

Part 8

Acquisition and Disposal of Property Guidance

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1 Definitions and interpretation

1.1 Definitions

In this Guidance the following words shall where the context so admits have the following meanings:

“Authorised Signatory List” - a list showing the officers who may sign contracts for specified amounts maintained by the Section 151 Officer.

“Chief Officer” - the Chief Executive, the Director of Change and Business Support, the Director of Regeneration and Sustainability.

“disposal” - disposal of an interest in land whether by way of sale, lease, licence, grant of an easement or other interest in land.

“General Disposal Consent” -the General Disposal Consent (England) 2003.

“land” - all real property owned by the Council and includes all easements, rights and other interests in, on, over or under or in relation to land.

“the records system” -the terrier and the computerised records system

“Value” - the total consideration for the acquisition or sale or, in the case of leases and such like, the premium, rent and other outgoings payable to the Landlord during the term of the agreement. If the agreement gives the Council an option to extend the term, payments due during any such extension of the term (whether or not the extension is actually exercised) but excluding value added tax. The Value shall include annual increases as set out in the contract.

1.2 Interpretation

1.2.1 The headings for each section throughout this Guidance are provided for ease of reference only and do not affect the context.

1.2.2 Words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa as appropriate.

1.2.3 Reference to any Act of Parliament and to any orders regulations or rules made pursuant to that Act shall include reference to any modifications re-enactment or replacement.

1.2.4 Unless otherwise stated reference to a paragraph is reference to a paragraph in this Guidance.

2 General

2.1 This Guidance is for the guidance of officers dealing with the acquisition and disposal of land.

2.2 This Guidance must be read in conjunction with the Council’s Constitution, the Contract Procedure Rules (“CPR”) and the Finance Procedure Rules.

2.3 In dealing with land Officers and members must have regard to the following:

2.3.1 the Local Government Act 1972 sections 123 and 127;

2.3.2 the General Disposal Consent (England) 2003;

- 2.3.3 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.
- 2.4 The definitions and interpretations contained in the Contract Procedure Rules shall also apply to this Procurement Guidance.

3 Compliance And Exemptions

Every contract for the acquisition or disposal of land shall comply with this Guidance and no exemption from any of the provisions of this Guidance shall be made otherwise than by direction of the Council or the Cabinet (or, if relevant, the Portfolio Holder) and only if the exemption is justified by special circumstances.

4 Best Consideration

- 4.1 Any disposal of an interest in land must be for the best consideration reasonably obtainable except where:
 - 4.1.1 It is the grant of a tenancy with a term of seven years or less
 - 4.1.2 It is the assignment of a term which has not more than seven years to run
 - 4.1.3 One or more of the special circumstances set out in paragraph 2 of the General Disposal Consent applies
 - 4.1.4 The Secretary of State consents to the disposal
 - 4.1.5 The disposal contributes towards the Council's published priorities.

5 Method of Disposal

- 5.1 Land shall be disposed of only by way of the following methods by:
 - 5.1.1 inviting sealed offers following public advertisement which shall have been placed in at least one local newspaper and such other publication or publications as the Head of Service shall deem appropriate,
 - 5.1.2 public auction, or
 - 5.1.3 private treaty (provided such method of disposal shall first have been authorised by the Cabinet in all cases where the value exceeds £10,000).
- 5.2 If sealed offers are invited the tendering procedure set out in the Council's Procurement Guidance shall be used.
- 5.3 The procedures for acquiring or disposing of interests in land shall be in accordance with general conveyance practice from time to time.

6 Authority

- 6.1 All acquisitions and disposals of land must be properly authorised.
- 6.2 The Section 151 Officer shall have the power to authorise the acquisition or disposal of land in accordance with his delegated powers.
- 6.3 All acquisitions or disposals which the Section 151 Officer does not have power under the Constitution to authorise must be authorised by Cabinet, or where the Value is £250,000 or under, the relevant Portfolio Holder, following a report submitted by the Section 151 Officer.

7 Content

- 7.1 Every document for the disposal of land and any amendment thereto must be in writing and must be approved in writing by the Legal Services Department.
- 7.2 Every document relating to the disposal of land must specify the consideration, the interest to be disposed of and the date from which the disposal takes effect.

- 7.3 There shall be inserted in every contract for the disposal of land a clause empowering the Council to cancel the contract and recover from the buyer the amount of any loss resulting from such cancellation if the buyer shall have acted corruptly in relation to the contract.
- 7.4 The Legal Services Department will advise as to the wording but regard should be had to the suggested wording contained in the Contract Procedure Rules.

8 Execution

- 8.1 The Legal Services Department shall advise whether or not a particular document must be executed under seal or under hand. Paragraphs 8.2 and 8.3 give general guidance as to which documents the Legal Department is likely to state must be sealed or signed.
- 8.2 The following are examples of documents which must be executed under seal:
- 8.2.1 Transfers of land
 - 8.2.2 Leases with a term in excess of six months
 - 8.2.3 Licences with a term in excess of six months
 - 8.2.4 Variations of a document that was itself executed under seal
 - 8.2.5 Deeds of Surrender of a lease
 - 8.2.6 Deeds of Grant of easement
- 8.3 The following are examples of documents which may not need to be executed under seal:
- 8.3.1 A contract for sale/purchase
 - 8.3.2 A licence or lease with a term less than 6 months
- 8.4 Any Chief Officer, the Head of Legal Services/ Monitoring Officer shall be able to sign contracts up to the amount he is authorised to sign, as stated in the Authorised Signatory List.
- 8.5 Any document which must be executed under seal shall be sealed by persons authorised to witness the seal.

9 Records

- 9.1 All disposals and acquisitions of land shall be noted in the Council's records system.
- 9.2 Files shall be kept or disposed of in accordance with the recommendations of the Law Society.

10 Exemptions

- 10.1 This Guidance does not apply to disposals that are pursuant to compulsory purchase procedures.
- 10.2 The hiring out of the Assembly Hall or other buildings or land belonging to the Council shall not be regarded as a disposal of land.

