

CABINET

21st February 2024

Subject: Review of the Council's Policy on the Acquisition and Disposal of Council owned land

Cabinet Member: Councillor T. Gibson – Special Projects & Assets

1 Purpose of Report:

To seek Cabinet approval to a refreshed Acquisition and Disposal of Council Owned Land Policy

2 Links to Council's priorities and objectives:

The report links to People, Place and Environment priorities.

3 Recommendation

That Cabinet approves the Acquisition and Disposal of Council Owned Land Policy set out in Appendix 1 to this report.

4 Background

Policy refresh

- 4.1 An owner of property is usually free to dispose of it as and when – and in whatever manner – he or she chooses. Local authorities are, however, subject to constraints when they come to dispose of land or buildings in their ownership. To avoid complaints about the way the Council disposes of its property there is a need for clear, transparent and approved procedures to be adopted. Some of these constraints are enshrined in law; others arise because of a general expectation that local authorities should be seen to act fairly when disposing of land, as in other aspects of their work. Changing requirements and the regular review of properties will, at times, lead to some property assets becoming surplus. In addition, there may be circumstances in which a disposal is considered the best way to achieve one or more of the objectives of the Council.
- 4.2 The Council's existing Policy for the Acquisition and Disposal of Council Owned Land Policy is dated October 2022. The Policy has now been reviewed and the refreshed version is attached at **Appendix 1**. The Policy has been substantially re-written to make it clearer and easier to understand and also to reflect changes

in internal governance which give elected members oversight and transparency in relation to the acquisition and disposal of Council land and buildings.

- 4.3 The sale of public assets to community ownership and management is also supported by this refreshed Policy. Where social and community benefits can be realized by community ownership then these benefits can be considered and reviewed against submitted business plans. If following review the business plan and its incorporated financial and service plans are seen to be viable then a disposal may be considered if appropriate. Such disposals however are most likely to involve a leasehold disposal rather than a freehold disposal, so as to ensure that community benefits are obtained.
- 4.4 Although this Policy will normally be followed there will be occasion where the procedure may need to be changed, particularly for larger more complex land sales and/or where the Council is aiming to deliver wider benefits such as regeneration programmes, where a joint venture approach may be more appropriate. It is important that the Council retains the discretion to define the most commercially appropriate approach to acquisitions and disposals.

Disposal of Public Assets

- 4.5 The Council is obliged by virtue of s123 Local Government Act 1972 to only dispose of land for the best consideration reasonably practicable. Best consideration means achieving maximum 'value' from the disposal, not just the maximum price. Disposal at less than market value must contribute to the 'promotion or improvement of the economic, social or environmental wellbeing of the area' as outlined under The General Power of Competence (GPC) which replaces the wellbeing powers in England that were provided under the Local Government Act 2000.
- 4.6 The Council is in the position of a trustee in relation to the land it holds on behalf of the community and has a statutory duty to sell the land at the best price that can reasonably be obtained. The Council will only be able to demonstrate that it has achieved best consideration by obtaining an appropriate valuation of the land from a Registered Valuer, sometimes known as a "red book" valuation.

5 Corporate Implications

a. Financial implications

Disposals at an undervalue will reduce the amount of income the Council may receive from disposals of assets whilst still having legal obligations to maintain set out in the terms of any the proposed legal agreement. However any such costs should be considered as part of the review of any business case attached to a proposal.

b. Legal implications

Local authorities have discretionary powers under the Local Government Act 1972 to dispose of land in any manner they wish, and government recognised that there may be circumstances where an authority considers it appropriate to dispose of land or property at an undervalue. The following refer ODPM Circular

06/2003 Local Government Act 1972: general disposal consent (England) 2003, disposal of land for less than the best consideration than can reasonably be obtained and includes a general consent for disposals below £2m.

Local Authorities were given wider powers pursuant to Section 2 of the Local Government Act 2000 (“the Well Being Powers”) to do anything they consider likely to promote the economic, social and environmental well being of their area unless explicitly prohibited elsewhere in legislation. This power is intended to be all embracing and in practice local authorities have interpreted these powers to encompass cultural well being and the promotion or improvement of the health of residents and visitors.

c. Human resources and equality

In considering the recommendations Cabinet should consider the impact it may have upon the Council’s duty to have regard to eliminating discrimination, promoting equality of opportunity and good race relations.

In disposing of assets consideration should be given as to whether the proposed use will discriminate against individuals or groups of individuals.

All Policies and procedures are scrutinised to ensure that none of the provisions conflict with the Council’s equality obligations.

6 Timescale for implementation and risk factors

The Policy sets out procedures for identifying risks in relation to disposal of assets.

7 Background Papers:

Making Asset Work – The Quirk Review of Community Management and Ownership of Public Assets

Building on Strong Foundations – A Framework for Local Authority Asset Management

Opening the Transfer Window – The Government’s response to the Quirk Review of Community management and ownership of public assets

ODPM Circular 06/2003 Local Government Act 1972: general disposal consent (England) 2003

CLG Practical Use of Well-Being Powers

Report Author: Angela Hutchings, Chief Executive



Castle Point Borough Council

Acquisition and Disposal of Council Owned Land Policy

**Updated
February 2024**

Name of Strategy / Policy: Acquisition and Disposal of Council Owned Land

Date last updated: October 2022

Links to Council Priorities:

Priority	Linked Yes / No?
Economy & Growth	Yes
People	Yes
Place	Yes
Environment	Yes

Links to Other Strategies and Policies Financial Planning, the Castle Point Plan, Capital Strategy, Asset Management Plan
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Action Plan in this document?

No

Is progress on the action plan regularly updated?

n/a

Officer Monitoring

Annually and periodically through the Asset Management Plan

Member Monitoring

Annually through the Asset Review Board

Member forum for agreeing the policy / strategy: Cabinet

Has it been subject to an Equality Impact Assessment?

Yes

Has it been subject to an Environmental Impact Assessment?

This document relates only to the acquisition and disposal of land assets. If an Environmental Impact Assessment is required in respect to any subsequent development or use of land, that will be a requirement of the planning process.

CASTLE POINT BOROUGH COUNCIL

CORPORATE POLICY

ON THE ACQUISITION AND DISPOSAL OF COUNCIL OWNED LAND

1. POLICY STATEMENT OF INTENT

- 1.1 Local authorities are, subject to constraints when they come to dispose of land and buildings in their ownership or acquisitions of land for the benefit of the community. Some of these constraints are enshrined in law; others arise because of a general expectation that local authorities should be seen to act fairly when disposing of land, as in other aspects of their work. Clear, transparent and approved procedures must be in place therefore to support any disposal or acquisition of land and buildings.

2. POLICY OBJECTIVES

- 2.1 To secure a transparent and consistent approach to the acquisition and disposal of Council owned land and buildings ("Property").

3. COUNCIL ASSET MANAGEMENT

- 3.1 The Council shall keep under review the sufficiency, suitability, condition, and cost of retaining the Property which it owns. The primary tool for such review is the Council's Asset Management Plan and Asset Register which shall be kept up to date and reflect the totality of the Council's Property, and the tenure under which they are held.
- 3.2 Acquisitions and disposals of Property are not ordinarily functions of the Executive and so fall to be dealt with by officers of the Council. However, to ensure Member oversight and transparency, all proposals to acquire or dispose of Property shall be reviewed by the Asset Review Board (which is a member working group of Cabinet) and, if necessary be reported via the Council's relevant corporate governance processes for a formal decision to be made in respect of any disposal or acquisition.
- 3.3 The Terms of Reference of the Asset Review Board are set out at Appendix 1 of this policy.

4. DISPOSAL OF PROPERTY

- 4.1 Subject to the provisions of this Policy, the Council may only dispose of Property if, following consideration in accordance with paragraph 7, the Asset Review Board makes a recommendation that the Property is either:
- 4.1.1 Surplus in accordance with paragraph 5; or
 - 4.1.2 Suitable for Community Ownership in accordance with paragraph 6.
- 4.2 If a Property has an associated commercial operational use, service or concession (whether or not that use is current or historic) then any proposed disposal may amount to the letting of a public works, services or supply contract as defined in by law. The Monitoring Officer shall advise the Asset Review Board accordingly and this Policy shall not apply to such Property.
- 4.3 The term “disposal” for the purposes of this Policy means to sell either the Council’s freehold interest in the Property or to grant a leasehold interest to a buyer with the Council retaining its freehold interest in the Property. but excludes licences where no legal right is granted to the third party under the Landlord and Tenant Act 1985.
- 4.4 The term “acquisition” for the purposes of this Policy means the purchase by the Council of a freehold or a leasehold from a third party, but excludes licences that do not grant the Council legal rights under the Landlord and Tenant Act 1985.

5. PROPERTY RECOMMENDED AS SURPLUS

- 5.1 Property may be recommended as Surplus if, following consideration in accordance with paragraph 7, the Asset Review Board concludes that retention of the Property would not meet the Council’s corporate aims and objectives; and the Property is otherwise not necessary to meet the Council’s operational or strategic requirements.
- 5.2 Where the Property is designated as public open space then the Property shall not be recommended as Surplus in accordance with paragraph 5.1 unless the provisions of paragraph 12 apply.

6. PROPERTY RECOMMENDED FOR COMMUNITY OWNERSHIP

- 6.1 Property may be recommended for Community Ownership if, following consideration in accordance with paragraph 7, the Asset Review Board concludes either that:
- 6.1.1 the Property is either suitable for management by a Community Organisation acting for and on behalf of the community; or
 - 6.1.2 the Property has been determined to be an Asset of Community Value.
- 6.2 Property likely to be recommended for Community Ownership will be Property which is used for the well-being or social interest of the local community.
- 6.3 “Community Organisation” means:
- 6.3.1 A group of individuals that are independent to the Council of which their

- governing board or committee comprises people living within the Borough of Castle Point; or
- 6.3.2 A public sector organisation based within the Borough; or
- 6.3.3 A charitable or other incorporated voluntary organisation based within the Borough.
- 6.4 Where the Property is designated as public open space then the Property shall not be recommended as suitable for Community Ownership in accordance with paragraph 6.1 unless the provisions of paragraph 12 apply.
- 6.5 Where Property has been determined as an Asset of Community Value, the Director, Commercial and Assets shall advise the Asset Review Board and the disposal of any such Asset of Community Value shall be in accordance with the relevant policy relating to Assets of Community Value.
- 6.6 “Asset of Community Value” means a Property entered on the Council’s list of Assets of Community Value pursuant to The Localism Act 2011 and The Assets of Community Value (England) Regulations 2012.

7. CONSIDERATIONS OF THE ASSET REVIEW BOARD

- 7.1 When determining whether a Property is to be recommended as Surplus or to be recommended for Community Ownership, the Asset Review Board shall consider such information as the Director, Commercial and Assets considers is necessary for such recommendation to be made, including but not limited to
 - 7.1.1 The Council’s Asset Management Plan;
 - 7.1.2 The sufficiency, suitability, condition and whole life cost of retaining the Property;
 - 7.1.3 The views of the Local Planning Authority as to any development potential of the Property;
 - 7.1.4 Any restrictive covenants or obligations on the Council which may affect the value or disposal of the Property;
 - 7.1.5 The covenant strength and financial viability of any prospective tenant, purchaser or Community Organisation to adequately finance or manage the Property, including any business plan or other documentation;
 - 7.1.6 The relative merits, demerits and risks associated with the disposal of the Property;
 - 7.1.7 The advice of the Council’s legal officers, for example relating to tenure and easements over or under the Property which benefit the Council; and
 - 7.1.8 The valuation obtained pursuant to paragraph 8.
- 7.2 Without prejudice to the generality of paragraph 7.1 above, in accordance with the Cabinet Office Guide for the Disposal of Surplus Land 2017, the Asset Review Board will consider whether:
 - 7.2.1 The Property is currently used/required to deliver the Council’s operational functions;
 - 7.2.2 There is a clearly evidenced plan to use the Property to deliver the Council’s future operational functions;

- 7.2.3 The Property is held for commercial purposes and/or is integral to continuity of service delivery; and
- 7.2.4 The Property is vital for business contingency, in line with the Council's strategic and operational plans.

8. VALUATION OF PROPERTY

- 8.1 The Council will appoint a Registered Valuer to provide a valuation of any Property recommended to be Surplus or recommended for Community Ownership pursuant to this Policy before any decision is taken to dispose.
- 8.2 "Registered Valuer" means a person registered as a Registered Valuer in accordance with s247 of the Companies Act 2013.
- 8.3 Property shall not be disposed of at an undervalue unless in accordance with guidance set out in Circular 06/03 Local Government Act 1972: General Disposal Consent (England) 2003 and with this Policy. [*Disposal of land for less than the best consideration that can reasonably be obtained: circular 06/2003 - GOV.UK \(www.gov.uk\)*](#)
- 8.4 Prior to any disposal, the valuation will be provided to the Asset Review Board for information.
- 8.5 Any proposal to dispose of Property at an undervalue will require formal corporate governance and advice from the s151 Officer and the approval of the Monitoring Officer is required before any disposal takes place.

9. METHOD OF DISPOSAL OF PROPERTY

- 9.1 Disposals may be by private treaty or by tender (whether formal or informal). The most appropriate method of disposal (subject to any supervening law or governance process) will be decided by the Director, Commercial and Assets in consultation with the Monitoring Officer and the s151 Officer. The Asset Review Board may also provide suggestions.
- 9.2 Where a disposal is proposed to a Special Purchaser, the approval of the Monitoring Officer must be given before the disposal takes place. A "Special Purchaser" is a purchaser to whom the Property, or the interest in the Property, being valued has a particular attraction which it does not have for the market in general e.g. where the purchaser owns adjoining land; or access to the Property passes through the purchaser's land; or the purchaser has an existing lease and wishes to acquire the freehold.
- 9.3 The Council shall be entitled to impose such conditions, covenants, or restrictions upon the disposal of any Property as it reasonably considers necessary and appropriate including requirements for building leases and agreements to a lease. The terms and conditions applicable shall be decided by the Director, Commercial and Assets in consultation with the Monitoring Officer, the s151 Officer and the Asset Review Board.

10. ACQUISITION OF PROPERTY

- 10.1 Any proposal for the Council to acquire any Property must first come to the

Asset Review Board for review and recommendation. Any decision to acquire Property must be taken in accordance with the Council's prevailing corporate governance processes.

- 10.2 Any acquisition of Property should meet the Council's corporate aims and objective and be at the lowest price which the Council can reasonably achieve.
- 10.3 This Policy shall also apply to the acquisition of land or buildings for the benefit of the Housing Revenue Account for the development or letting of new or empty properties as affordable homes.
- 10.4 "Acquisition" means acquisition by the Council by agreement, gift or exercising its compulsory powers for the economic, social and/or environmental benefit, improvement or development of the Borough or for the purposes of undertaking its services or functions.

11. REQUESTS FROM THIRD PARTIES TO PURCHASE PROPERTY

- 11.1 From time to time the Council may receive requests to purchase Property from third parties either for personal benefit or for public use.
- 11.2 Such requests may only be considered if the Property is or has been recommended as Surplus or suitable for Community Ownership in accordance with this policy.
- 11.3 Any request to purchase Property must be referred to the Director, Commercial and Assets, and include details of the proposed use of the Property together with any other information considered appropriate (in the reasonable opinion of the Director, Commercial and Assets) to enable a fully informed decision to be made. The request may be rejected if insufficient information has been given and the requestor may be asked to resubmit their request with the relevant information.
- 11.4 Once sufficient information has been provided by a requestor in accordance with paragraph 11.3 above, the request shall be brought to the attention of the Asset Review Board for its review.
- 11.5 Where the requestor is:
 - 11.5.1 A current or former elected member of the Council or a member of their immediate family; or
 - 11.5.2 a current employee or former employee of the Council or a member of their immediate family; or
 - 11.5.3 a member of a joint venture or other partnership or corporate arrangement of which the Council is also a member;
 - 11.5.4 an organisation of which any of the persons comprised within paragraph 11.5.1 or 11.5.2 are a trustee, board member, director or a person who could be seen as having a direct input to and therefore influence on that organisation,

the Monitoring Officer's advice shall be provided to the Asset Review Board at the same time as the request is brought to its attention.

- 11.6 Where a valuation is required because a request to purchase Property has been made in accordance with this paragraph 11, the cost of the valuation shall be payable by the requestor, regardless of whether a disposal takes place.
- 11.7 The requestor shall usually be responsible for the Council's reasonable fees and costs.

12. DISPOSAL OF PUBLIC OPEN SPACE

- 12.1 In respect of any Property designated as Public Open Space, the presumptions set out in paragraphs 5.2 and 6.2 above will apply unless, in its absolute discretion, the Council is satisfied that disposal would result in an overwhelming public benefit which meets the Council's corporate aims and objectives.
- 12.2 As defined in Section 20 of the Open Spaces Act 1906, "Public Open Space" means "any land, whether enclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for purposes of recreation or lies waste and unoccupied".
- 12.3 The Asset Review Board will consider disposals of Public Open Space in accordance with paragraph 7 of this Policy.
- 12.4 Any disposal of Public Open Space will be subject to the legal requirements of Section 123(2A) and (2B) of the Local Government Act 1972 namely that the intention to dispose be advertised by formal notice in two consecutive weeks in a local newspaper and any objections are taken into consideration.
- 12.5 Where a notice under paragraph 12.4 is required because of a request to purchase Public Open Space is made in accordance with paragraph 11 above, the cost of the notice shall be payable by the requestor, regardless of whether a disposal takes place.
- 12.6 Disposal of Public Open Space will be subject to the condition that it be retained for recreational purposes for the benefit of the public.
- 12.7 The approval of the Monitoring Officer is required before any disposal of Property designated as Public Open Space.
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Asset Review Board

Terms of Reference

February 2024

1. The Asset Review Board is a member working group of the Cabinet. It is not a public meeting.
2. The purpose of the Asset Review Board is
 - a. to provide advice and recommendations to the Director, Commercial and Assets in relation to the administration of policy relating to the acquisition and disposal of the Council's owned land and buildings; and
 - b. to ensure transparency in the execution by the Director, Commercial and Assets of his delegations.
 - c. to work alongside the Director, Commercial and Assets to review the Council's landholdings and building assets and provide member oversight and input into their use and management aligned to corporate objectives.
3. Meetings of the Asset Review Board will be on a monthly basis, normally on the third Tuesday of the month. Meetings will be held on a hybrid basis.
4. All Cabinet members will be invited to meetings of the Asset Review Board but to be quorate the meeting must comprise at least the Leader, PFH Resources and PFH Assets and be supported by the Chief Executive or the Director, Commercial and Assets.
5. The meetings will be noted and reported quarterly to Cabinet for public scrutiny.