represent a disposal for less than best consideration and to authorise the Head of Asset Management to take such actions as are required to complete the grant of the leases to the organisations listed in **Appendices 3 and 4**.

6.4 The proposed leases have been assessed using the new procedure and regard has been had to each organisation's ability to pay the rent when arriving at the rental discount.

7. Consultations

7.1 The Lead Councillor for Finance and Assets, Customer Services has been consulted and supports the new procedure and the recommendations set out

in this report. This includes the proposed level of income forgone (the undervalue) when determining if a decision should be made under delegated authority and when it would be more appropriate for the decision to be made by the Executive.

- 7.2 The Property Review Group has considered the report and supports the adoption of the new procedure.
- 7.3 Local ward councillors have been informed of the proposed leases to the nine organisations where the disposal would incur an undervalue.

8. Key Risks

- 8.1 The proposals within this report will allow the Council to demonstrate a consistent approach when considering the outcome of applications for disposals at less than best consideration, thereby reducing the risk of inconsistent decisions when making the assessment.

9. Financial Implications

- 9.1 Agreeing to disposals for less than best consideration has a financial impact on the Council that needs consideration as part of the approval process on whether to go ahead with a proposed transaction. The proposed procedure for assessing transactions will allow the undervalue to be explicitly assessed at the point of seeking approval, whether by delegated approval or Executive decision. This will provide greater clarity and transparency over the level of the undervalue, or opportunity cost lost, in exchange for the wellbeing benefits being provided as a result of the disposal.
- 9.2 For the leases described in section 6 where the Executive is asked to approve the new lettings for less than best consideration, please see the table in **Appendix 4** illustrating the proposed levels of rent for each proposed new lease compared to the market rent and the potential undervalue or opportunity cost lost.
- 9.3 With the proposed disposal at less than best consideration there is not a loss to the revenue account budget.

10. Legal Implications

- 10.1 The Council would be following good practice guidance by adopting guidelines to enable it to achieve consistency in its decision-making process in relation to the disposal of assets for less than best consideration. Care has been taken to ensure the procedure is not based on legally irrelevant considerations and will ensure they are not applied so rigidly that they preclude the proper exercise of discretion in each case.
- 10.2 A person who is aggrieved by the Council's decision may apply to the court for judicial review of the decision under Part 54 of the Civil Procedural Rules. The three main heads of challenge are:
 - (a) Illegality (ultra vires).
 - (b) Irrationality (Wednesbury unreasonableness).
 - (c) Procedural impropriety (breach of natural justice).

- 10.3 The Council should ensure that it complies with usual and commercial best practice when determining whether to dispose of land for less than the best consideration reasonably obtainable. In addition, checks should also be made to ensure that any specific proposal to take such action falls within the terms of the General Disposal Consent.
- 10.4 For each proposed transaction, the Council should obtain the valuation of the market value (the unrestricted value) and the proposed transaction (restricted value) from a professionally qualified valuer as to the likely amount of any undervalue.
- 10.5 All disposals will comply with the European Commission's state aid rules. A disposal for less than best consideration means that the Council is providing a subsidy to the tenant of the land and property. However, because of the low level of rent reduction relating to each individual case it is unlikely that this will be of concern.
- 10.6 The Council should ensure that it complies with any other procedural requirements that may be necessary to dispose of a particular area of land, such as those required on a disposal of open space land.

11. Human Resource Implications

- 11.1 No human resource implications apply.

12. Equality and Diversity Implications

- 12.1 A screening Equalities Impact Assessment has not been undertaken. However due consideration is given to relevant protected characteristics and persons when disposing of assets for less than best consideration by supporting charitable and community groups who are in turn required to demonstrate what wellbeing characteristics they would provide to the wider community.
- 12.2 This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from this report.

13. Climate Change/Sustainability Implications

- 13.1 No relevant climate change/sustainability implications apply.

14. Summary of Options

- 14.1 Executive has the option to agree to the proposals set out within this report which will provide efficiency savings and allow the Council to consider matters in a consistent, robust and transparent manner. Alternatively, should Executive opt not to approve the recommendations to amend the scheme of delegation, each application for a disposal for less than best consideration will require Executive approval.

15. Conclusion

- 15.1 An approved procedure for disposals for less than best consideration will allow the Council to demonstrate that a consistent approach to decisions

about land disposals has been applied and will provide clarity that the agreement of such transactions has used a step by step process.

- 15.2 A new delegated authority for the Head of Asset Management to approve certain disposals for less than best consideration will provide efficiency to agreeing such terms and completing transactions where the undervalue is not significant.
- 15.3 All the proposed transactions for the nine new leases set out in **Appendix 3** support the Council's Community fundamental theme and strategic priorities and as such should be supported.
- 15.4 An annual report will be provided to the Executive, summarising the transactions at less than best consideration.

16. Background Papers

None.

17. Appendices

Appendix 1: Procedure for asset disposal for less than best consideration

Appendix 2: Schedule of properties let for less than best consideration on terms where the rent payable is less than market rent

Appendix 3: Asset disposal for less than best consideration - Description of organisations and proposed lease terms that the Executive is asked to approve

Appendix 4: Asset disposal for less than best consideration - Schedule of proposed leases that the Executive is asked to approve