

GUILDFORD BOROUGH COUNCIL

LAND AND PROPERTY DISPOSALS POLICY AND GUIDANCE DOCUMENT

Revised 2021

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1.0 EXECUTIVE SUMMARY

- 1.1 The Council's actions in disposing of land are subject to statutory provisions in particular powers under:
- Section 123 of the Local Government Act 1972 to dispose of land using whatever method it chooses as long as it meets its overriding duty to obtain the best consideration that can be reasonably obtained for the land;
 - Section 32 of the Housing Act 1985 (as amended) to dispose of land held for the purposes of Part II of that Act; and
 - Section 25 of the Local Government Act 1988, assistance for private let housing.
- 1.2 These provisions are subject to certain exceptions that are set out in General Consents; namely The General Disposal Consent (England) 2003 and The General Housing Consents 2013. These stipulate that exceptions will normally be subject to the approval of the Secretary of State although prior approval is given in certain circumstances.
- 1.3 Depending on the status of the land being disposed of statutory provisions may apply for the disposal of the Council's land.
- 1.4 In line with the Local Government & Social Care Ombudsman's advice, this document sets out Guildford Borough Council's policies and guidance regarding the disposal of its assets (such as land or buildings).
- 1.5 The six methods for disposal of land undertaken by the Council are by:
- Private sale;
 - Formal tender;
 - Informal or negotiated tender;
 - Public auction; and
 - Exchange of land.
- 1.6 Part A sets out the policies by which the Council disposes of land, which include:
- Statutory provisions and General Consents;
 - The Council's Corporate Objectives and Priorities;
 - The policies and procedures recorded in its Constitution; and
 - The proper council authority having been obtained.
- 1.7 Part B provides guidance for each of the major methods of disposal.

2.0 INTRODUCTION

- 2.1 Local authorities have the freedom to dispose of their land in any manner that they wish subject to certain provisos prescribed within the following major Acts, other Acts and General Consents:
- s123 (Disposal of land by principal councils) and s127 (Disposal of land held by parishes and communities) of the Local Government Act 1972;
 - s32 of the Housing Act 1985 (as amended); and
 - s25 of the Local Government Act 1988.
- 2.2 The Local Government & Social Care Ombudsman (LG&SCO) considers it good practice for local authorities to have in place a comprehensive set of guidelines outlining their own approach to land disposals.
- 2.3 This document covers Guildford Borough Council's policy and internal guidance relating to land disposal. "Disposal" in this case means the sale of a freehold interest, an assignment of a lease (which at the date of the assignment there is more than seven years to run), the grant of a lease for more than seven years, and the granting of easements and options.
- 2.4 Whilst the purpose of the document is to make the Council's land disposal procedures transparent, it is important to note that each land disposal should be treated on its own merits and nothing in this document will bind the Council to a particular course of action in respect of a land disposal. Alternative methods of disposal, not specifically mentioned in this policy, may be used where appropriate, subject to obtaining proper authority (see section [7] below).
- 2.5 This policy will be subject to regular review by the Head of Asset Management (Climate Change Lead) with the aim of seeking continual improvement in the standard of asset disposal across all Council services. Any changes to the policy will be considered and discussed with the Lead Legal Specialist and, where relevant, the Head of Housing.
- 2.6 The success of the policy will be measured by the number of times each year the Council receives a formal complaint relating to the disposal of a Council asset. The Head of Asset Management (Climate Change Lead) will monitor any issues that may arise that do not reach the seriousness of a formal complaint but warrant a further look at improving processes outlined in this policy.

3.0 LAND DISPOSAL TYPES USED BY THE COUNCIL

- 3.1 The Council will usually choose one of the following five methods for disposing of land. An outline of which method to choose is examined in more detail in Part B.
- (1) Private sale - a sale of land negotiated with one or a small number of purchasers at a price agreed between the parties usually, but not always, following a marketing exercise. A binding legal agreement is created on 'exchange of contracts' between the Council and the purchaser.
 - (2) Formal Tender - a sale of land by a process of public advertisement and tenders submitted by a given date. A binding legal agreement is created upon the acceptance of a tender by the Council.

- (3) Informal or Negotiated Tender - a sale of land after a public advertisement that requests informal offers or bids, subject to contract, that meet a given specification or set of objectives. The Council may then negotiate further or more detailed terms with one or more individuals submitting the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts between the Council and the chosen bidder.
 - (4) Public Auction - a sale of land by open auction is open to all parties. The sale will be publicly advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer.
 - (5) Exchange of Land - a transaction involving the exchange of Council owned land with another landowner. The land acquired by the Council will meet at least one of its corporate objectives and will be 'equal' to the land exchanged or if not, the transaction will involve payment by way of a balancing sum referred to as an "equality of exchange".
- 3.2 A contract for sale may be conditional upon planning and in those circumstances the Council recognises the importance of keeping its responsibility as planning authority entirely separate to its role as landowner.

PART A – POLICY

4.0 POLICY STATEMENTS

- 4.1 The Council will dispose of land in accordance with:
- National statutory provisions and General Consents;
 - The Council Corporate Objectives and Priorities;
 - The policies and procedures recorded in its Constitution; and
 - The proper council authority having been obtained in accordance with the Constitution.

5.0 STATUTORY AND OTHER PROVISIONS

Local Government Act 1972 – Best consideration

- 5.1 Under s123 of the Local Government Act 1972, the Council has wide powers for the disposal of its property assets. The overriding requirement is to obtain the best consideration that can be reasonably obtained for the land. The Act does not apply to the disposal of a short-term tenancy with a term of less than seven years or the assignment of a tenancy with a term, which at the date of the assignment has not more than seven years to run.
- 5.2 The duty to seek best consideration is subject to certain exceptions. These are conveyed in the Local Government Act 1972: General Disposal Consent (England) 2003 (the Consent), which makes provision for the Council to dispose of land where the consideration is less than the best that can reasonably be obtained, known as an 'under-value'. In these circumstances, the Council must obtain consent from the Secretary of State. Specific consent is not required where the difference between the unrestricted value (market value) of the land to be disposed of and the consideration accepted (the under-

value) is £2Million or less. Whilst not superceding section 123 of the Local Government Act 1972, section 3 of the Local Government Act 2000 provides well-being powers for an authority in certain circumstances to accept a disposal at undervalue within the £2 million provided for by the Consent, where the authority deems the sale to be for a proper reason/purpose (i.e. for a use to aid wider community benefits but lower value) or where there is an identifiable need to use the capital funds raised by the disposal by a particular time.

- 5.3 The Council must comply with its duty to obtain the best consideration for land disposed of at under-value. The Council must test whether an offer is the best that can reasonably be obtained having regard to any restrictions or the effect on value of any conditions/ placed on the use of the land, the basis of relevant professional advice including whether the offer under consideration is reliable, advice on possible changes to the price that may flow from changes to the planning situation and other evidence.
- 5.4 Technical help on valuing land for disposal can be found in the following:
- The detailed valuation requirements are set out in the technical appendix to the Consent, which specifically incorporates guidance in the *Royal Institution of Chartered Surveyors (RICS) Valuation – Global Standards: UK National Supplement* and the definition of market value in VPS 4 in the *RICS Valuation – Global Standards* (known as the Red Book);
 - Additional guidance is provided in 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. However, it includes a caveat “as not being exhaustive and does not purport to be an authoritative interpretation of the law”.
- 5.5 It remains the responsibility of the Council to seek its own legal or other professional advice on land disposal as it feels appropriate. It must comply with normal and prudent commercial practices including obtaining the view of a professionally qualified valuer as to:
- what financial consideration it should expect to achieve;
 - the likely amount of any under-value; and
 - the most appropriate method of disposal to encourage bidders to offer the best consideration.
- 5.6 The Council is aware that best consideration does not necessarily mean the highest financial offer available. The decision whether or not to accept any offer(s) will take into account an evaluation of the financial considerations as well as the substance and strength of any supporting material submitted with the offer (excluding sale by public auction where supporting material is not an option). Supporting information can lead the Council to accept a lower offer where it has justifiable doubts, for example, about the financial security of a bidder or a bidder’s commitment to a proposed scheme.
- 5.7 The Council has an approved procedure that it follows when considering and approving disposal of land and buildings for less than best value under officer delegation.

Public Procurement Considerations

- 5.8 Case law, including the Court of Appeal judgment in *Faraday Development Ltd v West Berkshire Council* [2018] EWCA Civ 2532, provides that a sale of

land will qualify as a public works contract where each of the following tests are satisfied:

- The developer must assume an obligation to carry out works;
 - Those works must correspond to the requirements specified by the contracting authority; and
 - The works must confer an economic benefit on the contracting authority
- 5.9 If a transaction is structured as an exempt land transaction as per Regulation 10(1)(a) of the Public Contracts Regulations 2015 (PCR) then it does not constitute a "public works contract" and the Council will not have to go through a Find a Tender/procurement exercise.
- 5.10 Regulation 4 of the PCR sets out rules on the treatment of mixed contracts. In short, whether or not the Council is required to apply the PCR is contingent on whether the land sale and the public works are objectively separable. Pursuant to Regulation 4(2)(a)(iii), where the different parts of a mixed contract are objectively separable and the Council chooses to award a single contract, the PCR will apply to that contract irrespective of the value of the parts and the legal regime those parts would otherwise have been subject to. Regulation 4(2)(b), on the other hand, provides that *"where the different parts of a given contract are objectively not separable, the applicable legal regime shall be determined in the basis of the main subject-matter of that contract."*

State aid considerations

- 5.11 From 1 January 2021, the European Union State Aid rules no longer apply to funding and other forms of support measures such as disposal of land at an undervalue granted to business by the Council. The only exception to this is for aid that is caught by the award of funding that include contributions from EU Structural Funds.
- 5.12 In place of the European Union State Aid rules, when disposing of Council property at an undervalue, the Council will comply with a domestic subsidy control regime that will be introduced by the government. *NOTE: As at the date of writing this policy, the domestic subsidy control has not yet been introduced – it is likely to be brought in approximately August 2021.*
- 5.13 Until such time as the abovementioned domestic subsidy control regime is introduced, the Council will apply the following principles when determining whether or not a sale at undervalue will contravene any international commitments accepted by the United Kingdom under the World Trade Organisation (WTO) Rules and/or the Trade and Co-operation Agreement (TCA) with the European Union:
- In consultation with the Council's Legal Services Team, evaluate whether the measure(s) related to the disposal is/are regarded as a prohibited subsidy under World Trade Organisation Rules;
 - If a measure related to the disposal is in the scope of the TCA, assess the subsidy against the principles contained in the TCA;
 - In consultation with the Council's Legal Services Team, assess the likelihood of triggering a dispute under the WTO rules; and

- If it is determined to award the subsidy, record the award of the subsidy and authorize the subsequent disposal in accordance with the Council's constitution.

Housing Act 1985 (as amended)

- 5.14 Under s32 the local authority has the power to dispose of land and dwellings held for housing purposes. Secretary of State consent will be required unless the disposal is covered by the General Housing Consents 2013, and the correction issued 6/6/13: s32 of the Housing Act 1985, which covers:
- The General Consent for the Disposal of Land held of the purposes of Part II of the Housing Act 1985 – 2013
 - The General Consent for the Disposal of Dwelling-houses to Tenants who have the Right to Buy acquiring with others 2013
 - The General Consent for the Disposal of Non-Part II Dwelling-houses 2013
 - The General Consent for the Disposal of Reversionary Interests in Houses and Flats 2013.
- 5.15 Disposals are to be at market value, but discounts may be applicable to qualifying applicants.

Local Government Act 1988

- 5.16 Under s25 a local authority may provide a Registered Social Landlord (RSL) with any financial assistance or gratuitous benefit of land for development as housing accommodation. Secretary of State Consent will be required unless the disposal is covered by the following General Consents under section 25 of the Local Government Act 1988:
- Local Authority assistance for privately let housing) 2010 (“the 2010 General Consent); and
 - Local Authority assistance for privately let housing) 2014 (“the 2014 General Consent”).
- 5.17 The 2010 Consent includes:
- consent to dispose of land for development or access, easements and rights;
 - consent to dispose of dwelling houses for refurbishment;
 - provision of financial assistance for prevention of homelessness; and
 - loans to RSLs.
- 5.18 The aggregate value of financial assistance or gratuitous benefit provided by the disposal or grant shall not exceed £10 million.
- 5.19 The 2014 General Consent includes a new consent:
- General Consent AA - The general consent under section 25 of the Local Government Act 1988 for the disposal of vacant housing land to non-registered providers at less than market value, and amends
 - General Consent B - The general consent under section 25 of the Local Government Act 1988 for the disposal of vacant dwellings to other

Registered Providers of Social Housing (including local authority landlords) regulated by the Regulator for Social Housing at less than market value 2014. This removes the requirement that a property should be in need of renovation before disposal to a registered provider at less than market value. It also removes the cap that limited the number of properties that could be disposed of in this way.

Other statutory provisions

5.20 Depending on the status of the land held by the Council, other statutory provisions may have a bearing on the procedures to be followed if the Council seeks to dispose of the land. These include:

- s233 Town and Country Planning Act 1990 – provisions are set out in this Act for the disposal of land held for planning purposes, which follow principles similar to those of s123 of the Local Government Act 1972 and its requirement to obtain best consideration reasonably obtainable. However, it must be noted that the General Disposal Consent (England) 2003 does not apply and a specific consent from the Secretary of State will be required if the Council is considering disposal at an undervalue.
- Green Belt (London and Home Counties) Act 1938 – The Council must obtain the consent of the Secretary of State to dispose of green belt land held under this Act.
- s123 (2A) Local Government Act 1972 – the Council must follow certain statutory requirements to advertise the disposal of land that consists of or forms part of an open space.
- Charities Act 2011 – the Council is trustee of charitable lands and properties originally gifted to it under the terms of trust deeds. When dealing with disposals of these lands and properties, the Council has additional responsibilities which arise from its role as trustee and will be subject to the disposal requirements set out in the Charities Act 2011. It is for the Council's Executive Shareholder and Trustee Committee to consider whether charitable land and/or property should be disposed of. Any decision by the Executive Shareholder and Trustee Committee to dispose of charitable land and/or property, including by long term leasehold, must be in accordance with the requirements of the Charities Act 2011, any directions issued by the Charity Commission and professional advice.
- s233 (2) Town and Country Planning Act 1990 – The Council must obtain the consent of the Secretary of State to dispose of common land, which may involve the requirement to provide land in exchange.
- Allotment Acts 1908 to 1950 – For disposal of land held under these Acts, the Council must obtain the consent of the Secretary of State for disposal other than for use as allotments.
- Thames Basin Heaths Special Protection Areas (SPA) – where the land has been designated in the Council's SPA Avoidance Strategy as Suitable Alternative Natural Green Spaces (SANGS), this land can at the time of writing only be disposed of subject to its continued use as SANGS in line with Habitats Regulations (Conservation of Species and Habitats Regulations 2017), and the associated planning permission which will restrict the use of the land.

- Housing Act 1980 – introduced the ‘Right to Buy’ and the disposal of homes to qualifying secure tenants of the local authority.

Non-statutory provisions

- 5.21 The Crichton Down Rules (Rules) are non-statutory rules that regulate the disposal of government land that has become surplus to requirements and has been identified for disposal by the government. The Rules can now be found in MHCLG Guidance:
<https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichton-down-rules-guidance>
- 5.22 The Rules only relate to government land acquired in either of the following ways:
- By, or under the threat of compulsory purchase.
 - Under the statutory blight provisions.
- 5.23 The Rules apply to all freehold disposals and to the creation and disposal of a lease of more than seven years.
- 5.24 Although the Rules are non-statutory and for guidance only, the courts have repeatedly held that the importance of the Rules and the need to adhere to them "cannot be underestimated", and that former owners have a legitimate expectation that the Rules will be applied (*R v SoS for Defence ex p Wilkins (2000) 40 EG 180*).

6.0 CORPORATE PLAN OBJECTIVES

- 6.1 The Council’s mission within its Corporate Plan is to be “an efficient, innovative and transparent Council that listens and responds quickly to the needs of our community”. Having in place a Land Disposal Policy will enable the Council to ensure its land disposal procedures are transparent, whilst making the best use of its resources and it therefore underpins the Council’s strategic framework and the delivery of the corporate plan.
- 6.2 The Council’s Property Review Group (PRG) is a working group made up of senior officers and Councillors with responsibility for effective asset management of the Council Property Portfolio.
- 6.3 A primary responsibility of PRG is to make recommendations (but the group does not have any decision-making powers) for the retention, disposal or acquisition of individual General Fund properties that support the implementation of the Council’s corporate objectives and priorities.
- 6.4 Another function of the PRG is to review our whole estate to identify opportunities to optimise use or gain additional value from it, whether by potential redevelopment, intensification or disposal; and review business cases on acquisitions of new properties.
- 6.5 The Council’s Asset Strategy, including the basis for acquiring, disposing or developing assets, will drive the direction and create the fundamental need for

significant regeneration programmes, which will form part of the Council's Strategic Property Asset Management Plan.

7.0 COUNCIL PROCEDURES

- 7.1 The Council's Constitution prescribes the procedures that the Council must adopt for the disposal of land. The complete Constitution can be inspected on the Council's website at <http://www2.guildford.gov.uk/councilmeetings/ieListDocuments.aspx?CId=183&MId=382&Ver=4&Info=1> .
- 7.2 Where statutory provisions for land disposal apply, these must take precedence over the Council's internal policies and guidelines.
- 7.3 For major General Fund disposals not delegated to the Head of Asset Management (Climate Change Lead), recommendations are presented to Executive, with the committee taking the final decision as to whether and how to dispose of land. Ultimate responsibility for strategic management of the Council's property portfolio rests with the Executive.
- 7.4 For major Housing Revenue Account disposals not delegated to the Director of Service Delivery, recommendations are presented to Executive, who takes the final decision as to whether and how to disclose of the land.
- 7.5 Decisions taken by the Executive are recorded in the minutes of the meeting and may be inspected on the Council's website. Decisions taken by officers under delegated powers are documented (including appropriate authorisations) and records maintained and unless commercially sensitive published on the Council's website. These decisions are to be taken in consultation as appropriate with the relevant Councillors in accordance with the Constitution.

PART B – GUIDANCE

The facts of each intended disposal and the precise relationship between the parties are likely to be different at least in detail of each case and the guidance must be applied in the light of specific circumstances. Where any disposal is being considered the Council must obtain specific legal advice before proceeding.

8.0 DISPOSAL BY PRIVATE TREATY/SALE

- 8.1 The main characteristics of a sale by private treaty are:
- The timescales for completion of the transaction are not fixed until exchange of contracts.
 - Offers are made subject to contract.
 - Offers are, or may, not all be received at the same.
 - It is usual for the asking price to be quoted unless presented on an ‘any offer’ basis.
- 8.2 Private sale should generally be used when there is a buyer's market, where there is a special purchaser or where there is to be an element of joint venture, for example, claw back or profit sharing.
- 8.3 A disposal by private sale may take place after a period of extensive marketing including advertising (through an agent or directly) and, where appropriate, negotiating bids. In this case, the Council will normally consider the highest bid as representing the best consideration that can be reasonably obtained, subject to ensuring any conditions attached to bids are reflected in the final evaluation. The process for disposal by private treaty can still include a closing date and be by way of sealed bids if considerable interest is anticipated.
- 8.4 A sale of land by private treaty may be appropriate where the Council is seeking obligations to be placed on the successful bidder that are clear and capable of specification in advance, for example, the leasing out of an asset whereby the tenant will be required to perform a particular function or activity. The evaluation of bids received may include qualitative assessment as part of a scoring mechanism to assess the preferred bidder, such evaluation criteria being set out at the time of advertising.
- 8.5 The Council may place a public advertisement seeking bids for the property/site and publicise any selection criteria by which it will evaluate bids.
- 8.6 If land is to be sold by private sale without being marketed, then the reasons justifying a private sale must be recorded in writing. In some circumstances the Council may seek an independent valuation to verify that ‘best consideration’ is being obtained or if considering the disposal of land and buildings (including leases) for less than best consideration, follow the Council’s procedure. A private sale without the land being marketed may be justified where:
- a. The land to be disposed of is relatively small in size and an adjoining or closely located landowner is the only potential or likely purchaser(s).

- b. The nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained.
 - c. The Council's corporate objectives and best consideration can best be achieved by a sale to a particular purchaser.
 - d. The sale is to a non-profit making organisation and the role of that organisation is conducive to the improvement of public services and facilities available within the Borough.
 - e. The disposal is as a result of the Right to Buy scheme.
 - f. The Council's land is part of a larger area of land that is proposed for development, redevelopment or regeneration. Also, the nature and complexity of the proposed development of the overall site is such that the Council's corporate objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area.
- 8.7 A legally binding agreement will not be concluded until either contracts for the lease or sale of land are exchanged or a development agreement is signed.

9.0 DISPOSAL BY FORMAL TENDER

- 9.1 A sale of land by formal tender may be appropriate where:
- the land ownership is not complex; and
 - the Council is seeking obligations to be placed on the successful tenderer that are clear and capable of specification in advance, for example, the disposal of land to a developer with an obligation to build industrial units for lease or, the conservation of a listed building, or in the case of lettings, an obligation on the tenant to enter into an operational management agreement to run alongside a lease.
- 9.2 Formal tenders will not be appropriate where the land ownership position is complex or the development proposals for the land are insufficiently identified or otherwise incapable of detailed specification at the pre-tender stage.
- 9.3 In a formal tender process a legally binding relationship is formed when the Council accepts a tender in writing. It is essential therefore, that every aspect of the disposal is specified in the tender documents. The tender documents should include a contract for sale or lease, which should be completed with the tenderer's details, the tender price and be signed by the tenderer. It will be released unconditionally to the Council on submission of the tender.
- 9.4 Sale of land by formal tender will require a detailed specification to be drawn up. This needs to specify the land to be sold, any requirements to be met by the tenderer and any obligations that must be met. The Council may seek formal best and final bids if two or more tenders score closely in the evaluation process.
- 9.5 The Council will place a public advertisement seeking expressions of interest for the property/site and publicise the selection criteria by which it will evaluate tenders. Selected tenderers will then be invited to submit their tender bids, in accordance with the tender procedure outlined.

10.0 DISPOSAL BY INFORMAL / NEGOTIATED TENDER

- 10.1 A disposal by informal/negotiated tender differs from a formal tender in that neither the Council nor the successful bidder is legally obliged to enter into a contract for the disposal of the land. The informal process allows the Council to identify one preferred bidder with whom it may then negotiate further detailed terms or proposals.
- 10.2 The Council may, as a part of the disposal process, still request best and final offers for a sale, or informal development proposals for land that either meet a given specification, or a request for proposals. This process is particularly useful for large or complex development or regeneration sites requiring development and where the proposals may need to be developed in co-operation with the preferred bidder to meet the Council's corporate objectives and to achieve the best consideration that can be reasonably obtained.
- 10.3 This method is suited to sales where there are uncertainties, particularly around Planning, and allows for use of conditional contracts, including clauses which can allow for further sums to become payable upon grant of planning permission at different points in the future.
- 10.4 A binding legal agreement is not created until the exchange of contracts for sale or lease or the signing of a development agreement.
- 10.5 The evaluation of bids received may include qualitative assessment as part of a scoring mechanism to assess the preferred bidder, such evaluation criteria being set out at the time of advertising.
- 10.6 The Council will place a public advertisement seeking bids for the property/site and publicise any selection criteria by which it will evaluate bids.

11.0 DISPOSAL BY PUBLIC AUCTION

- 11.1 Sale by public auction may be appropriate for disposal of smaller properties or those that present difficulties, for example, where no planning consent has been forthcoming so that it is difficult to establish a clear idea of value, or there is no obvious potential purchaser and where speed and best price can be publicly demonstrated.
- 11.2 Exceptions to the usual tendering process must be authorised and recorded in accordance with the Council's Procurement Procedure Rules.
- 11.3 Before the sale, the property should be listed and the marketing agent should be asked to recommend a reserve price to ensure that a property is not sold below certain agreed levels, which will be confidential and known only to the vendor and the auctioneer.
- 11.4 The contract for sale or lease, EPC (if applicable), replies to standard pre-contract enquiries and all appropriate searches must be provided and be ready for exchange at the auction.
- 11.5 The binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed and exchanged.

12.0 DISPOSAL BY EXCHANGE OF LAND

- 12.1 Disposal by exchange of land will be appropriate when it is advantageous to the Council and other parties to exchange land in their ownerships and will achieve best consideration for the Council.
- 12.2 The exchange will usually be equal in value. However, any inequality in land value may be compensated for by the receipt of a balancing payment or other means of consideration as appropriate. For example, where the Council in exchange for a larger piece of land receives a smaller piece of land but the recipient of the larger plot agrees to build industrial units on the Council's smaller area to equalise the consideration. In such circumstances the Council will always obtain an independent valuation to verify that 'best consideration' will be obtained.
- 12.3 A binding legal agreement will be created when a contract is exchanged.

13.0 EXCEPTIONS

- 13.1 Other methods of disposal may be used where circumstances warrant, for example delivering housing for people with special needs that might otherwise not be assisted through housing development opportunities. In such cases, authority needs to be obtained in accordance with section 7 above.

14.0 OTHER CONSIDERATIONS

Transparency and Freedom of Information

- 14.1 All data held and managed by local authorities should be made available to the public unless there are specific sensitivities (e.g., protecting vulnerable people or commercial and operational considerations) to doing so. The Local Government Transparency Code 2015 ("Transparency Code") ensures the public can now see and access data covering (1) how money is spent, (2) use of assets (including details of land and property which is "surplus to requirement", (3) decision making and (4) issues important to local people. The Council must comply with the requirements of the Transparency Code, along with any of the government approved optional information that the Council decides to publish (as set out in Part 3 of the Transparency Code) - <https://www.gov.uk/government/publications/local-government-transparency-code-2015> .
- 14.2 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 came into force on 10 September 2012 and places a requirement that all meetings of "a decision-making body" are to be held in public unless an exception applies. A "decision-making body" under the regulations includes: a local authority's executive and its committees and sub-committees; joint committees where all the Councillors are members of a local authority executive; sub-committees of such joint committees, and area committees of local authority executives.
- 14.3 The regulations also include a requirement that the public should be excluded from a meeting of a decision-making body if confidential information is likely to be disclosed or if a resolution has been passed to exclude the public because exempt information is likely to be disclosed or if a lawful power is used to

exclude members of the public in order to maintain orderly conduct or prevent misbehaviour. “Confidential information” is defined as information provided to the local authority by a Government department on terms which forbid the disclosure of the information to the public or information the disclosure of which is prohibited by or under any enactment or a court order. “Exempt information” is defined by reference to section 100I of the Local Government Act 1972.

- 14.4 The principle of access to information relating to local authority decisions is well established and some of the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 reinforce obligations with which local authorities are familiar. Local authorities generally aim to be transparent in their activities and restrict access to information only where this is necessary to comply with obligations. However, some of the regulations do potentially increase the obligations on local authorities and they need to ensure that they are meeting their obligations.
- 14.5 Potential buyers (and others) are also entitled to request wider information under the Freedom of Information Act 2000 ("FOIA") than an authority is required to disclose under the debriefing obligations. Commercially sensitive information may be able to be withheld if it falls within one of the exemptions.
- 14.6 A contracting authority has 20 working days from receipt of a FOIA request to respond.

Equalities Act 2010

- 14.7 In respect of any disposal the Council must comply with its legal obligations under the Equalities Act 2010, which include positive duties to have regard to the need to eliminate unlawful disability, gender, race and religious discrimination and promote equality of opportunity. As is required for all Council policies an Equalities Impact Assessment screening has been carried out for this document. The result of that screening is attached at Appendix 1.

Late Bids

- 14.8 Any 'late bid' must be considered in the context of the individual circumstances at the time. The Council's approach to 'late bids' will vary depending upon the method of land disposal used. In each case, its overriding duty will be to obtain best consideration that it can reasonably obtain (subject to any exceptions in the General Disposal Consents).
- 14.9 Consideration of a late bid does not mean that it will necessarily be accepted even if it is the 'highest' bid. The Council will take into account the likelihood of the late bid proceeding to completion in a timely manner and the possibility of late bids being used as a spoiling or delaying tactic.

APPENDIX 1

Equality Impact Assessment

The purpose of an assessment is to understand the impact of the Council’s activities* on people from protected groups and to assess whether unlawful discrimination may occur. It also helps to identify key equality issues and highlight opportunities to promote equality across the Council and the community. The assessment should be carried out during the initial stages of the planning process so that any findings can be incorporated into the final proposals and, where appropriate, have a bearing on the outcome.

(*Activity can mean strategy, practice, function, policy, procedure, decision, project or service)

Name of person completing the assessment	Deputy Head of Asset Management	Date of assessment	21/01/21
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Name of the proposed activity being assessed	Land Disposals Policy	Is this a new or existing activity?	Existing
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Who will implement the activity and who will be responsible for it?	Councillors and officers responsible for the policy and its implementation
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1. Determining the relevance to equality

What are the aims, objectives and purpose of the activity?	The document sets out Guildford Borough Council's policies and guidance for the disposal of Council owned land and includes the sale of freehold or leasehold interests, assignment of applicable leases and the granting of easements
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Is this a major activity that significantly affects how services or functions are delivered?	No	Who will benefit from this activity and how?	Councillors and officers and all other interested parties; professional advisors; contractors; and members of the public
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Does it relate to a function that has been identified as being important to people with particular protected characteristics?	No	Who are the stakeholders? Does the activity affect employees, service users or the wider community?	Councillors, officers, professional advisors, contractors, members of the public
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Based on the above information, is the activity relevant to equality?

Yes – continue to section 2	Yes
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No – please record your reasons why the activity is not relevant to equality	
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2. Is the proposed activity accessible for all the protected groups listed below?
(Consider in what ways the activity might create difficulties or barriers to parts of the workforce, community or protected groups. How might one or more groups be excluded because of the activity?)

Protected groups	Yes	No	Evidence
Disability	Yes		When considering the disposal of any Council owned land the Council has an overriding duty to obtain the best consideration that can reasonably be obtained for the land in question which is a pure economic assessment and an objective test not in any way linked to the identity of the bidder. However, in circumstances where tenders are sought following public advertisement to be evaluated against selection criteria it is essential that the criteria do not include any assessment linked to any of the equality strands of race, age, disability, gender, sexuality or religion. The requirement to publicise all selection criteria by which the Council will evaluate tenders at the time of inviting tenders to submit their bids would guard against this.
Race	Yes		Please see above
Gender	Yes		Please see above
Sexual orientation	Yes		Please see above
Age	Yes		Please see above
Religion or belief	Yes		Please see above
Transgender or transsexual	Yes		Please see above
Marriage and civil partnership	Yes		Please see above
Pregnancy or maternity	Yes		Please see above

3. Is it likely the proposed activity will have a negative impact on one or more protected groups?

Protected groups	Yes	No	Evidence
Disability	No		
Race	No		
Gender	No		
Sexual orientation	No		
Age	No		
Religion or belief	No		
Transgender or transsexual	No		
Marriage and civil partnership	No		
Pregnancy or maternity	No		

4. What action can be taken to address any negative impact? What measures could be included to promote a positive impact? (*Consider whether it is possible to amend or change the activity due to the likely adverse impact whilst still delivering the objective. Is it possible to consider a different activity which still achieves the aims but avoids an adverse impact? Is an action plan required to reduce any actual or potential adverse impact?*)

N/A

5. What are the main sources of evidence that have been used to identify the likely impacts on the different protected groups? (*Use relevant quantitative and qualitative information that is available from sources such as previous EIA's, engagement with staff and service users, equality monitoring, complaints, comments, customer equality profiles, feedback, issues raised at previous consultations and known inequalities*).

Data used from previous EIA for early revisions of this policy.

6. Has any consultation been carried out (e.g. with employees, service users or the wider community)? Please provide details

N/A

7. Is further consultation required as a result of any negative impact identified? If so, what groups do you intend to engage with and how?

No

8. Conclusion of Equality Impact Assessment - please summarise your findings

The policy requires all disposals of land to be in accordance with the Council's corporate objectives and to publicise all selection criteria against which it will evaluate bids for the acquisition of the land.

Name of person completing assessment:

Melissa Bromham

Date: 21/01/21

Job title: Deputy Head of Asset Management

Signature:



Senior manager name:

Marieke van der Reijden

Date: 21/01/21

Signature:



Assessing the impact of your activity* on equality



