

Appendix 1 – Procedure for Asset Disposal for Less than Best Consideration

This procedure applies to the disposal of a freehold interest, disposal of an asset in the form of granting a lease, assigning an unexpired term on a lease and the granting of easements for less than the best consideration that can reasonably be obtained where the difference between the unrestricted value of the land and the consideration or restricted value of the land does not exceed £2,000,000 (two million pounds).

The Council will follow these procedures in order to:

- 1) determine if a disposal of land and buildings will achieve best consideration reasonably obtainable in accordance with s123 of the Local Government Act 1972 (“1972 Act”) and if not,
- 2) assess and consider the terms of the proposed disposal for less than best consideration and the ‘undervalue’ in accordance with the 1972 Act General Disposal Consent (England) 2003¹, in order to satisfy itself that it will help the Council to secure the promotion or improvement of the economic, social or environmental wellbeing of its area.

This procedure does not cover circumstances where the Council wishes to grant an option or an option holder wishes to exercise an option on land which the Council holds, or development land appraisal that could result in the Council accepting less than best consideration that can reasonably be obtained. Assessments and valuations of such disposals must also comply with the requirements of the 1972 Act with additional calculations and considerations on a case by case basis set out in the Technical Appendix of the Circular. Nor does it apply to disposal of land held under powers derived from the Housing Act 1985.

Legal Context

The Council is in the position of a trustee in relation to the land that it holds on behalf of the community. Therefore, it has a statutory duty to sell land at the best price reasonably obtainable.

Generally, the Council cannot dispose of its land for a consideration less than the best that can be reasonably 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. However, the government recognises that there may be circumstances where a local authority considers it is appropriate to dispose of land at an undervalue where it is satisfied that the circumstances warrant such an action.

Specific consent is not required for the disposal of any interest in land that the Council considers will help it to secure the promotion or improvement of the economic, social or environmental wellbeing in respect of the whole or any part of the Council’s area or all or any persons or residents in its area, and where the undervalue does not exceed £2 million.

The Council should comply with usual and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue. Please see below.

The 2003 Consent does not preclude judicial review of a decision to make a disposal at an undervalue.

Bases of Valuation

The procedure requires the valuer to provide the following figures:

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”

Unrestricted Value – which is the best price that is reasonably obtainable for the property, which is the market value of the land or property.

Restricted Value – which is the market value of the land or property having regard to the terms of the proposed transaction.

Voluntary conditions – which is the value of any term or condition of the proposed transaction that the Council chooses to impose that provide a direct or indirect benefit to the Council that can be assessed in monetary terms, for example, operational savings.

In assessing value, the valuer must have regard to the General Disposal Consent 2003 and its detailed requirements set out in the technical appendix to the requirements of the RICS Valuation Standards for the UK VPGA 17²

Considerations when deciding whether to dispose of an asset for less than best consideration

This procedure sets out the guidelines to follow when making a decision whether by delegated authority or Executive and requires the approver to consider, review and appraise a proposal and satisfy themselves that the:

- a) purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following in respect of the whole or any part of its area, or of all or any person resident or present in its area:
 - i) the promotion or improvement of economic wellbeing
 - ii) the promotion or improvement of social wellbeing
 - iii) the promotion or improvement of environmental wellbeing.
- b) difference between the unrestricted value of the land to be disposed of and the consideration or restricted value of the land does not exceed £2,000,000 (two million pounds).
- c) Council will/has complied with usual and commercial best practice when seeking to dispose of land for less than the best consideration reasonably obtainable and checked to see that any specific proposal to take such action falls within the terms of the General Disposal Consent.
- d) Council has obtained a detailed valuation report of the interest to be disposed which clearly states the difference between the unrestricted value of the interest to be disposed and the consideration to be accepted, the date of which is no earlier than six months before the transaction completion is due. The valuation should have been undertaken and signed by a qualified valuer (a member of the RICS).

Decisions involving the disposal of a freehold interest for less than best consideration

Regardless of whether the decision is by delegated authority or Executive³, the approver must have considered a written assessment of the proposed transaction noting the reasons for disposing at an undervalue, the key terms and any restrictions to be imposed by the

² RICS Valuation Global Standards 2017: UK National Supplement VPGA 17 “Local authority disposal of land for less than best consideration in England and Wales

³ DRAFT - The Head of Asset Management has delegated authority, in consultation with the relevant lead councillor, the Lead Councillor for Finance and Assets and the Chief Finance Officer, 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 £20,000 or less. In all other cases, the decision remains with the Executive.

Council and satisfy themselves that of the specified conditions set out in the General Disposal Consent (England) 2003.

Decisions involving the disposal (grant) of a leasehold interest for less than best consideration

To ensure that disposals of leasehold interests for less than best consideration are administered in a consistent manner, this procedure provides steps for the approver to follow in order to satisfy themselves that:

- 1) the Council is leasing its land and buildings to organisations that fall within a group that the Council wishes to support in helping it to achieve the Council's wellbeing objectives (Stage 1)
- 2) the Council is providing financial support in the form of a reduced rent or premium that is directly proportional to the amount the organisation cannot afford (Stage 2), and
- 3) the conditions of the lease and the benefits gained from leasing to the particular organisation would provide all the benefits the approver expects can be achieved in order to promote or improve the economic, social or environmental wellbeing of the Council's area (Stage 3)

Organisations that fall within a group that the Council wishes to support will be invited to apply for the grant of a lease for less than best consideration. The three-stage application process will involve the prospective tenant completing an Asset Disposal At Less Than Best Consideration Application Form, provided at Annex 1.

Application Stage 1 – Organisations will be required to show that they fall within the following group that the Council wishes to support in helping it to achieve the Council's wellbeing objectives are:

Trust Deed - Company Limited by Guarantee - Community Interest Company -Not for Profit - Unincorporated Association – Charitable Trust –Charitable Incorporated Organisation – Charitable Company – Voluntary Organisations – Community Organisations – Social Enterprises

If the organisation falls within one of these categories, then the application for consideration moves to Stage 2; if not, then their application for a lease for less than best consideration will be taken no further.

Application Stage 2 – Organisations will be required to submit financial audited accounts (as well as any other salient information) for the Council to review and confirm whether in its opinion the prospective tenant could afford to pay the market rent or market capital premium for the property. If the organisation can afford the market sum, then their application for a lease for less than best consideration will be taken no further.

The degree to which the Council is willing to provide financial support in the form of a reduced rent or premium is dependent upon the strength of the prospective tenant organisation. 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.

If the organisation cannot afford the market rent or premium, the Council will indicate what level of rent or consideration it believes the organisation can potentially afford and offer a reduced rent or premium on that basis. This might be any point between 0% and 100% of the market rent or capital value.

If the organisation is a new enterprise and cannot provide three years of audited accounts, they must provide a letter from its Chartered Accountants confirming the

organisation's financial position. For new organisations who proceed to a successful letting, there will be a six-month review to evaluate their financial standing at this point.

Application Stage 3 – The organisation will be required to provide a commentary of their wellbeing offer in order demonstrate the letting would help the Council to secure the promotion or improvement of the economic, social or environmental wellbeing of its area. The onus is on the organisation to prove and justify why the Council should consider offering a disposal for less than best consideration based on, for example, the level of community engagement, their specific community use, how the service specifically meets Corporate Plan objectives and so on.

If the organisation can provide adequate justification to the Council for the grant of a lease at less than best consideration, then the Council can offer lease terms accordingly. If the organisation cannot provide adequate justification at this stage, then their application for a lease for less than best consideration will be taken no further.

For applications where the above steps lead to an agreed set of terms for a new lease, the approver must also have considered a written assessment of the proposed transaction noting the reasons for disposing at an undervalue, the key terms and any restrictions to be imposed by the Council and, for leases greater than 7 years, satisfied themselves that the specified conditions set out in the General Disposal Consent (England) 2003.

Whilst short tenancies of less than 7 years fall outside of the requirements set out in the General Disposal Consent (England) 2003, such lettings where less than best consideration would be achieved should follow these procedures and meet the same requirements when deciding whether to approve the letting.

The recommended approach for assessing the undervalue of a leasehold interest disposal is to express the unrestricted, restricted and voluntary conditions in capital value terms, not rental. The example provided within the Technical Appendix of Circular 06/03 is:

“In the case of a proposed disposal of a leasehold interest, or where the valuer has assumed that a lease would be granted, the unrestricted value should be assessed by valuing the authority's interest after the lease has been granted plus any premium payable for its grant. This will usually be the value of the authority's interest subject to the proposed or assumed lease. In other words, it will be the value of the right to receive the rent and other payments under the lease plus the value of the reversion when the lease expires.”

For example, if the Finance team confirmed that the prospective tenant could only afford 50% of the market rent, the organisation must provide adequate justification to gain a discount of 50%, subject to the discount being no more than £10,000.

Tenants looking to benefit from a below market rent will be offered a maximum term of 5 years, under an excluded lease. As the financial position of the tenant may change over time, the below market rent will be reviewed at the end of the third anniversary of the term. Again, our finance team will review the tenant's accounts and confirm the level of affordability and this will confirm the amount of rent payable. There will also be a mutual rolling break option operable any-time after the third anniversary of the term, allowing flexibility should either party not wish to continue the arrangement. The tenants will not be allowed to assign or sublet the benefit of their lease. A review of the organisation's activities will also be undertaken to ensure that they are still delivering the social, economic or environmental benefits.

Annexe 1

Asset Disposal At Less Than Best Consideration – Application Form



Details of Organisation

Name of Organisation -

Address of Organisation -

Type of Organisation * -

Details of Prospective Property

Prospective Property to Let -

Proposed Annual Market Rent

-

Financial Information **

3-year audited accounts appended to application form -

Other supporting financial information appended to

-

Company Information

What does your organisation do for the community and how does your organisation involve the community?

How does your organisation's aims support the Council's strategic priorities?

To what degree is your organisation self-sustaining?

Would your organisation survive without a reduced rent?

Does your organisation receive other Council funding or financial support?

Does your organisation receive any external funding?

Further information:-

Stage 1 - The type of Organisation the Council wishes to support is listed.

*** Types of Organisation considered for support** - e.g. - Not for profit Organisations / Community Interest companies / Unincorporated Associations / Charitable Trusts / Charitable Incorporated Organisations / Charitable Company / Voluntary Organisations / Community Organisations and Social Enterprises (*Not exhaustive list*)

Stage 2 - The financial checks

This will be undertaken by the Council and will identify the applicant's financial position and affordability level. Three yearly checks would be required as the organisation's affordability will change over time and may not require ongoing financial support.

**** Financial Information** - Any organisation under consideration for a below market rent will be required to provide the last three years audited accounts and any other salient supporting documentation. If the organisation is new and cannot provide three years of audited accounts, the organisation must provide a letter from its Chartered Accountants confirming the organisations financial position. With new organisations there will be a six-month review to evaluate the organisations financial standing.

Short term leases of up to five years will be considered. The financial position of the organisation may change over time, so there will be 3-year reviews of the organisations financial standing.

Stage 3 - The organisation's supporting information to justify why the Council should wish to support the organisation. The statements made will be considered by the Lead Councillor for Finance and Assets together with the Director of Finance and Director of Planning and Regeneration.

Please return your application to:-

Asset Management, Guildford Borough Council, Millmead House, Millmead, Guildford, Surrey, GU2 4BB

Signed..... Date
