

## **CABINET**

<b>DATE</b>	21 <sup>st</sup> December 2022
<b>REPORT OF</b>	Councillor Stephen Harness - Portfolio Holder for Finance, Resources and Assets
<b>RESPONSIBLE OFFICER</b>	Sharon Wroot – Executive Director of Environment, Economy and Resources
<b>SUBJECT</b>	DISPOSAL OF PROPERTY AT LESS THAN BEST CONSIDERATION – Leasehold of the building sited at Clee Fields (former Youth Centre and changing rooms), Ladysmith Road, Grimsby.
<b>STATUS</b>	Open
<b>FORWARD PLAN REF NO.</b>	<b>CB 12/22/08</b>
<b>CONTRIBUTION TO OUR AIMS</b>	

The disposal of the building sited at Clee Fields (former Youth Centre and changing rooms) (the “Site”), by way of a leasehold disposal, will enable Fusion Health and Wellbeing (the “Group”) to continue with the management, maintenance and use of the Site to fulfil their Charitable aims and objectives.

The current lease has a remaining term of 18 years which is insufficient to access external funding. A surrender and regrant of the lease at less than best (market) value is based on the submission of a revised and detailed Business Case proposal setting out the social, economic and environmental (community) return on investment; the benefits of which outweigh the monetary value that would be requested if the Site were to be leased at market value.

The disposal supports the Council’s outcome of ‘Stronger Communities’ by ensuring the continuation of the current provision, as well as proposed investment in to the Site as set out by the Group. There would continue to be no financial constraint on the Council in terms of managing the Site which will meet our determination to be an efficient and effective Council.

### **EXECUTIVE SUMMARY**

This report seeks authority to surrender and regrant a new 30-year full, repairing, and insuring lease, of the subject Site, namely the Former Youth Centre and changing rooms. The purpose of this report is to gain agreement to a revised Business Case proposal from the Group, which will provide a social return on investment, far outweighing monetary equivalent to otherwise proposed rent as part of the Council’s approach to Community Asset Transfers (CAT). Approval to the proposal will allow the granting of a new lease of the Site over the stated term at a peppercorn rent (£1 per annum, if demanded).

## **RECOMMENDATIONS**

It is recommended that Cabinet:

1. approves the principle of a regrant of a full, repairing, and insuring lease of the subject Site for a term of 30-years at a peppercorn rent (£1 per annum if demanded) to Fusion Health and Wellbeing;
2. delegates authority to the Executive Director of Environment, Economy and Resources in consultation with the Portfolio Holder for Finance, Resources and Assets the responsibility to ensure that all necessary actions are carried out in order to approve and complete the detailed terms of the disposal;
3. delegates to the Assistant Director Law and Governance (Monitoring Officer) authorisation to complete all requisite legal documentation in relation to the matters outlined above.

## **REASONS FOR DECISION**

A proposal has been received from the Group which has been considered as part of the Council's approach to Community Asset Transfers (CAT). The proposal, by way of a full Business Case, has been agreed in principle which could result in the transfer of the Site by virtue of a 30-year full, repairing, and insuring lease. The new term would ensure the continuation of an existing lease on the basis that their proposal is sustainable and viable over the proposed term.

### **1 BACKGROUND AND ISSUES**

- 1.1 The Council is the freehold owner of the Site, being the former Youth Centre, Changing Rooms and toilets/ showers, which for the purposes of this report, is shown outlined as per the attached plan at Appendix One and is the extent of the Site to be granted a new lease term.
- 1.2 The Group hold an existing lease, granted for 25 years in 2015 and have since invested and extended the current Site. The Group have recently secured significant further funding to invest in to the site which requires a minimum lease term of 20 years.
- 1.3 This proposal, based on a revised Business Case which has been received and progressed using the Community Asset Transfer (CAT) approach supports the continued use of the Site with localised ownership and management of a public asset which has already and will further lead to an enhancement of the area and promotion of the Site for increased use by the local community and residents.
- 1.4 The Business Case received from the Group evidenced that over the last seven (7) years there has been significant social, economic or environmental benefits to the community - benefits which can be taken in lieu of the monetary value being proposed in rent. The CAT approach allows proposals to be considered through an agreed governance process, including in principle support at key milestones, resulting in formal Cabinet approval.
- 1.5 The Council has been satisfied that the revised proposal leading to the recommendation to approve a 'less than best' transaction is based on sufficient social and economic benefit, which is stated as part of the submitted Business Case. The Business Case received far outweighs the monetary value that could be requested in rent and supports existing and proposed community

benefits which are a direct contribution to the Council's outcomes of 'Stronger Economy' and 'Stronger Communities'.

- 1.6 The proposal to set the level of rent at a peppercorn ensures the continued community use and management of the Site remains sustainable, with the monetary value being realised through social benefit. The obligations for repair and maintenance of all aspects of the Site will continue to be that of the Group, as would all future investment opportunities.
- 1.7 Ward Councillors will be engaged as part of the disposal process.

## **2 PROPOSAL**

- 2.1 A revised proposal, by way of a Business Case, has been received from the Group which sets out their objectives as a Charitable Incorporated Organisation (Registration number-1153370) to extend their existing lease of the Site and to benefit from external funding to enable fundamental improvements to the Site.
- 2.2 Should the proposal be agreed, and a new lease be granted, the Group will have full autonomy to concentrate on improving the sustainable provision of leisure and recreational use of the Site, and to enhance the biodiversity of the area and make investment in the security of the Site to deter anti-social behaviour.
- 2.3 Parts of the Site have been improved already as well as a new extension to the front. The rear part of the Site needs refurbishment and the Group have ambitious plans to invest, improve and maintain the building as a valuable resource to the community. The Group's proposal to enhance the Site and improve on the current provision for the benefit of the community and residents should be considered on merit of the social benefits to be realised.
- 2.4 The Group have set out their proposals to invest in the Site in four (4) phases. In the first phase the Group have completed an extension to the front, providing more floor space for the boxing gym. Phase two (2) saw the refurbishment of an internal part of the Site, developed in conjunction with the Community needs, residents, and specialists and achieved with funding.
- 2.5 Further investment in phase three (3) seeks to further extend the Site in consultation with Youth Groups to extend the gymnasium and fitness suite, attracting groups that may otherwise turn to anti-social behaviours. The final phase, four (4), sets out achieving a youth training and education space extending the Youth offer at the Site. This includes demolition of the current and aged structure which is in a poor state of repair and will result in the creation of a new build for training and education as well as being flexible at other times for use as social space to attract more users.
- 2.6 Any proposed changes to the Site as part of the lease would need to be reviewed, considered and agreed in advance with the Council as Landlord.
- 2.7 The Group have held engagement sessions with the Community in respect to having more activities and use of the Site, with feedback from those who are eager to see the Site further improved.
- 2.8 The proposal to surrender the current lease and enter in to a new lease agreement would be granted on a full, repairing, and insuring basis across the 30-year term. This would maintain the current position whereby the Council would not incur any ongoing maintenance costs for the Site.
- 2.9 The proposed lease does not extend to the wider Clee Fields site, including investment plans to improve the existing grass football pitches and the

installation of two (2) new artificial pitches and pavilion building. However, this proposal is considered a significant benefit and compliments the continued use and viability of the wider site. In this regard, the tenants and any future operator of the wider site are encouraged to work collectively for the benefit of the community who access this important asset within the borough.

### 3 CONSTITUTIONAL REQUIREMENTS

3.1 The Constitution includes a Protocol on Disposal of Land for Less than Best Consideration (“the Protocol”) as set out at Appendix Two. The Protocol contains eight specific procedural requirements that must be addressed and included in any report seeking authority to dispose at less than market value or market rent as follows:

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| (i) | A valuation report, undertaken by a Chartered Surveyor (Valuer), setting out the restricted and unrestricted values of the property |
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The Council's qualified Chartered Surveyor has provided a valuation report which contains the following key information.
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Unrestricted Value (i.e. market value as a capital sum)	£95,000 (Ninety-Five Thousand Pounds)
Less Restricted Value (i.e. market value subject to proposed lease)	£1,200 (One Thousand, Two Hundred Pounds)
Equals Discount (i.e. total amount of undervalue)	£93,800 (Ninety-Three Thousand, Eight Hundred Pounds)

The above figures are based on the current market value and the market value under the terms of the proposed transaction and is the amount that will not be received by the Council if the proposal is approved.
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| (ii) | An assessment with supporting evidence of the capital value to the Council of those benefits of the proposal which are capable of monetary assessment together with an assessment with supporting evidence of the value of non-monetary benefits (i.e. social, economic and environmental benefits) |
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The value of the proposed lease in non-monetary terms cannot be quantified. Nevertheless, securing a longer period of transfer to the Group supports the Council's outcomes of a 'stronger economy' and 'stronger communities'. It provides the Group with security to bid for external funding to enable further improvements to a key asset to the community and continue with the management and maintenance of the Site. The lease includes all of the maintenance costs associated with the Site being that of the Group, thus ensuring no change in the financial position of the Council.
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The Group's continued commitment to provide a local community amenity ensures community spirit and health and well-being, helping to tackle anti-social behaviour, and boost local prosperity.
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These outcomes affect peoples' lives and cannot be directly quantified.
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<p>Notwithstanding there is a significant cost to the Borough in dealing with issues and any opportunity to reduce the numbers of those affected must be embraced.</p>
<p>(iii) Confirmation that the disposal will contribute positively to the Council's priorities.</p>
<p>The new lease will contribute positively to the continued active management and use of the Site in support of the Council's objectives including 'Sustainable Communities', 'Feel Safe and Are Safe' and 'Health and Wellbeing'.</p>
<p>(iv) A statement that the benefits that the Borough will derive from the proposed disposal cannot be achieved unless the lease takes place at an undervalue rent and confirming that no reasonable alternative means of funding are available to the purchaser.</p>
<p>The Group are dependent upon a longer-term lease at 'Less Than Best' to enable them to take receipt of external funding and to ensure ongoing viability with the management and maintenance of the Site on behalf of the local Community.</p>
<p>(v) In cases where the proposed disposal is to an identified person/organisation without a tender process, this should be subject to consideration of a robust business case and an analysis of the financial standing of the organisation/person.</p>
<p>An updated full Business Case has been received and considered. The Group is of sound grounding, demonstrating improvements over the last seven (7) years to provide an enhanced asset to benefit both the residents and the wider community.</p>
<p>(vi) Details of the proposed terms of the transaction which will ensure that the disposal will contribute to the achievement or improvement of the social, economic, and environmental wellbeing of the area.</p> <p><i>NOTE: In considering the application of the wellbeing criteria under the General Disposal Consent, the Council must have regard to the Community Strategy and reasonably consider the extent, if any, to which the proposed disposal supports the aims and objectives in the Strategy</i></p>
<p>A summary of the Headline terms are below:</p> <ul style="list-style-type: none"> <li>• A 30-year lease term</li> <li>• Peppercorn rent (£1 if demanded)</li> <li>• Full, Repairing and Insuring by the tenant</li> <li>• Restricted to Community Uses throughout the term.</li> </ul>
<p>(vii) A statement from the Monitoring Officer on whether it is considered that the disposal is capable of falling within the terms of the General Disposal Consent.</p>
<p>See Section 12 of this Report "Legal Implications"</p>

(viii)	A statement from the Section 151 Officer in relation to the financial implications of the proposal, particularly in respect of the impact on resources for capital spending as set out in the Medium-Term Financial Plan.  <i>There must be demonstrable evidence that the outcome of any undervalue disposal will be equally beneficial to a disposal at market value</i>
See Section 11 of this Report “Financial Implications”	

- 3.2 ESTATES PROGRAMME BOARD - The Protocol also requires that any proposal to dispose at less than best consideration should, in the first instance, be referred to the Board for consideration of a business case and options appraisal.
- 3.3 SUBSIDY CONTROL RULES - The Subsidy Control Act 2022 became law at the end of April 2022 with the new regime expected to come into force in January 2023. Until then, public authorities are required to continue to follow the existing rules on subsidy control (as set out in the UK-EU Trade and Cooperation Agreement (the TCA). The Protocol requires that the Council continues to ensure that the nature and amount of any undervalue complies with the Subsidy Control Rules and does not create a state aided subsidy for a commercial organisation. From 1<sup>st</sup> January 2021 the State Aid rules have been replaced by the Subsidy Control Rules for subsidies granted in the UK. The Council now has to ensure the nature and amount of the undervalue, as a subsidy, complies with the obligations in the TCA. The application of the differing regimes is dependent upon the date of completion. At the moment the matter requires the application of the follow tests:

<p>Does the proposal meet the four-limb definition of a Subsidy under the TCA? <i>Where 1 or more of the criteria appears not to be met, then it is unlikely to constitute a Subsidy:</i></p>
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Is there financial assistance arising from resources of the parties?	Yes
Does the financial assistance confer an economic advantage on one or more economic actors?	Yes
Is it selective, favoring certain economic actors over others?	Yes
Has it or could it have an effect on trade or investment between the UK and the EU?	No

#### 4 RISKS AND OPPORTUNITIES

- 4.1 The risk to the Council in progressing with a new lease term to the Group is considered minimal. In the scenario of a lease, should the proposals no longer be viable, the option to relinquish the Site back to the Council and ultimately seek alternative opportunities would be pursued which could mitigate against the Council incurring any future holding costs.
- 4.2 Future risks remain with the Group in respect to the management and operational costs of maintenance etc. and the obligation of repair and

maintaining the Site to an acceptable standard to ensure ongoing use.

- 4.3 There are potential positive identifiable environmental sustainability implications because of the proposal, as it is the intention that the condition of the Site will be maintained and improved based on its current operational use. The new lease term will allow the Group to continue with management of the Site and would allow for potential funding to be obtained, allowing for further investment and improvements.
- 4.4 The disposal will enable the Group to direct resources and funding towards ongoing management resulting in increased usage which will result in a positive reflection to the street scene within this part of the borough, reduce miss-use or antisocial behaviour and will ensure there is no future ongoing financial commitment to the Council.

## **5 OTHER OPTIONS CONSIDERED**

- 5.1 To do nothing would see the Group not being able to take advantage of external funding opportunities. This would result in the Site not being invested in and improved and the Group unable to develop their current proposals as well as seek future funding opportunities to improve and maintain the Site for the benefit of the residents and community.
- 5.2 The freehold disposal of the Site has not been considered at this time. This is in respect of the Council's continued interest in the use of the wider site and mitigating risk in the event the Group are unable to continue with maintaining the Site. In such circumstances where the proposal is no longer viable, which impacts on the on-going use of the Site, the Council could take action to seek an alternative use of the Site or to prevent any unauthorised uses of the Site which a freehold disposal would remove.

## **6 REPUTATION AND COMMUNICATIONS CONSIDERATIONS**

There are positive reputational implications for the Council resulting from the decision to support a new lease to the Group. The lease agreement will primarily enable continued use of the Site but will allow current and future investment opportunities for enhancement as well as a continued localised management offer for the benefit and use by local residents and the community. The Council's communications service has been briefed of the proposal and will issue any information requirements in respect to this proposal.

## **7 FINANCIAL CONSIDERATIONS**

- 7.1 The proposal outlined within the report supports the Council's key outcome of 'stronger communities', by enabling The Group and the residents and community to use and enhance the Site.
- 7.2 The repair and maintenance cost of the Site will continue to be financed through resources obtained by the Group. Any investment will be subject to the Group's own resources and access to external grant funding.
- 7.3 On an ongoing basis the proposal will require no capital and revenue expenditure to be provided by the Council. This is consistent with the Council's policy to contribute to improved value for money and supports the financial objective and our determination to be an efficient and effective Council.

## **8 CHILDREN AND YOUNG PEOPLE IMPLICATIONS**

The use of the Site will continue as it is now, with proposals to invest and enhance

the Site and its facilities which will result in positive implications so far as Children and Young People.

## **9 CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

The recommendations outlined within this report have been considered so far as their impact of the proposal on climate change and the environment. In reference to the Council's environmental policy, the proposal supports the Council's environmental priorities:

- By recognising and realising the economic and social benefits of a high-quality environment.
- By working towards a low carbon North East Lincolnshire that is prepared for, and resilient to, the impacts of climate change.

## **10 CONSULTATION WITH SCRUTINY**

There has been no consultation with Scrutiny to date.

## **11 FINANCIAL IMPLICATIONS**

The proposed long-term leasing out of the site will ensure the continuation of the current provision and provide opportunity for the Group to access external funding to further invest and enhance the site for the benefit of the community. There are no ongoing financial implications to the Council.

## **12 LEGAL IMPLICATIONS**

12.1 Local Government Act 1972, s123, provides that the Council may dispose of land in any manner it sees fit subject to the constraint that (except in the case of leases for less than 7 years) disposal must be for the best consideration reasonably obtainable.

12.2 The General Disposal Consent (England) 2003 provides a general consent removing the requirement for Local Authorities to seek specific approval from the Secretary of State for a wide range of disposals at less than best consideration. Authorities are granted consent in circumstances when the undervalue does not exceed £2m and where the disposing Authority considers that the disposal is likely to contribute to the achievement of the promotion or improvement of the economic, social, or environmental wellbeing of the whole or any part of the area (the general power of wellbeing).

12.3 Constitutionally and as outlined in the above report the Protocol on Disposal of Land for Less than Best Consideration requires that the Council receives a statement from the Monitoring Officer on whether it is considered that the proposed lease is capable of falling within the terms of the General Disposal Consent (England) 2003.



12.4 Cabinet is advised that this proposed disposal is capable of falling within the terms of the consent for the following reasons:

12.4.1 the amount of undervalue would be below the £2m threshold

12.4.2 it is the professional opinion of the Executive Director for Environment, Economy and Resources that in granting this disposal the monetary loss is outweighed by the positive social, economic and environmental benefits of the proposal.

12.5 The Scheme of Delegation in the Constitution provides for the Executive Director for Environment, Economy and Resources to refer any proposed disposal at an undervalue to Cabinet in accordance with the Protocol on Disposal of Land at Less than Best Consideration and maintain a register of all undervalue disposals. This report therefore complies with those provisions.

12.6 In terms of subsidy control, it is clear from the analysis set out earlier in this report that the proposal fails to fully satisfy the four-limb definition of a subsidy under the UK-EU Trade and Co-operation Agreement. Further, the proposal would fall within de minimis contained in the UK-EU Trade and Co-operation Agreement. This recognises that small amounts of subsidy, less than €380,000.00 over a rolling 3-year period, are unlikely to distort competition.

12.7 It is recognised and accepted that long term security of tenure can be advantageous to a provider and sometimes necessary to secure funding or render an investment capable of delivering a return.

### **13 HUMAN RESOURCES IMPLICATIONS**

There are no direct HR implications

### **14 WARD IMPLICATIONS**

This proposal impacts on the Heneage Ward.

### **15 BACKGROUND PAPERS**

There are no background papers in respect of this proposal.

### **16 CONTACT OFFICERS**

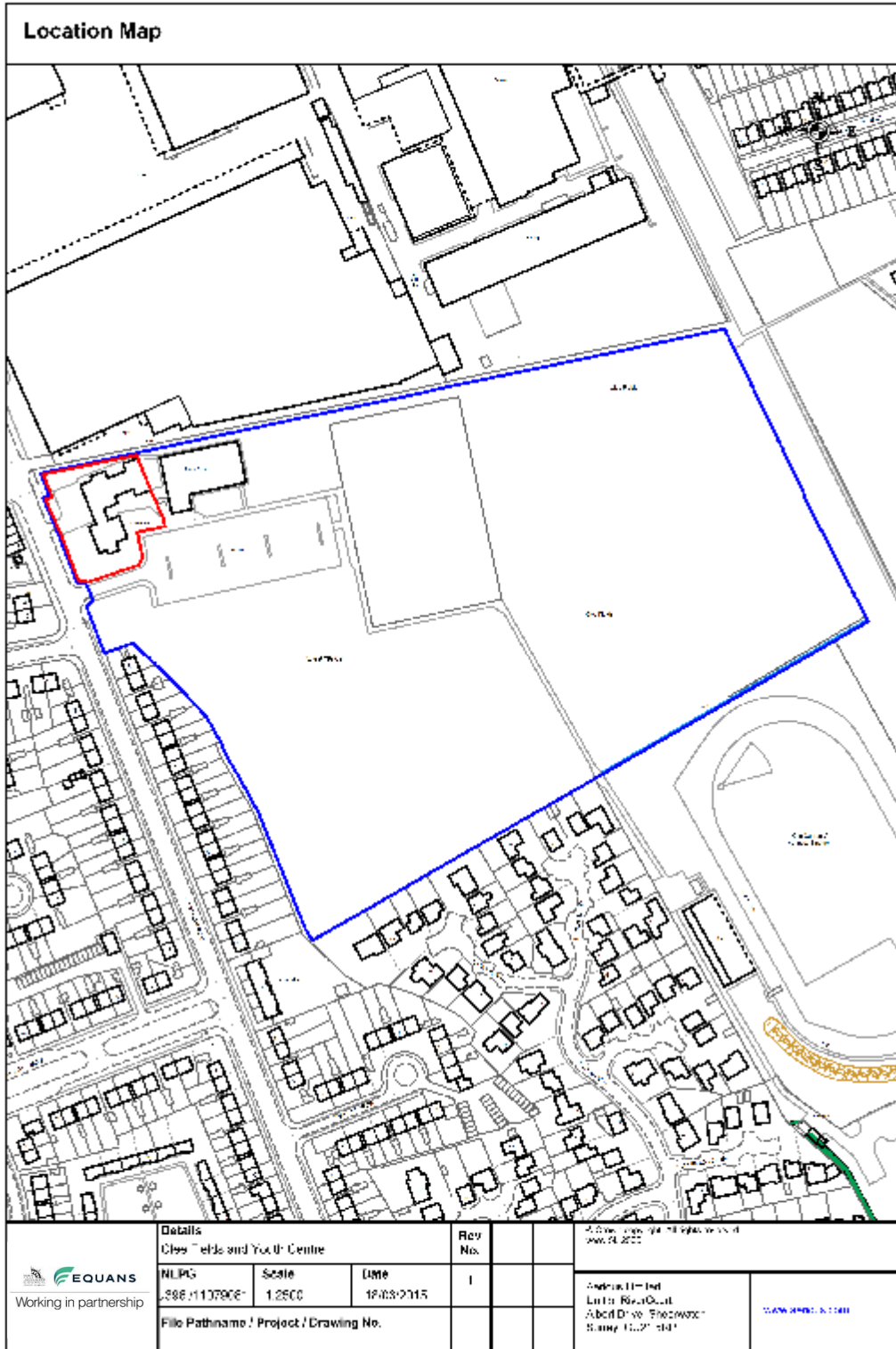
14.1 Mark Nearney, Assistant Director for Housing, Highways, Transportation, Planning and Assets, NELC (01472) 326742

16.1 Wendy Fisher, Head of Estates and Business Development, NELC (01472) 323132

**COUNCILLOR STEPHEN HARNESS**

**PORTFOLIO HOLDER FOR FINANCE, RESOURCES AND ASSETS**

## APPENDIX ONE – SITE LOCATION PLAN



## **APPENDIX TWO – PROTOCOL ON DISPOSAL OF LAND FOR LESS THAN BEST CONSIDERATION**

1. Cabinet approved the Corporate Property Policy on the 4th July 2005.
2. The Policy provides that the Council should seek to achieve best consideration in respect of any disposal unless a case for disposal at an undervalue can be sustained. Generally best consideration will be achieved by an offer for sale subject to competition.
3. This Protocol sets out the principles to be applied when considering disposal of land for less than the best consideration reasonably obtainable.
4. The Local Government Act 1972, Section 123 provides that the Council may disposal of land in any manner it sees fit subject to the constraint that, except in the case of leases for less than 7 years, disposal must be for the best consideration reasonably obtainable.
5. Section 123 applies to land held for most local authority functions subject to certain exceptions such as disposal of land held for housing purposes (governed by the Housing Acts) and for planning purposes (governed by Planning legislation).
6. It is Government policy that local authorities should dispose of surplus land wherever possible. The Corporate Property Policy is consistent with this expectation. Generally it is expected that land will be sold for the best consideration reasonably obtainable. However, the Government recognises that there may be circumstances where an authority considers it appropriate to dispose of land at less than best price.
7. When disposing of land at an undervalue, the authority must remain aware of its fiduciary duty to council tax payers.
8. The General Disposal Consent (England) 2003 provides a general consent removing the requirement for local authorities to seek specific approval from the Secretary of State for a wide range of disposals at less than best consideration.  
Authorities are granted consent in circumstances when the undervalue does not exceed £2m and where the disposal authority considers that the disposal is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the whole or any part of the area (the general power of wellbeing).
9. It is for the Council to decide whether any particular disposal meets these criteria or continues to require specific consent under the 1972 Act.
10. In determining whether or not to dispose of land for less than best consideration the Council should obtain the view of a professionally qualified Chartered Surveyor (Valuer) as to the likely amount of the undervalue. Legal advice should also be obtained on the question of whether the disposal is capable of falling within the terms of the consent. In certain cases it may also be prudent to consult with the District Auditor in relation to any action that is proposed.
11. In considering the application of the wellbeing criteria under the General Disposal Consent, the Council must have regard to the Community Strategy and reasonably consider the extent, if any, to which the proposed disposal supports the aims and objectives in the Strategy.
12. The Council must demonstrate that it has acted reasonably in agreeing undervalue transactions in order to be in a position to respond to any potential

challenge. Regard must therefore be had to the adopted Corporate Property Policy, the terms of this Protocol and the Council's fiduciary duty.

13. In considering the financial considerations of any disposal at an undervalue there must be demonstrable evidence that the outcome will be equally beneficial as compared to a disposal at market value.
14. As a general principle disposal of land at less than best consideration should take place on an exceptional basis and should not be regarded as the rule.
15. Local authorities are state aid authorities for the purposes of the European Commission's State Aid Rules. Disposal of land at less than best consideration effectively involves subsidising the purchaser, Developer and/or occupier of the land. The Council must therefore ensure that the nature and amount of any subsidy complies with the State Aid rules. Failure to do so would render the provision of any aid unlawful.
16. Any proposal to dispose of land at less than best consideration should, in the first instance, be referred to the Corporate Asset Management Group for consideration of a business case and options appraisal.
17. Any subsequent recommendation to dispose of land at less than best consideration should be referred to the Cabinet for a decision. In reporting to Cabinet, the following mandatory requirements must be fulfilled:
  - (a) A valuation report, undertaken by a Chartered Surveyor (valuer), setting out the restricted and unrestricted values of the property
  - (b) An assessment with supporting evidence of the capital value to the Council of those benefits of the proposal which are capable of monetary assessment together with an assessment with supporting evidence of the value of non-monetary benefits (i.e., social, economic and environmental benefits)
  - (c) Confirmation that the disposal will contribute positively to the Council's priorities
  - (d) A statement that the benefits that the Borough will derive from the proposed disposal cannot be achieved unless the sale takes place at an undervalue and confirming that no reasonable alternative means of funding are available to the purchaser
  - (e) In cases where the proposed disposal is to an identified person/organisation without a tender process, this should be subject to consideration of a robust business case and an analysis of the financial standing of the organisation/person
  - (f) Details of the proposed terms of the transaction which will ensure that the disposal will contribute to the achievement or improvement of the social, economic and environmental wellbeing of the area
  - (g) A statement from the Monitoring Officer on whether it is considered that the disposal is capable of falling within the terms of the General Disposal Consent
  - (h) A statement from the Section 151 Officer in relation to the financial implications of the proposal, particularly in respect of the impact on resources for capital spending as set out in the Medium-Term Financial Plan
18. In all cases, subject to the particular circumstances and legal advice, consideration should be given to recovery of all or part of the undervalue in the event of a subsequent disposal at full market value.

19. In any case of urgency - i.e. where it is not reasonably practicable to submit a report to Cabinet pursuant to this Protocol - the Chief Executive will have delegated authority to approve the disposal of land at less than best consideration subject to the requirements set out in paragraph N, in consultation with the Leader and relevant Portfolio Holder.