

CABINET MEETING – 7TH SEPTEMBER 2011

EXECUTIVE SUMMARY SHEET – PART I

Title of Report:

Disposal Procedure for Surplus Land and Property and Amendment of Delegation Scheme and Financial Procedure Rules for acquisition and disposal of assets

Author(s):

Report of the Deputy Chief Executive.

Purpose of Report:

This report recommends improvements to the Council's Disposal Procedure for Surplus Land and Property, and a revision to the Delegation Scheme and Financial Procedure Rules which will further improve the process for the acquisition and disposal of assets.

Description of Decision:

Cabinet is recommended to:

(1) agree to the amendments to the Procedure for the Disposal of Surplus Land and Property as set out in this report

(2) recommend Council to

(a) amend paragraph 2.37 of the Delegation Scheme set out in Part 3 of the constitution in respect of the Deputy Chief Executive to provide as follows:-

“2.37 To authorise, in consultation with the Executive Director of Commercial and Corporate Services:-

a) the acquisition and disposal of freehold and leasehold interests in land where the consideration is less than £250,000; and

b) the acquisition and disposal of leasehold interests in land where the annual rental is less than £250,000.”

provided that in each case, save for:-

(i) leases granted for a term of seven years or less; or

(ii) where a disposal of a surplus property is proposed at less than best consideration to a Voluntary and Community Sector organisation in

accordance with the Surplus Building Policy (Community Benefit) approved by Cabinet at its meeting on 6th April 2011 and the consideration or annual rental is less than £250,000.00 before any concession; or

(iii) where the disposal is within the scope of the Deputy Chief Executive's delegated authority to agree rent concessions;

in the reasonable opinion of the Deputy Chief Executive, the transaction represents the best consideration reasonably obtainable.”

- (b) amend paragraph 2.58 of the Delegation Scheme set out in Part 3 of the constitution in respect of the Deputy Chief Executive to provide as follows:-

“2.58 To agree abnormal development costs for all sites”

- (c) amend paragraph 20.4 of the Financial Procedure Rules to provide as follows

“Cabinet approval is required for the purchase and disposal of freehold and leasehold interests in land where the consideration is £250,000 or more or, in any case, save for:-

(i) leases granted for a term of seven years or less; or

(ii) where a disposal of a surplus property is proposed at less than best consideration to a Voluntary and Community Sector organisation in accordance with the Surplus Building Policy (Community Benefit) approved by Cabinet at its meeting on 6th April 2011 and the consideration or annual rental is less than £250,000.00 before any concession; or

(iii) where the disposal is within the scope of the Deputy Chief Executive's delegated authority to agree rent concessions;

where the disposal of a freehold or leasehold interest is at less than best consideration.”

- (d) amend paragraph 20.5 of the Financial Procedure Rules to provide as follows

“Cabinet approval is required for the purchase and disposal of leasehold interests in land where the annual rental is £250,000 or more or, in any case, save for:-

(i) leases granted for a term of seven years or less; or

(ii) where a disposal of a surplus property is proposed at less than best consideration to a Voluntary and Community Sector organisation in accordance with the Surplus Building Policy (Community Benefit) approved by Cabinet at its meeting on 6th April 2011 and the consideration or annual rental is less than £250,000.00 before any concession; or

(iii) where the disposal is within the scope of the Deputy Chief Executive's delegated authority to agree rent concessions;

<p>where the disposal of a leasehold interest is at less than best consideration”</p> <p>(e) authorise the Head of Law and Governance to make such other amendments to the constitution as are required to give effect to and ensure consistency with the decisions of Council as set out in paragraphs (2) (a) to (d) above.</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: To provide a more efficient and streamlined approach to the acceptance of offers for the disposal and acquisition of Council land and buildings.</p>	
<p>Alternative options to be considered and recommended to be rejected: The alternative option is to not amend and continue with the existing Delegation Scheme and the procedure for the Disposal of Surplus Land and Property. This option would not take advantage of an opportunity to provide a more efficient procedure thereby assisting with the earlier receipt of capital sums. This option has been considered and is not recommended.</p>	
<p>Is this a “Key Decision” as defined in the Constitution? Yes</p> <p>Is it included in the Forward Plan? No</p>	<p>Relevant Scrutiny Committee: Management</p>

**DISPOSAL PROCEDURE FOR SURPLUS LAND AND PROPERTY AND
AMENDMENT OF DELEGATION SCHEME AND FINANCIAL PROCEDURE
RULES FOR ACQUISITION AND DISPOSAL OF ASSETS**

REPORT OF THE DEPUTY CHIEF EXECUTIVE

1.0 Purpose of the Report

- 1.1 This report recommends improvements to the Council's Disposal Procedure for Surplus Land and Property, and a revision to the Delegation Scheme and Financial Procedure Rules which will further improve the process for the acquisition and disposal of assets.

2.0 Description of Decision

- 2.1 Cabinet is recommended to:-

(1) agree to the amendments to the Procedure for the Disposal of Surplus Land and Property as set out in this report

(2) recommend Council to

(a) amend paragraph 2.37 of the Delegation Scheme set out in Part 3 of the constitution in respect of the Deputy Chief Executive to provide as follows:-

“2.37 To authorise, in consultation with the Executive Director of Commercial and Corporate Services:-

a) the acquisition and disposal of freehold and leasehold interests in land where the consideration is less than £250,000; and

b) The acquisition and disposal of leasehold interests in land where the annual rental is less than £250,000.”

provided that in each case, save for:-

- (i) leases granted for a term of seven years or less; or
- (ii) where a disposal of a surplus property is proposed at less than best consideration to a Voluntary and Community Sector organisation in accordance with the Surplus Building Policy (Community Benefit) approved by Cabinet at its meeting on 6th April 2011 and the consideration or annual rental is less than £250,000.00 before any concession; or

- (iii) where the disposal is within the scope of the Deputy Chief Executive's delegated authority to agree rent concessions;

in the reasonable opinion of the Deputy Chief Executive, the transaction represents the best consideration reasonably obtainable."

- (b) amend paragraph 2.58 of the Delegation Scheme set out in Part 3 of the constitution in respect of the Deputy Chief Executive to provide as follows:-

"To agree abnormal development costs for all sites"

- (c) amend paragraph 20.4 of the Financial Procedure Rules to provide as follows:-

"Cabinet approval is required for the purchase and disposal of freehold and leasehold interests in land where the consideration is £250,000 or more or, in any case, save for:

- (i) leases granted for a term of seven years or less; or
- (ii) where a disposal of a surplus property is proposed at less than best consideration to a Voluntary and Community Sector organisation in accordance with the Surplus Building Policy (Community Benefit) approved by Cabinet at its meeting on 6th April 2011 and the consideration or annual rental is less than £250,000.00 before any concession; or
- (iii) where the disposal is within the scope of the Deputy Chief Executive's delegated authority to agree rent concessions;

where the disposal of a freehold or leasehold interest is at less than best consideration."

- (d) amend paragraph 20.5 of the Financial Procedure Rules to provide as follows:-

"Cabinet approval is required for the purchase and disposal of leasehold interests in land where the annual rental is £250,000 or more or, in any case, save for:

- (i) leases granted for a term of seven years or less; or
- (ii) where a disposal of a surplus property is proposed at less than best consideration to a Voluntary and Community Sector organisation in accordance with the Surplus Building Policy (Community Benefit) approved by Cabinet at its meeting on 6th April 2011 and the consideration or annual rental is less than £250,000.00 before any concession; or

(iii) where the disposal is within the scope of the Deputy Chief Executive's delegated authority to agree rent concessions;

where the disposal of a leasehold interest is at less than best consideration"

(e) authorise the Head of Law and Governance to make such other amendments to the constitution as are required to give effect to and ensure consistency with the decisions of Council as set out in paragraphs (2) (a) to (d) above.

3.0 Background and Proposed Amendment

3.1 The current Disposal Procedure for Surplus Land and Property was adopted by Cabinet in December 2009 (copy attached). Its operation has since been reviewed, and it is considered that there are a number of amendments that can be made that will improve the speed and efficiency of the disposals process without compromising its integrity. These are set out below.

3.2 Existing procedure

Initial gross financial offers for land and buildings are reported to Cabinet, the highest acceptable offer being recommended for approval. This allows the Council to conditionally accept the offer and gives the preferred developer the confidence to proceed with due diligence. The current procedure requires that if, as is usually the case, unforeseen development costs exceed 10% of the original offer, a further report is made to Cabinet seeking approval to a revised offer.

3.3 This procedure results in unnecessary lengthening of the process due to the need to report to Cabinet twice on the majority of transactions. It can therefore lead to delays in the process and prolong the investment and development in Sunderland.

3.4 Proposed amendment

It is therefore proposed that a report be made to Cabinet recommending the proposed disposal to the preferred bidder at the initial gross offer on the basis that the offer is both acceptable in planning terms and represents the most financially advantageous offer representing best consideration.

3.5 As is the case now, the preferred bidder will then be issued a contract for sale which will be conditional upon the grant of planning permission and the agreement of any abnormal development costs for the proposed development. The prospective purchaser will have the opportunity to carry out due diligence and will commission site investigation works.

- 3.6 If it is the case that site investigation works highlight unforeseen additional development costs, these will be scrutinised and verified in order to reach a best and final offer. It is proposed that the Deputy Chief Executive, in consultation with the Executive Director of Commercial and Corporate Services, be delegated authority to accept a best and final offer. The Council's constitution also contains requirements in respect of consultation with relevant portfolio holders by Chief Officers who are exercising delegated powers and in the case of property disposals, consultation will be undertaken with the Leader and Cabinet Secretary. In respect of unforeseen costs it is expected that bidders will have undertaken diligent desk top surveys of the site in question and as a result will have allowed for costs such as access, services, and known ground conditions as part of their initial submission. These areas will not be considered as unforeseen development costs. However, works that could not have reasonably been envisaged at the time of making the offer such as the removal of contaminated materials, removal of substructures and the requirement for upgraded foundations due to poor ground quality, will be considered.
- 3.7 The policy presently requires any claimed reductions for unforeseen development costs in excess of £100,000 to be scrutinised and verified by independent external consultants. However the expertise to carry out this work is available in house and it is proposed that this be utilised which will result in a saving on consultants fees. Specialist external advice will be sought only if necessary.
- 3.8 The procedure set out above will be followed in respect of any transaction for which the value exceeds the level delegated to the Deputy Chief Executive. With the following exceptions it is recommended that any proposed disposals at an undervalue (for example, in order to secure the promotion or improvement of the economic, social or environmental well-being of the area) must be approved by Cabinet.

The exceptions are:-

- a) where a disposal of a surplus property is proposed at less than best consideration to a Voluntary and Community Sector organisation in accordance with the Surplus Building Policy (Community Benefit) approved by Cabinet at its meeting on 6th April 2011 and the consideration or annual rental is less than £250,000.00 before any concession (therefore within the current acquisition and disposal delegation).
- b) leases granted for a term of seven years or less where the annual rental is less than £250,000.00 (therefore within the current acquisition and disposal delegation).

where the disposal is within the scope of the Deputy Chief Executive's delegated authority to agree rent concessions.

4.0 Proposed Amendment to the Scheme of Delegation and Financial Procedure Rules

4.1 Currently the Scheme within the Constitution enables the Deputy Chief Executive to authorise the acquisition and disposal of freehold and leasehold interests where the consideration is less than £100,000 in the case of freeholds and where the annual rent is less than £50,000 in the case of leaseholds. Transactions outside of these limits require Cabinet approval.

4.2 It is proposed therefore that the Deputy Chief Executive be authorised, in consultation with the Executive Director of Commercial and Corporate Services, to approve the acquisitions and disposals of both freehold and leasehold property where the consideration is less than £250,000 and where the annual rental is less than £250,000 in respect of leaseholds. The requirement to consult with the Executive Director of Commercial and Corporate Services will ensure that best consideration is obtained save for the excepted cases at 3.8 above including leases granted for a term of seven years or less. Such leases generally relate to occupation by social enterprises and charities of Council shops and factories and are not reported to Cabinet.

It is also proposed that the Financial Procedure Rules be amended to reflect that:-

- a) Cabinet approval is required for the purchase and disposal of freehold and leasehold interests in land where the consideration is £250,000 or more or, in any case, save for:
 - (i) leases granted for a term of seven years or less; or
 - (ii) where a disposal of a surplus property is proposed at less than best consideration to a Voluntary and Community Sector organisation in accordance with the Surplus Building Policy (Community Benefit) approved by Cabinet at its meeting on 6th April 2011 and the consideration or annual rental is less than £250,000.00 before any concession; or
 - (iii) where the disposal is within the scope of the Deputy Chief Executive's delegated authority to agree rent concessions;

where the disposal of a freehold or leasehold interest is at less than best consideration.

- b) Cabinet approval is required for the purchase and disposal of leasehold interests in land where the annual rental is £250,000 or more or, in any case, save for:

- (i) leases granted for a term of seven years or less; or
- (ii) where a disposal of a surplus property is proposed at less than best consideration to a Voluntary and Community Sector organisation in accordance with the Surplus Building Policy (Community Benefit) approved by Cabinet at its meeting on 6th April 2011 and the consideration or annual rental is less than £250,000.00 before any concession; or
- (iii) where the disposal is within the scope of the Deputy Chief Executive's delegated authority to agree rent concessions;

where the disposal of a leasehold interest is at less than best consideration.

5.0 Reasons for decision

To provide a more efficient and streamlined approach to the acceptance of offers for the disposal of Council land and buildings.

6.0 Alternative options to be considered and recommended to be rejected

The alternative options are:-

Not amend and continue with the existing Delegation Scheme and the procedure for the Disposal of Surplus Land and Property. This option would not take advantage of an opportunity to provide a more efficient procedure thereby assisting with the earlier receipt of capital sums.

This option has been considered and is not recommended.

7.0 Financial Implications and Legal Implications

The Executive Director of Commercial and Corporate Services has been consulted and his comments are contained in the report.

8.0 Background Papers

Appendix 1 - Disposal Procedure for Surplus Land and Property.