

<p style="text-align: center;">CABINET MEETING – 2 December 2009</p> <p style="text-align: center;">EXECUTIVE SUMMARY SHEET – PART I</p>
<p>Title of Report: Strategy for Surplus Assets</p>
<p>Author(s): Deputy Chief Executive</p>
<p>Purpose of Report: This report outlines a strategy for the disposal or retention of surplus land and property assets (which for convenience are referred to as property in the remainder of the report). The strategy sets out a number of criteria against which the Council will make a judgement on whether it is in its best interests to dispose of or retain property that is no longer required for service delivery purposes. Surplus property is likely to be:</p> <ul style="list-style-type: none"> • Property that is no longer required for any Council operational purpose; • Vacant property that has development potential; • Tenanted property which does not contribute towards strategic priorities or help to meet performance targets.
<p>Description of Decision: Cabinet is recommended to: Agree the strategy for surplus assets, as set out in this report.</p>
<p>Is the decision consistent with the Budget/Policy Framework? Yes</p>
<p>If not, Council approval is required to change the Budget/Policy Framework</p>
<p>Suggested reason(s) for Decision:</p> <p>To ensure that the Council has a strategy in place that enables decisions in respect of the disposal or retention of assets to be made within the context of agreed criteria.</p> <p>To demonstrate that where a decision to dispose of an asset has been made, the disposals process is undertaken in accordance with an agreed methodology.</p>
<p>Alternative options to be considered and recommended to be rejected:</p> <p>The Council could decide not to adopt a strategy for disposal of surplus assets. Such an option would not enable the Council to demonstrate that it had properly considered and aligned its asset base to the corporate goals of the organisation. This option has therefore been considered and is not recommended.</p>

Is this a “Key Decision” as defined in the Constitution? Yes	Relevant Scrutiny Committee: Management
Is it included in the Forward Plan? Yes	

CABINET

2 December 2009

Strategy for Surplus Assets

Report of Deputy Chief Executive

1.0 Purpose of Report

1.1 This report outlines a strategy for the disposal or retention of surplus land and property assets (which for convenience are referred to as property in the remainder of the report). The strategy sets out a number of criteria against which the Council will make a judgement on whether it is in its best interests to dispose of or retain property that is no longer required for service delivery purposes. Surplus property is likely to be:

- property that is no longer required for any Council operational purpose;
- vacant property that has development potential;
- tenanted property which does not contribute towards strategic priorities or help to meet performance targets.

2.0 Description of Decision

2.1 Agree the strategy for surplus assets, as set out in this report.

3.0 Background

3.1 The Council has an extensive property holding which can broadly be divided into two categories: -

- operational property, i.e. property used to deliver services; and
- non-operational property, which is all other property.

There is not a definitive guide to determine what property should be held in either category but the Council has followed the guidance agreed between the Royal Institute of Chartered Surveyors (RICS) and the Chartered Institute of Public Finance and Accountancy (CIPFA) for the valuation of local authority property assets and subsequently adopted by the Government in its guidance to local authorities for asset management. Examples are set out below.

- Operational – schools, leisure centres, libraries, plus offices and depots used to support service delivery.
- Non Operational – land awaiting development, investment property (e.g. industrial units), surplus property.

It should be noted that as part of this categorization certain operational assets, such as parks and historic buildings, are defined as community assets, which the Council holds in perpetuity, and may have restrictions on their disposal.

A more detailed analysis of the categorisation of land and property assets is shown in **Appendix 1**.

- 3.2 The Council's property portfolio is managed as a corporate resource allowing decisions on the use, acquisition and disposal of assets to be taken to address and deliver the Council's strategic priorities.

- 3.3 In 2008 the Department for Communities and Local Government published "Building on Strong Foundations – A Framework for Local Authority Asset Management". This document defines strategic asset management as:

'... the activity that seeks to align the asset base with the organisation's corporate goals and objectives. It ensures that the land and buildings asset base of an organisation is optimally structured in the best corporate interests of the organisation concerned'.

- 3.4 It is important that the Council ensures that strategic property decisions are taken within the context of the above definition. This report therefore seeks approval to a strategy for surplus assets that will enable such decisions to be taken in the best interests of the Council.

4.0 Strategy for Surplus Assets

- 4.1 There will be a presumption that surplus property is disposed of other than where, after satisfaction of one or more of the following tests, it is concluded that there is a case to retain the property. These tests will be applied to operational property that has been declared surplus to requirements as follows:

4.1.1 Strategic Needs

Where it can be demonstrated that property, which has been declared to be surplus to operational requirements, is required to meet the strategic aims of the Local Area Agreement, the Sunderland Strategy 2008-2025, or the Corporate Improvement Objectives of the Council, the property may be retained.

4.1.2 Financial Risk

In circumstances where the Council is exposed to significant financial risks, the retention of surplus property may be required as a strategic response to the management of those financial risks.

4.1.3 Regeneration Requirements

Where it is anticipated that as part of a medium to longer term land assembly programme, surplus property may be retained, where it will ultimately lead to the delivery of regeneration objectives.

4.1.4 Partnership Working

Through the Head of Land and Property the Deputy Chief Executive will consult with partners on the Strategic Property Group. Property

may be retained for use for partnership working with public or private sector partners, where it is anticipated that retention will lead to improved outcomes for service delivery, or where enhanced values can be realised through partnership working, or both.

4.1.5 Heritage

In some instances, the retention of heritage assets may be necessary to ensure that the property is maintained in good order, to prevent blight to the property and the surrounding area.

4.2 Following the application of the above tests, and where property is to be retained, temporary uses will be considered to minimise risks relating to security, rates, property maintenance, and loss of investment income.

4.3 Where property is to be disposed of, the Portfolio Holder for Resources will be consulted, together with the appropriate ward members. The property will be included in the disposal programme for release either when market conditions are optimum so as to secure the highest capital receipt, or when it is considered that the Council's funding requirements are such that a capital receipt should be realised. On becoming surplus to requirements, and whether the property is to be disposed of or retained, its management will be undertaken by Property Services. Where it is agreed that any capital receipt will revert to the service area, the costs of dilapidations and the management costs of holding the property will be borne by the service which previously occupied the building. These management arrangements will be subject to a detailed agreement between Property Services and the service area. Where it is agreed that the capital receipt will be held corporately, the costs will be met corporately.

5.0 Method of Disposal

5.1 Once a decision has been taken to dispose of a property, the method of disposal will need to be determined. The disposal could vary from the grant of a leasehold interest to a freehold disposal and the method could be by negotiation, auction or by marketing and tender process. These methods are detailed in **Appendix 2** and the preferred method for each disposal will be recommended by the Deputy Chief Executive, following consultation with the Capital Strategy Group, setting out the rationale for the business case.

5.2 In the main, significant disposals take place using an informal tender process, the procedure for which is set out in section 7.

5.3 In some instances, a leasehold disposal of a property may provide for rent concessions. The Council's rent concessions policy, agreed by Cabinet in October 2008, is set out in **Appendix 3**.

6.0 Best Consideration

- 6.1 The Local Government Act 1972 enables the Council to dispose of surplus property in any manner including the sale of freehold interests, granting of leases, assignment of any unexpired term of a lease and the granting of easements. Any disposal must be for the best consideration reasonably obtainable unless it is progressed under the provisions of the General Disposal Consent referred to in paragraph 6.5 and **Appendix 4**. A specific consent will be required for the disposal where land is held under powers derived from the Housing Act 1985 or the disposal of land under section 233 of the Town and Country Planning Act 1990. The provisions for disposal for best consideration do not apply to tenancies of a term of less than 7 years, or to the assignment of a lease with less than 7 years of its term remaining.
- 6.2 The Courts have considered the definition of best consideration and held that it is the highest price achievable without restrictions on use.
- 6.3 There is no statutory definition in respect of the method to be adopted to demonstrate best consideration has been obtained. It is generally held that providing an authority has acted reasonably it is entitled to form its own view as to whether a particular price is the best consideration which can be reasonably obtained.
- 6.4 In this respect, all local authorities are recommended to obtain a realistic valuation for disposals so that they can determine whether the proposed price is the best consideration reasonably obtainable. The realistic valuation to be the assessment of the likely sale price based on the RICS Valuation Standards definition of Market Value:

“ The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion”

but also taking into account the existence of any ‘special purchaser’ where the combination of one or more interests in property will create a new asset with a higher value than the sum of the individual interests.

The value will have regard to: -

- any restrictions on the use of the property in the title deeds;
- the planning allocation in the Unitary Development Plan or Local Development Framework and planning guidance on acceptable alternative uses;
- highway constraints;
- known property defects (the condition of the building, ground condition problems and the like);
- market conditions;
- relevant comparable evidence of recent market transactions for the type of property.

This should be done irrespective of the method of disposal. Disposal by tender, sealed bids or auction does not automatically mean that best consideration has been obtained. Indeed legal commentators have stated the converse, that there is no presumption that such methods are essential to establish best consideration. The Council is expected to act consistently, record evidence and be satisfied that its fiduciary duty has been discharged.

- 6.5 The Local Government Act 1972: General Disposal Consent (England) 2003 provides a general consent removing the requirement for the Council to seek specific approval from the Secretary of State for a wide range of disposals at less than best consideration to a maximum undervalue of £2,000,000.
- 6.6 The terms of the general consent means that specific consent is not required for the disposal for less than best consideration where the Council considers it will help to secure the promotion or improvement of the economic social or environmental wellbeing of its area as set out in **Appendix 4**. In these cases the advice of the Chief Solicitor will be sought to ensure that the legal basis of the disposal is sound.

7.0 Disposal Procedure for Surplus Land and Property

- 7.1 At its meeting on the 14th March 2007 Cabinet agreed a procedure for the disposal of surplus land and property. At its meeting on the 11th December 2008 the Policy and Co-ordination Review Committee agreed that improvements to the procedure be recommended for adoption by Cabinet. The disposal procedure, together with the proposed improvements shown in italics, is set out as follows: -

The main steps in the disposal procedure are as follows:

- Step 1: Following consultation with all Directorates, land is declared surplus to requirements and alternative uses evaluated.
- Step 2: Where a proposal is made to dispose, Ward Councillors are consulted and if appropriate, sales particulars and a design brief are prepared including guidance on the Council's expectations for planning, highway and open space/play requirements. *The design requirements and evaluation criteria are signed off by appropriate Heads of Service. The particulars will also contain a timeframe setting out the Council's requirements for various key stages to be achieved to seek to complete a disposal by a specific date.*
- Step 3: The site is marketed with sales particulars and a design brief is sent to prospective purchasers, and initial design submissions, including layout plans are requested by a closing date. *A contract for the disposal will be incorporated into the particulars.*

- Step 4: Design submissions are evaluated against the objectives of the brief.
- Step 5: Developers submitting acceptable designs are invited to submit financial offers by a closing date. A supplement to the financial offer is requested to provide a breakdown of any deductions made by the developer relating to known development costs to enable the offers to be evaluated by the Council.
- Step 6: Financial offers are opened in the presence of the Mayor.
- Step 7: The highest acceptable offer is recommended to Cabinet. (The offer is generally conditional upon the developer obtaining planning consent, a satisfactory ground condition report and availability of service connections. Developers will only commit to carrying out costly and detailed work in these areas once they have the comfort of knowing that the Council has conditionally accepted their offer).
- Step 8: The conditional contract issued with the sales particulars will be refined to meet the requirements of the disposal – the Council to sell the land at the offered price subject to the developer obtaining planning consent and obtaining a satisfactory ground condition report within a specified timescale. It is the conditional contract that gives the developer the comfort to invest in further work and also provides the Council with comfort that should another offer be received it can be disregarded without the risk of a legal challenge.
- Step 9: Developer submits planning application and commissions ground investigations.
- Step 10: Where a developer identifies abnormal ground conditions an application may be submitted to reduce the previously accepted price; this is scrutinised and a revised price provisionally agreed:
- An abnormal development cost claim in excess of £100,000, is scrutinised by independent external advisors appointed by the Council. In the case of a dispute regarding the value of any abnormal development costs, the Council's decision shall be final.
 - An abnormal development cost claim below £100,000 is scrutinised by the Deputy Chief Executive.
 - The Deputy Chief Executive has delegated authority to agree abnormal development costs for all sites up to a maximum of 10% of the original highest offer.

- In the case of abnormal development costs exceeding 10% of the original highest price the matter is referred to Cabinet to decide whether to either re-market the site or accept the reduced offer.

Step 11: Developer obtains planning consent and purchases site.

- 7.2 **Appendix 5** details the milestones and indicative timescales to be achieved for each major disposal. The milestones will in the main be the same for less significant disposals, although the timescales will be reduced. The particulars of sale for each disposal will contain the milestones and timescales to be adhered to. The Capital Strategy Group will receive performance reports on disposals progress against the timescales. Failure on the part of the developer to adhere to the timescale could result in a report to Cabinet recommending an alternative course of action.

8.0 Non Operational Property

- 8.1 The Council has acquired an extensive non operational property holding over a long period of time. It includes industrial units, managed workspaces, shops and market, and also comprises miscellaneous land and property acquired for a variety of purposes, not used for service delivery and often leased to others to generate an income. This miscellaneous element includes the following:

- property let as a general investment;
- land used for agricultural purposes including horse grazing;
- land used for private car parking and garages;
- land used for allotments, storage and garden purposes;
- land and buildings used by community groups;
- land let on ground leases (leases for long terms eg 99 years or more where the tenant is responsible for constructing a building and maintaining it during the course of the lease eg The Bridges);
- buildings used for offices (other than Council offices), pubs, restaurants;
- dwellings;
- third party rights (wayleaves, easements, rights of way etc predominantly but not exclusively to companies providing services to the City).

The non operational portfolio, including industrial units and shops, will be reviewed using option appraisal techniques, and reports will be brought forward recommending retention or disposal as appropriate. The appraisals process will include criteria in relation to the retention of property, if appropriate, to meet the tests set out in paragraph 4.1.

9.0 Decision Making

- 9.1 The Council's Constitution provides for a delegation to the Deputy Chief Executive to dispose of freehold and leasehold interests in property where the freehold value is less than £100,000 and in the case of leaseholds, where the annual rental is less than £50,000 (Paragraph 9.62 of delegation Scheme in Part 3 of the Constitution) . All other decisions to accept or decline offers for surplus property will be referred to Cabinet.

10.0 Reason for Decision

- 10.1 To ensure that the Council has a strategy in place that enables decisions in respect of the disposal or retention of assets to be made within the context of agreed criteria.
- 10.2 To demonstrate that where a decision to dispose of an asset has been made, the disposals process is undertaken in accordance with an agreed methodology.

11.0 Options

- 11.1 The Council could decide not to adopt a strategy for disposal of surplus assets. Such an option would not enable the Council to demonstrate that it had properly considered and aligned its asset base to the corporate goals of the organisation. This option has therefore been considered and is not recommended.

12.0 Consultations

- 12.1 The Chief Solicitor and the Director of Financial Resources have been consulted and their comments are contained in the report.

13.0 Background Papers

- 13.1 Asset Disposal working papers held by the Deputy Chief Executive.

CATEGORIZATION OF LAND AND PROPERTY ASSETS

Annexe B to UK appendix 1.5 Examples of asset categories

Annexe B to UK appendix 1.5
Examples of asset categories

1.

Operational assets

Land associated with operational *property*

Council dwellings

Other housing *properties*

Buildings

Office buildings

Schools

Libraries

Sports centres and pools

Golf courses/sports pitches (see note 1, below)

Residential homes/day centres

Museums and galleries

Depots and workshops (see note 2, below)

Cemeteries (buildings only)

Crematoria (buildings only)

Off-street car parks

Tenanted farms/smallholdings (see note 1, below)

Equipment

Vehicles

Mechanical plant

Computers

Fixtures and fittings

Other equipment
2.

Non-operational assets

Land awaiting development

Commercial *property*

Investment *property*

UK practice statements

Annexe B to UK appendix 1.5 Examples of asset categories

- Surplus *assets* (see note 3, below)
- Golf courses/sports pitches
- Depots and workshops
- Tenanted farms/smallholdings
- Shops on housing estates (see note 1, below)
- Markets
- Mooring sites and rights/dockland/shipways (see note 1, below)

3. Infrastructure assets

- Roads
- Sea defences
- Bridges
- Permanent ways
- Water drainage
- Street furniture

4. Community assets

- Parks
- Historic buildings
- Works of art
- Museum exhibits
- Civic regalia
- Cemeteries (land only)
- Crematoria (land only)

Note 1: If these *properties* are held for investment purposes, they are non-operational. However, if they are held with particular service objectives in mind, they are operational.

Note 2: The identification of the category of these *properties* will depend on the individual circumstances in each case. If a *third party* uses them to provide the authority's services, then they are operational.

Note 3: Includes *property* released by a service and awaiting alternative use, as well as land and buildings declared surplus.

UK practice statements

APPENDIX 2

METHOD OF DISPOSAL

1.0 Definition

- 1.1 The disposal of property is defined as the transfer, in any manner or by any means whatsoever, of property title for a consideration.

2.0 Statutory and Constitutional Requirements

- 2.1 Local authorities are given power under Section 123 of the Local Government Act 1972 to dispose of property in any manner they wish. The only constraint is that generally a disposal must be for best consideration reasonably obtainable.
- 2.2 The disposal of property is also regulated in Part 4 of the Rules of Procedure FPR 20. Under these procedures the disposal of property by Chief Officers should have due consideration to the Councils Capital Strategy and be executed as part of their Revenue Budget or Capital Programme as appropriate. Cabinet approval is required for the disposal of freehold interests in land where the consideration is £100,000 or more. Beneath this figure a sale can progress via delegated authority given to the Director of Development and Regeneration.

3.0 Methods of Sale

- 3.1 A decision to declare a property surplus to requirements may be taken either by Cabinet or by the Service Director in consultation with the Cabinet Portfolio Holder.

Once a decision has been made to disposal of an asset, there are four principle methods which may be employed for the disposal. These are set out below.

4.0 General Principles

- 4.1 The Head of Land and Property should recommend the most effective way of disposing of that interest in order to secure the best terms reasonably obtainable. A written record should be kept of the reasons for such recommendations e.g. cost, timescales etc.
- 4.2 Disposals of Council land should be seen to be fair and transparent.

5.0 Private Treaty

- 5.1 Procedure

The majority of property in the UK is sold through private treaty e.g.

private home sales via Estate Agents. A sale by private treaty occurs where property is marketed, valued and negotiations are carried out between the vendor and prospective purchasers (or their respective agents) privately, normally without any limit on the time within which they must be completed before contracts are exchanged.

5.2 Advantages

The advantages of the private treaty method are that it allows a flexible approach; time pressures are seldom imposed on either the vendor or the purchaser, and it is widely understood and accepted by the general public.

5.3 Disadvantages

The major disadvantage is that the proceedings cannot always overcome suspicions of unfair dealings, and it is therefore a method that is used with caution in the public sector.

There is no current time limit on these negotiations within which they must be completed.

5.4 Suitability

Generally, wherever there is likely to be more than one potential purchaser then surplus land/property disposals should be completed through a competitive tendering process by open advertisement on the market.

The main area where best consideration should be achievable by private treaty negotiations is where there is a special purchaser, that is a purchaser who has an existing interest in the property or area and has an interest over and above a normal market purchaser in purchasing the Council's interest.

Examples of special purchasers are:

- A purchaser who already controls significant property holdings in the area and is consolidating its holdings.
- A specific, albeit commercial, development proposal.
- An existing tenant where the merger of the freehold and leasehold interests give rise to "marriage value" and a price over and above what an ordinary market purchaser could offer.
- A property owner who is the only likely party interested in purchasing the Council's interest, eg land being sold for garden extensions.
- Those occasions where the Council wishes to support a specific use or development; allowing key objectives of the Sunderland Strategy to be delivered. Examples may include:

- Sales to Housing Associations;
- Sales to developers or companies for commercial development that creates new employment opportunity or protects existing jobs;
- Sales to religious, community or voluntary groups that meet the local need;
- Sales to selected partners.
- Sales to developers that can show preferred developer status.

Where the Council does decide to progress a private treaty disposal and an acceptable price cannot be negotiated then it retains the ability to dispose of the property by tender, sealed bids or by auction.

An acceptable price will depend upon the individual circumstances of each transaction but will primarily be whether the proposed sale price equals or exceeds the Market Value assessed by the Head of Land and Property.

6.0 Public Auction

6.1 Procedure

Auction is the process by which a property is sold to the highest bidder at a public sale.

The chosen auctioneer will confirm their terms of appointment, all charges (including the commission rates for sale on the day, sale after auction or no sale at all), will liaise with the City Solicitor, gather together the necessary paperwork, liaise with others to get Searches, Planning Permissions, Specialist Reports, Tenancy agreements, Architectural Plans and get Special Conditions of Sale prepared for the property. This will all contribute towards the legal pack which potential buyers can inspect on or before the auction. Auctioneers may also provide services for putting up sale boards and showing potential bidders around the property. This may be done at set times before the auction. Some auction houses also provide the services of Internet and telephone bidding to complement the bidding in the auction room itself on the day.

The property is advertised by the auction house prior to the auction to gain maximum coverage for the property.

On the day of the auction, each lot is described prior to being offered. If bidding reaches the reserve price the property will be sold on the fall of the hammer, with contracts effectively being exchanged at that point. The clerk or auction administrator will require the buyer to sign the sale documentation and pay a 10% sale deposit on the day.

6.2 Advantages

- Certainty of sale. When the hammer comes down contracts are exchanged and the buyer is legally committed. The buyer must pay a deposit of the sale price before leaving the auction house and the remaining balance within a set period;
- interest from two or more prospective buyers will encourage them to bid against each other;
- the process of competitive bidding will help property to achieve 'best price' on the day. Where sales are required to achieve 'best price' and where auction is the chosen route then this is guaranteed and open to public scrutiny;
- With Private Treaty sales a price agreed may not be the price finally received eg a deduction for cost of repairs or abnormal costs not known at the time offers were received. With Auction there is no re-negotiation, no discounting to take account of survey findings. With Auction the buyer will have fully researched the property's condition prior to bidding and cannot reduce the sale price after the hammer has fallen.

6.3 Disadvantages

- To the extent that an auction is a 'sold as seen/buyer beware' deal, it requires buyers to accept higher risks than they would accept in a more conventional deal. Buyers will cope with this extra risk by bidding less than they otherwise would in a sale by private treaty/tender and the property may therefore sell for less than full market value.
- Not generally the accepted disposal method by general public bodies because of costs of preparatory works and unusual environment.
- The auctioneer will seek to enter into a sole agency agreement. This means they will advertise our property in brochures and catalogues on behalf of the vendor. The Council would be responsible for the cost of that advertising, as well as a portion of the room hire fee, regardless of whether the property sells. On top of this, the auctioneer generally charges the seller around 2.5% commission on the sale.
- Although auction houses will often state that one of the advantages of auction is the speed of the sale, by the time a property has been prepared for auction the process is often no quicker than conventional methods.
- There is no guarantee that the property will sell at auction and abortive costs will have been incurred.

6.4 Suitability

Selling property at auction is by no means suitable for every type of property. Auctions usually focus on unusual, hard-to-value premises such as churches and village halls, as well as properties in

need of renovation although in recent years the method has become more popular for selling job lots including ground rents and investment properties.

7.0 Formal Tender

7.1 Procedure

This is similar to an auction in that all the preparatory work is done prior to marketing and offers made are legally binding.

The formal tender document is the contract from sale so all of the relevant issues must as far as possible have been resolved before the tender procedure commences. The vendor then invites sealed bids to be received by a certain date, subject to the caveat that it will not be bound to accept the highest, or any tender.

7.2 Advantages

The period for identifying a proposed purchaser can be defined and controlled, and that the process can be demonstrated to be transparent. Prospective purchasers have sufficient time to consider all of the relevant issues before submitting an offer and will have the opportunity to contact the vendor for any further information they may want, so the offer is likely to be informed and reasonably represent the highest figure that particular purchaser would pay.

7.3 Disadvantages

The disadvantage is that some prospective purchasers will be deterred by the finality of the process whereby only one offer may be submitted and there is no subsequent chance to amend that offer in terms of price and timescale.

7.4 Suitability

This method of sale is rarely used in practice and is suitable only in limited circumstances.

8.0 Informal Tender

8.1 Procedure

The procedure is similar to that of formal tenders but the tender applicant may submit conditional offers that will only become binding once those conditions have been satisfied e.g. grant of planning permission and site investigations.

The method of quantifying abnormal development costs is set out in

this policy. These costs could occur on Greenfield or Brownfield sites.

In such circumstances it is usual for a developer to approach the Council with an application to reduce the original offer price by the amount of these costs. The costs would have been quantified following site investigations and would be challenged and verified by the Council's in house technical team. The policy therefore states that sales particulars include details of the areas of work that the Council would accept as qualifying as abnormal development costs. In addition where offers exceed £1m, any application for a price reduction over £100,000 will be scrutinised by external advisors appointed by the Council. The Director of Development and Regeneration is authorised to agree abnormal development costs up to a maximum of 10% of the original offer and any reduction exceeding 10% is to be referred to Cabinet. In any event the Council's decision would be final.

8.2 Advantages

The main advantage of this procedure is that it is well known and acceptable to the market place. This method has the advantage of allowing both vendor and purchaser more flexibility and scope to respond to matters which may emerge during the tender process. The timetable can therefore be managed from inception to completion.

8.3 Disadvantages

Conversely to the advantages, this method has the disadvantage of introducing an element of uncertainty.

8.4 Suitability

This method of disposal is suitable for a wide range of disposals, especially where significant demand is expected e.g. housing and mixed use sites.

9.0 Conclusions

- The Council has a statutory obligation to achieve best consideration in the disposal of its property
- There are a number of methods available for the disposal of property
- Officers should recommend the most effective method for each individual circumstance and this recommendation should be clearly reasoned in writing.
- All disposals should be seen to be fair and transparent.

APPENDIX 3

RENT CONCESSION POLICY

1.0 Policy for Rent Concessions – Agreed by Cabinet 8 October 2008 in respect of property leased by the Council.

1.1 The policy for rent concessions will be as follows:

- Manufacturing business already benefit from a 50% rent discount in the first year of occupancy as an incentive to create jobs. Further rent concessions will also be considered in circumstances whereby tenants can demonstrate that existing jobs will be protected or new jobs created as a result. In both cases consideration will be on the basis of consultation with the Council's Business and Investment Team and City Treasurer.
- Managed Workspace tenants may benefit from rent discounts of 75% for the first 6 months, 50% for a further 6 months, 25% for months 12 to 18 and a full rent thereafter. This provides an incentive to start new business and create new jobs. Eligibility criteria have been established which are attached at Appendix 2, and the process is administered by Property Services. Any further extended rent concessions will be on the basis of consultation with the Council's Business Investment Team and the City Treasurer, and subject to the limits contained in the recommendations of this report.
- Rent concessions for shop, industrial or vacant premises will be given consideration where the tenant undertakes remedial works which are the responsibility of the Council as follows: -
 - A concession equivalent to 100% of the costs of works undertaken will be considered where a tenant carries out works such as the removal of items belonging to a previous tenant, or the execution of dilapidation works that, in default, have not been attended to by the previous tenant or the Council as Landlord.
- Rent concessions may be given where the tenant proposes to undertake improvement works which will provide long term benefit to the property as follows:
 - A concession equivalent to 50% of the costs of improvement works undertaken will be considered where a tenant proposes to alter or improve the premises which will result in significant and lasting benefit to the Council, for example converting two shops into one which will improve the trading position of the unit and its longer term marketability.

- Rent concessions may be given where the tenant proposes to undertake works which are their responsibility but are high cost and will provide significant and long term benefit to the property as follows: -
 - A concession equivalent to 25% of the costs of works undertaken will be considered where a tenant proposes to carry out works which would normally be a tenants responsibility but are considered to be a long term benefit to the premises, for example re-wiring, installation of a new heating system.
- Rent concessions may be given for difficult to let property which has been vacant for some time and will lead to the property being brought back to beneficial use which will lead to new job creation, services to the community and a financial return for the Council. Although each case will need to be considered on its particular merits, a concession based on this criterion would normally be considered where a property has been vacant for at least 3 months.

In all cases lease terms will state that the works are to be timetabled and detailed as positive covenants, classed as Landlords improvement works and any attributable additional value will be included in future rent reviews throughout the lease term. Any departures from the policy will be reported to Cabinet for approval.

2.0 Procedure for Request of Rent Concession

The procedure for dealing with a request for a rent concession will form part of the adopted Letting Strategy and be included within internal Quality Assurance procedures. The procedure, which should be read in conjunction with the policy, is set out below.

- 2.1 A request for a rent concession is received, in writing from the tenant, providing full details of the proposal.
- 2.2 The property is then inspected by the Council's Surveying Services Manager and findings recorded to confirm works are reasonable and required for business purposes and satisfy the circumstances set out in section 6.1 above.
- 2.3 The tenant or prospective tenant provides three written quotes for works from suitable contractors.
- 2.4 The Council's Surveying Services Manager confirms within 20 working days, whether or not the quotes reflect value for money in terms of cost and specification, and a reasonable timescale for completion is provided.

- 2.5 Where a rent concession is agreed at officer level, or by Cabinet where necessary, this will be stated in the Heads of Lease Terms that are issued to prospective tenants in accordance with the lettings procedure.
- 2.6 Upon completion of the lease and the works, the Surveying Services Manager will ensure that the work has been carried out to a satisfactory standard, the tenant has paid for the works and the contractor engaged was one of those for whom a quote was provided earlier in the process.

3.0 Delegations

- 3.1 The Director of Development and Regeneration is authorised to agree rent concessions up to a value of £25,000 a year per property and up to a total value of £50,000 over the term of the lease. Cabinet approval will be required for amounts over these values.

The grant of any proposed rent concessions will be subject to the prior consultation and approval of the Resources Portfolio Holder.

- 3.2 In all cases the economic, social or environmental benefits will be identified as part of the supporting documentation.

4. Background

- 4.1 The Council's managed property portfolio consists of factory units, 5 managed workspace centres, the Place at Sunnyside, shops, and Jacky Whites Market, together with miscellaneous properties ranging from tenancies at the Port of Sunderland to offices and buildings for community use. The Bridges shopping development also provides the Council with an annual rental income. The portfolio is held to meet the Council's strategic objectives and for investment purposes, the revenue from which provides funding for Council services through the Council's financial planning processes.

The annual rental received from the portfolio fluctuates depending upon occupancy rates, but on average is in the region of £5.2m. Rent concessions have previously been granted to tenants in appropriate circumstances, for example for difficult to let property, or as an incentive to new business and to secure job creation. In the vast majority of cases concessions relate to the management of the shops and factories portfolio. Appendix 1 outlines the property to which concessions are most likely to apply based upon 2007/08 figures.

- 4.2 Rent concessions are an acknowledged part of property management practice as well as a tool to encourage investment and secure job creation. As a general rule a rent concession can be defined as a rent free period the length of which can reflect both the

cost of works proposed to be carried out to a property by a tenant in order to bring it into use, and the period of time that the property cannot be used by the tenant for business whilst the work is being undertaken. Concessions may be given for works that are either the responsibility of the Council as landlord, or which are required by the tenant to bring the property into operational use for their specific business. The grant of a rent concession will provide an incentive to the tenant and can make a crucial difference in being able to grant leases to start-up businesses, bring vacant property into use and to secure job creation in accordance with the Council's Prosperous City priority.

It should be noted that there may be circumstances where both a rent concession for fit out, and a separate concession supported by the Business Investment Team and justified by job creation, may be applicable for the same property.

- 4.3 The benefits to the Council that can result from a rent concession include the subsequent income from the letting of vacant property, the creation and or the retention of jobs, potential increase in value of the Council's property asset as a result of tenant investment and potentially a greater certainty of revenue income in the longer term.
- 4.4 The value of the rent concession will vary depending on individual circumstances and examples that can prompt the use of a rent concession can include capital works such as small extensions to property, remedial works that are normally the responsibility of the Council as landlord, fitting out works at the commencement of a lease such as installation of trade counters, display windows, floor coverings, plant and equipment.
- 4.5 The rent concession policy also needs to take into account competition from elsewhere, for example adjacent areas which can offer the benefits of Enterprise Zone status and other landlords offering particularly advantageous and lengthy rent concessions without conditions.
- 4.6 The Council has a general duty under Section 123 of the Local Government Act 1972, to dispose of land other than short tenancies for the best consideration that can be reasonably be obtained. Short tenancies are those involving the grant of a term not exceeding 7 years or an assignment where at the date of assignment the lease has not more than 7 years to run.

A circular issued in 2003 on general disposal consent enables Local Authorities to carry out the statutory duties and functions and fulfil other objectives they consider necessary or desirable, bearing in mind their fiduciary duties.

In summary, the Authority can dispose at less than best

consideration subject to the condition that the under value does not exceed 2 million pounds. The exercise of the power is linked to the Council's well-being powers under Section 2 of the Local Government Act 2000. There are also limitations regarding land held under certain powers and guidance as to how a valuation should be undertaken. Thus the Council does also have appropriate powers to grant rent concessions, for longer tenancies where it would be in the interests of the economic development of its area.

Property to which rent concessions are most likely to apply based upon 2007/2008 figures.

Type	No. of Units	Number Vacant	Approx. Full Rental £ per annum	Rent Received £ per annum	Approx Average Rent per Unit £ per annum
Shops	195	4	653,000	633,417	3,350
Factories	*1 112	8	1,795,000	1,750,515	16,000
Managed Workspace	148	*2 32	291,000	*3 181,149	1,228
Jacky Whites Market	85	3	385,000	357,855	4,500

*₁ - Does not include units at Salterfen and Rheims Court which are vacant and due to be demolished.

*₂ - 15 of which are vacant at Southwick Centre following recent refurbishment.

*₃ - Tenants of start up business benefit from discounted rent

Eligibility for Concession

Eligible applicants are defined as those:-

1. Being in the process of setting up a business in order to commence trading;
2. Having an established business, which is trading from a home address and has not previously held commercial premises for that particular business use;
3. Being in the process of creating a new franchise of an established business;
4. Being in the process of creating new satellite trading premises of an established business, with a clearly defined new project.

Retail and automotive repairs are considered to be ineligible activities.

APPENDIX 4

DISPOSAL AT LESS THAN BEST CONSIDERATION

1.0 Background

- 1.1 The Council has power under The Local Government Act 1972 Section 123 to dispose of surplus property in any manner including the sale of freehold interests, granting of leases, assignment of any unexpired term of a lease and the granting of easements. With the exception of short tenancies with a term of less than 7 years or the assignment of a lease with less than 7 years of its term remaining the only constraint is that the disposal must be for the best consideration reasonably obtainable. Any other disposal at less than best consideration requires the approval of the Secretary of State.
- 1.2 Section 123 will apply to the majority of disposals by the Council however there are other provisions for disposals such as section 233 of the Town and Country Planning Act 1990.
- 1.3 The Government has emphasised that its policy is that local authorities should dispose of surplus property wherever possible and it is expected that disposals should be for the best consideration obtainable. However, it recognises there may be circumstances where local authorities may consider it appropriate to dispose of property at an undervalue and subject to the authority being satisfied that the circumstances warrant such action in line with its fiduciary duty has issued a General Consent for disposals.

2.0 General Disposal Consent (England) 2003

- 2.1 The Local Government Act 1972: General Disposal Consent (England) 2003 provides a general consent removing the requirement for the Council to seek specific approval from the Secretary of State for a wide range of disposals at less than best consideration. The Council is granted consent to dispose of property at less than best consideration where the undervalue does not exceed £2million and 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 the area or all or any persons resident or present in the area. It is for the Council to decide whether any particular disposal meets these criteria or continues to require specific consent under the 1972 Act.
- 2.2 Consent is still required for disposals for less than best consideration where the undervalue exceeds £2,000,000 or where the land is held under the Housing Act 1985 or for planning purposes.
- 2.3 The Consent and the Government guidance on well-being powers state the Council should have regard to its Community Strategy and whilst a

proposal need not be specifically referred to in the strategy the Government expects the Council to think very carefully before using the power in a way which ran counter to the aims and objectives of the strategy.

- 2.4 The Council must be able to demonstrate that it has acted reasonably in agreeing undervalue transactions, particularly as it is unlikely that aggrieved unsuccessful or potential purchasers or local residents will in all cases accept the decision. A fundamental issue will be the ability to demonstrate reasonableness having regard to applicable policy.
- 2.5 The decision to dispose of property at less than best consideration is to be made rationally and fairly.

3.0 State Aid

- 3.1 Where the Council disposes of property at less than best consideration it is providing a subsidy to the owner, developer and/or occupier of the property. Where this occurs the Council must ensure that the disposal complies with the European Commission's State Aid rules.

4.0 Proposals

- 4.1 Sales of property at an undervalue in Sunderland have only ever taken place on an exceptional basis and to ensure future requests are considered appropriately the following guidelines will apply.
- 4.2 Proposals to dispose of property for less than best consideration will be considered by the Capital Strategy Group with the following information:-
 - (i). A valuation report undertaken by a qualified valuer setting out the valuation of the interest to be disposed in accordance with the Consent's Technical Appendix and the requirements of the RICS's Valuation Standards UK Guidance Note 5. This requires valuations to be prepared to show:-
 - A). The unrestricted value, the best price reasonably obtainable if the Council's aim was to maximise the capital receipt.
 - B). The restricted value, the market value of the property having regard to the terms of the proposed transaction.
 - C). The value of voluntary conditions, the total capital value of conditions imposed voluntarily by the Council as terms of the disposal. These may include non property benefits including operational savings. This valuation will need to be prepared in conjunction with the Project Sponsor, see (ii) below.

If the difference between the values shows the undervalue and where this is less than £2million the Council has the ability to proceed with the disposal.

Where the assessment shows the undervalue to be in excess of £2million the Council will need to seek the approval of the Secretary of State. This application will require a valuation report as detailed above.

- (ii). The Project Sponsor will need to provide an assessment of the capital value to the Council of those benefits of the proposal which are capable of monetary assessment (e.g. operational savings or income generation, leveraging in of additional financial resources) together with an assessment with supporting evidence of the value of non-monetary benefits (economic benefits such as job creation, environmental improvements, health and safety benefits, etc and social benefits to the community).
- (iii). Confirmation from the Project Sponsor that the disposal will contribute positively towards an agreed Council priority and will not adversely affect any other priority project or area, together with a clear statement showing where the scheme fits within service priorities.
- (iv). A clear statement from the Project Sponsor that the benefits which the city or its residents will derive cannot be achieved unless the sale takes place at an undervalue and confirming that no alternative means of funding is available. In case where the proposed disposal is to an identified person/organisation without a tender process this will normally only be possible by provision of a robust business plan and analysis of the financial standing of the organisation.
- (v). Details (having taken advice from the Head of Land and Property) of the proposed terms of the transaction which will ensure (as far as possible) that the disposal will contribute to the achievement of well-being locally.
- (vi). Confirmation that the property is held for purposes to which the General Disposal Consent Order applies or if not whether the property can be appropriated to a purpose within the Consent Order.
- (vi). Any views of Members.
- (vii). A statement from the Chief Solicitor on whether he considers the disposal at an under value is within the provisions of the General Disposal Consent Order and complies with the European Commission State Aid rules.

APPENDIX 5**Timeframe for Disposal by Informal Tender**

Start date	Site marketed by Property Services
+ 8 weeks	Closing date for layouts
+ 4 weeks	Evaluation of layouts by planning and engineering completed
+ 4 weeks	Developers requested by Property Services to revise layouts
+ 4 weeks	Layouts confirmed to be acceptable and financial offers sought by Property Services
	DfES consent sought if required
+ 4 weeks	Return of financial offers
+ 4 weeks	Offers reported by Property Services to Cabinet
1 day	Solicitors instructed by Property Services
within 2 weeks	Pre application meeting developer & Development Control
+ 6 weeks	Completion of conditional contract via Property Services and Legal and submission of planning application
	DfES consent obtained if necessary
+ 13 weeks	Planning consent granted (minimum)
	Referred to SoS if required
	Renegotiation of price by Property Services and external consultant if required by policy, due to changes in layout to secure planning consent/abnormal development costs*
	Revised price considered by Cabinet
	Highway stopping up order triggered by grant of planning consent (minimum)
+ 1 day Scheduled completion	
(Minimum 49 weeks)	

