

Asset Disposal Policy

Introduction

1. The Asset Disposal Policy forms a key part of the emerging Strategic Asset Management Plan (SAMP). At the time of writing, the SAMP is being developed by the Council in stages, as it seeks to improve its understanding of its estates assets in order that it can improve its investment decisions, support the financial position of the Council and improve outcomes for residents.
2. The Strategic Asset Management Planning (SAMP) supports the Council's corporate priorities, helping to comply with statutory duties whilst enabling service and community outcomes through;
 - Establishing a vision for our property portfolio.
 - Providing a more robust and integrated approach to asset management.
 - Promoting collaboration and visibility of resources.
 - Embedding a culture of scrutiny to help challenge the use, effectiveness, and retention of our land and building assets.
3. This Plan outlines our vision and long-term approach to improve management and utilisation of Rother District Council's (RDC) property assets and seeks to align the asset base with the Council's corporate goals and Policy objectives.
4. The development of a SAMP is an iterative process, and immediate tactical decisions need to be taken now that will not wait for the development of a fully formed SAMP. In the meantime, the Council requires a Policy that can guide its decision making when it comes to identifying and prioritising assets for disposal, between a range of competing Council objectives.

Council Plan Priorities

5. The Council's vision is as follows:
6. *In 2040, Rother District will be an attractive and affordable place to live, work and visit. The district will have a **Thriving Local Economy** with diverse, flexible, well-paid local employment and skills opportunities. People will be enabled to **Live Well Locally** within safe and fairer communities, where they can access the facilities, services, and housing they need. Rother will be recognised for being **Green to the Core**, leading the response to the climate and biodiversity emergencies, protecting the historic and natural environment.*
7. To enable this, the Council has developed a new Council Plan (add link once drafted). The SAMP can support the strategic objectives contained within the Council Plan by;

- **A thriving Local Economy** – supporting and enabling diverse, flexible, well-paid local employment and skills opportunities through our commercial asset base.
 - **Living Well Locally** – helping shape the future spaces for our communities and residents to thrive in.
 - **Green to the Core** – leading by example by managing down the Council's carbon emissions to help support delivery of our Net Zero aspirations.
 - **Fit for the Future** – ensuring the property estate contributes to the Council's efficiency agenda, providing value for money for residents both now and in the future.
8. The SAMP can support the strategic objectives of a range of adopted Council policies that includes the development of an investment and disposal framework that allows for effective decision making and an ability to prioritise between competing investment priorities; alongside, providing data to support disposal and investment decisions.
 9. This Policy outlines the principles and procedures for the permanent disposal of estate assets owned by RDC. The goal is to ensure transparency, accountability, and value for money, while aligning with RDC's strategic objectives.

Aim of Policy

10. It is Government policy to encourage the disposal of surplus and under-used assets by local authorities. The Council has discretion as to how it disposes of its assets, although disposals are subject to statutory provisions, most notably the duty imposed by s123 Local Government Act 1972 to obtain the best consideration that can reasonably be obtained. There are provisions whereby an authority can accept a lower value for an asset where the authority considers it will help to secure the promotion or improvement of the economic, social or environmental well-being of its area. However, this should be informed by professional valuations and should in any event not exceed any undervalue in excess of £2million.
11. This Policy will set out procedures that Council officers will follow when dealing with disposals, to ensure they are dealt with in a consistent and transparent way. There will be exceptional circumstances when officers may need to depart from the procedures set out in the Policy depending upon the circumstances of a disposal.
12. The definition of an asset disposal for the purposes of this Policy includes the sale of a freehold interest, an assignment or grant of a lease for more than seven years, and the granting of easements and options.
13. A lease or assignment of a term with less than seven years to run is exempt from the statutory requirement to obtain best consideration, and therefore is outside the scope of this Policy, although in such cases there will be a general presumption that officers will follow the Policy's principles.
14. The Policy is not intended to apply to leases where a tenant has a statutory right of renewal, or statutory easements and wayleaves granted to utility

companies unless there is clear public interest in which case Cabinet will be consulted.

Statutory Provisions

15. A Local Authority may dispose of land it owns as it wishes; however, any disposal is subject to compliance with certain statutory provisions. Section 123 Local Government Act 1972 ('s123') imposes the overriding duty to obtain the best consideration that can reasonably be obtained for relevant disposals of land.
16. For the purposes of Section 123, a disposal includes the sale of a freehold, granting a lease, assigning any unexpired term of a lease and the grant of an easement. It may also extend to the grant of an option to purchase a freehold or to take a lease. Section 123 does not apply to the grant of a short-term tenancy of less than seven years or an assignment of an existing term with no more than seven years to run.
17. The Local Government Act 1972 general disposal consent (England) 2003 provides a mechanism for Local Authorities to proceed with disposals at an undervalue, without the need for specific consent from the Secretary of State, subject to conditions. Examples may include those where the local authority considers that such disposal will help to secure the promotion or improvement of the economic, social or environmental well-being of its area; although this should not be considered an overriding factor.
18. The general consent is subject to a condition that the undervalue does not exceed £2 million. The undervalue is calculated by assessing the difference between the market value of the land or property (known as the unrestricted value) and the actual consideration received. If the under-value exceeds £2 million or the authority considers for any other reason that the general consent cannot be applied to the disposal, then specific consent from the Secretary of State must be obtained for the disposal to proceed.
19. Further guidance to assess the community benefit when selling its property assets at less than best consideration is set out below at Appendix E. This looks at some of the key considerations which should be taken into account as part of the decision-making process.

Council Procedures

20. As part of its SAMP, the Council will ongoingly review the purpose, value and condition of its assets and consider whether a business case for disposing of an asset should be explored. The decision-making process will be informed by its Asset Disposal Decision Matrix that will enable officers to consider the relative value of assets within its portfolio, considering financial value alongside environmental, social, economic and community values. The process may include assets that are no longer needed by the Council, are unaffordable to repair, or that are unlikely to be required for any future use. Alternatively, the

Council may consider assets that provide a benefit that is disproportionate to the opportunity cost of capital tied up in the asset.

21. Furthermore, assets may be deemed surplus to the Council's requirement where:
- it does not contribute to the Council's services;
 - the Council's strategic and corporate objectives are not supported;
 - a more cost-effective alternative site has been identified;
 - it has no strategic or regeneration potential in the future;
 - whole or part of a site is vacant and likely to remain so for the foreseeable future;
 - others are providing similar alternatives;
 - services can be provided by alternative means with partners;
 - the income available from the site is uneconomic; or
 - the site is only partially used and such use could be accommodated elsewhere.

Land Disposal Policy

Council officers

22. Internal consultation with the relevant officers will be carried out at an initial stage to consider the merits of a disposal along with any potential operational service issues or problems that might need dealing with in advance of bringing a property to market or that might make a disposal inadvisable. In addition, early consultation with the Development Team and Legal Services will be required, as and when appropriate depending on the nature of the proposed disposal.
23. In consultation with internal service colleagues, the Strategic Assets and Estates Team will complete the Disposal Matrix and use this to support the rationale for the disposal and a Proposal Report prepared.

Consultation with Councillors

24. Having secured an internal officer recommendation and approval from SLT to progress a disposal to the next stage, consultation will be held with the relevant Cabinet Portfolio Holders and relevant Ward Councillors. This consultation will outline the initial proposals and invite comments and suggestions.
25. Asset Disposal Proposal Reports will be considered by the Property Investment and Disposal Panel (PIDP) and recommended to the Head of Paid Service to refer to Cabinet for approval.

Consultation with the public

26. Officers must consider whether the specific facts of a proposed transaction give rise to public consultation.
27. Disposals may be subject to a statutory duty to consult for example, the proposed sale of public open space, which requires the advertising of the

proposal in the local newspaper for two consecutive weeks and any objections received must be considered by Cabinet before any decision upon the disposal is made S.123(2A) LGA 1972. The duty to consult on proposed disposals of open space also applies to Leases of less than seven years duration.

Consultation with tenants

28. Where property is subject to a lease, the Head of Housing and Strategic Assets must consider the most appropriate method of consultation when meeting Section 123 best consideration obligations.

Planning

29. Land shall be offered for disposal with the benefit of a supplementary planning guidance or a Planning Committee decision resolution to grant permission for the most profitable use, unless the Strategic Assets and Estates Manager or other competent professional adviser acting for the Council certifies that obtaining the same will not increase the value above the value being obtained.
30. Where land is being disposed for development on a conditional basis, the presumption is that planning permission should be secured prior to entering into agreements, and if not, the Council should be given the opportunity in any conditional sale contract to challenge the planning application or planning permission secured. Moreover, any such agreements should set out in sufficient detail agreed objectives for the scheme, noting that the Council has powers by virtue of the Local Government Act 2000 to provide for the social, economic and environmental wellbeing of its area and the carrying out of the Development is authorised by these powers.

Equalities

31. The public sector Equality Duty (PSED) requires the Council to have “due regard” to the need to eliminate discriminating, advance equality opportunity and foster good relations between different people when carrying out their activities. In addition, the Council will consider Equalities Impact Assessments as part of any disposal process.

Methods of Disposal

32. A key consideration when seeking the appropriate authority to dispose of an asset is its method of disposal. The Head of Housing and Strategic Assets will determine the appropriate method of disposal taking into account the nature of the proposed transaction.
33. The methods of sale generally adopted are set out below but these are not exhaustive, and alternative methods which are not listed below may be used to deal with unusual disposals.
34. **Private Treaty** - the sale of land/property negotiated with one or a small number of interested parties either through a direct approach from an individual(s) or through a marketing exercise.

35. A private sale without marketing the land may be justified where for example:
- the land to be disposed of is relatively small in size and an adjoining or closely located landowner is the only potential or likely purchaser;
 - the Council's corporate objectives and best consideration can best be achieved by a sale to a particular purchaser;
 - the purchaser has a particular interest in purchasing the land or a particular association with the land and sale to that purchaser would therefore be at a higher value than could be obtained otherwise;
 - the nature of the Council's land ownership and that of the surrounding land ownership is such that the land can only viably be sold to adjoining or surrounding landowners if best consideration is to be obtained;
 - the Council's land is part of a larger area of land that is proposed for development, redevelopment or regeneration and the nature and complexity of the proposed development of the overall site is such that the Council's corporate objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area.
36. The reasons justifying a private sale without marketing, other than for minor disposals (see 6 below), must be set out and approved by the PIDP and Cabinet, where required. In exercising statutory Section 123 duties, the Head of Housing and Strategic Assets shall obtain no less than one independent valuation in accordance with the Royal Institution of Chartered Surveyors (RICS) Valuation - Professional Standards 2014 UK Edition (or later).
37. **Public Auction** – a sale of land/property by open auction available to anyone. The sale will be publicly advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer. Reasons justifying sale by this method and how the reserve price is determined must be recorded in writing. A binding contract is made on the acceptance of the highest bid providing that the reserve price is reached, and contracts for the sale or lease will immediately be signed and exchanged.
38. **Formal Tender** – a sale of property by a process of public advertisement and tenders submitted by a given date. This is a suitable mechanism where there are identified development proposals. This would not be appropriate where ownership is complex or the development proposals for the land are incapable of detailed specification at the pre-tender stage. A formal tender is legally binding when the Council accepts the tender in writing. A fair and transparent tender process will need to be adopted.
39. **Exchange of Land** – a transaction involving the exchange of Council owned land with another landowner. The land acquired by the Council will meet at least one of its corporate objectives and will be 'equal' in commercial worth to the land exchanged whether from the value of the land itself or where a balancing payment is made by either party to the other in addition to the land exchanged typically with, although not exclusively with, other public sector bodies.
40. **Informal Negotiated Tender** – a transaction involving a public advert that requests informal offers or bids that meet a given specification or set of objectives. The Council may then negotiate further or more detailed terms with one or more individuals who submitted the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts for the sale or lease takes place.

41. **Compulsory Purchase Order** – Another Statutory Body with the benefit of Compulsory Purchase Powers either exercises or threatens to exercise those powers over land owned by this Council.
42. The Council has the power to issue Compulsory Purchase Orders (CPOs) under the Town and Country Planning Act 1990 and other relevant legislation. In doing so, the Council should be aiming to help bring about improvements to social, economic and environmental wellbeing. CPO powers allow the Council to acquire land or property without the owner's consent, typically to facilitate development, infrastructure projects, or public benefit schemes, provided there is a compelling case in the public interest and appropriate compensation is offered to affected parties.

Marketing strategy

43. The Strategic Assets and Estates Manager will determine the appropriate marketing strategy for the disposal. A marketing brief may be prepared in-house or via external agents dependent upon the nature of the disposal.

Valuations

44. Best consideration is not necessarily the highest financial offer available, it can also reflect the substance and strength of any supporting information submitted with an offer including the financial security of a bidder and the commitment of the bidder to a proposed scheme (except in the case of an auction).
45. The Council should comply with normal and prudent commercial practices including obtaining the view of a professionally qualified valuer as to the likely financial consideration that can be expected for any disposal and the most appropriate method of disposal to encourage bidders to offer the best consideration; where time and available budgets allow, two valuations is considered best practice to demonstrate best value. The Council must test whether an offer is the best that can reasonably be obtained having regards to any restrictions or the effect on value of any conditions placed on the use of the land, including whether the offer under consideration is reliable, advice on possible changes to the price that may flow from changes to the planning position etc. The Valuer should also consider the most appropriate pricing structure. It may be appropriate to use an overage arrangement, whereby the Council receives future payments representing any uplift in value of the land/property once it has been developed / sold on.
46. Overage provisions negotiations can be complex, so it would be sensible to discuss the preferred structure with the legal adviser and valuer prior to agreeing terms of the disposal. A calculation of the overage that the Council is likely to receive and the likelihood of that sum being correct given changing market conditions will be essential to assessing the business case for disposal of surplus property.

Other Considerations

Procurement

47. In most cases, disposals of land will fall outside the scope of the Public Contracts Regulations 2015. However, if as part of the disposal the Council is involved in determining the scope of future development of its land and its intention is to impose on the purchaser certain obligations as to the nature of the development, possibly including certain standards to which the works must be constructed then the result may be that procurement rules will apply. The Strategic Assets and Estates Team must consider the possibility of public procurement rules applying to any disposal and in all such cases must refer the matter to Legal and Procurement for comment before proceeding further with the proposed disposal.

Conflict of Interest

48. In all matters the Council's appropriate codes of conduct will apply to all officers and Members involved in the process and decision making to dispose of any assets.

Subsidy Control

49. Depending upon the nature of the transaction, it is possible that a disposal at less than market value will be considered as a form of subsidy to the purchaser. If applicable, the Council must ensure that the relevant subsidy control rules are complied with to ensure the disposal is not regarded as unlawful, but in all cases details of the particular transaction must be referred to Legal Services for comment.

Appendices

- Appendix A: Legal and Regulatory Framework
- Appendix B: Disposal Process Flowchart
- Appendix C: Valuation Guidelines
- Appendix D: Community Asset Transfer Criteria and Procedures
- Appendix E: Measuring Community Value

Legal and Regulatory Framework

Local Government Act 1972, Section 123

- Requirement: Disposals must achieve the best consideration reasonably obtainable unless the Secretary of State consents to a disposal at less than best consideration.
- Exceptions: Disposals for less than best consideration can in certain circumstances be made where the disposal contributes to the economic, social, or environmental well-being of the area, provided the undervalue does not exceed £2 million.

UK Procurement Regulations

- Overview: Ensure compliance with UK procurement regulations when disposing of assets, particularly in cases involving high-value transactions.

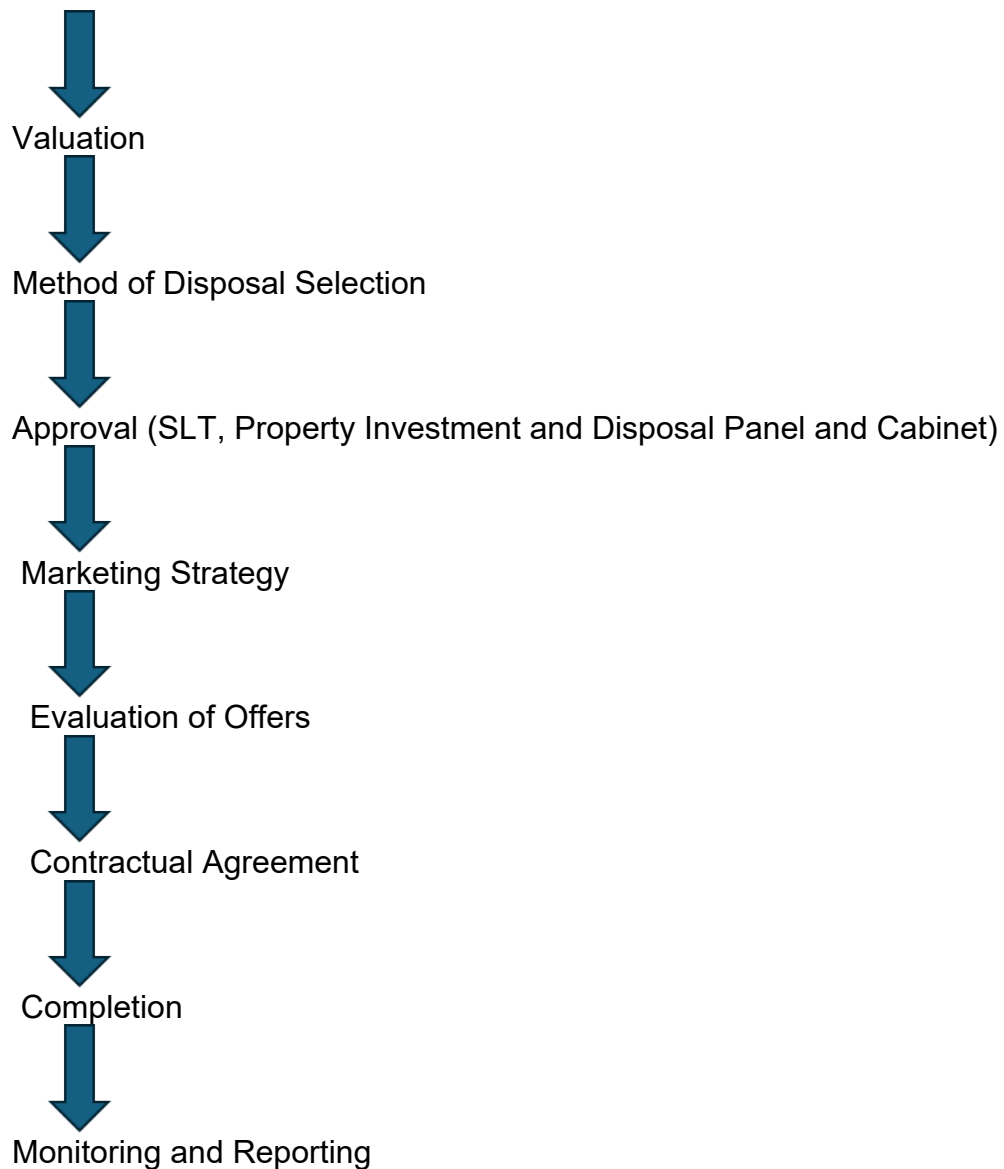
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Disposal Process Flowchart

Flowchart Overview

Identify Surplus Assets (Liaise with Senior managers and Property Investment and Disposal Panel)



Valuation Guidelines

Professional Valuation

- Requirement: Obtain a valuation from a qualified and independent valuer / expert agent.

Factors to Consider

- Market Value: The estimated amount for which an asset should exchange on the date of valuation in an arms-length transaction between a willing buyer and a willing seller.
- Alternative Uses: Potential for redevelopment or change of use, which might enhance value.
- Planning, Planning Use, Conservation: Current and potential future planning permissions or restrictions and consideration of restrictions (or benefit) of AONBs, Conservation Areas and / or Listed Building status.
- Condition of Asset: Physical state and any maintenance or repair requirements.

Community Asset Transfer Criteria and Procedures

Criteria for Transfer

- Eligibility: Only community organisations with a clear social, economic, or environmental benefit.
- Viability: Evidence required to show financial and operational viability of the community organisation.
- Community Benefit: Must be able to demonstrate positive impact for the local community.

Procedures

1. Expression(s) of Interest for identified asset(s):
 - Community organisations submit an initial expression of interest, outlining their proposal and intended benefits.
2. Assessment:
 - Evaluate the proposal based on eligibility, viability, and community benefit criteria.
3. Negotiation:
 - Agree heads of terms with the community organisation, including any obligations, conditions or covenants.
4. Approval:
 - Detailed assessment and report prepared for Cabinet.
5. Solicitors Instructed and Completion:
 - Finalise the legal transfer, ensuring all conditions are met and appropriate safeguards are in place.

Measuring Value

The Council's financial position is such that it must prioritise financial returns above other considerations; however, the Council will assess community value so that this can also be fed into its decision making. The assessment is to be considered as an aid to decision making and is not meant to oversimplify what are complex and nuanced decisions, that require subjective professional judgement, albeit supported by a more objective assessment provided by the matrix. The following is a suggested process that should be considered in order to measure and score such value.

It is proposed that this is used as a guideline only and that each case is considered on its own specific merits, as it is anticipated that there will be little continuity between each case that arises.

Definition of Community Value

Community value can encompass several factors, such as:

- Social Impact: How does the proposal benefit social cohesion, inclusion, and well-being? Does it provide space for community activities, education, or support services?
- Economic Impact: While not purely financial, consider the economic benefits to the community, such as job creation, local business support, or tourism enhancement.
- Environmental Impact: How does the proposal contribute to environmental sustainability? Does it support or enhance green spaces, reduce carbon footprints, or promote biodiversity?
- Cultural Impact: Does the proposal preserve local heritage, support cultural activities, or provide a space for arts and creativity?
- Health and Well-being: Does the proposal contribute to the physical and mental health of the community through recreational or health services?

Metrics

For each factor, establish specific metrics or indicators that can be quantitatively or qualitatively measured. Examples include:

- Financial return (priority criteria)
 - Financial value of capital receipt generated relative to income/cost of retaining it
 - Financial benefit of alternative use(s) for capital receipt generated
- Social Impact:
 - Number of community groups using the asset.
 - Range of social services provided.
- Economic Impact:
 - Number of jobs created or sustained.
 - Revenue generated for local businesses.
 - Potential increase in local spending.

- Environmental Impact:
 - Amount of green space preserved, enhanced or created.
 - Reduction in local carbon emissions.
- Cultural Impact:
 - Number of cultural events hosted.
 - Community engagement in cultural activities.
 - Preservation of historical features.
- Health and Well-being:
 - Number of recreational activities available.
 - Participation rates in health programs.
 - Potential improvements in community health.

Assessment Criteria and Scoring System

Dependent on the individual situation, a scoring system should be adopted that assesses each proposal.

Officers will assess various elements to establish the relative community value of an asset in addition to the financial value or benefit of any disposal. The Property Investment and Disposal Panel (PIDP) will assess the relative value of an asset and apply a score in response to certain community considerations that may need to be prioritised due to the asset's location or function for example.

Each element will be rated on a scale (likely 1-5) to assess the asset's performance. The scores can then be aggregated to give an overall community value score.

Review

It is essential that common sense is applied when measuring community value and setting priorities because the scoring system could create outcomes that just do not make sense, bearing in mind the specific set of circumstances.

Each individual project / proposal will have its own unique considerations and it is therefore absolutely right and proper that the PIDP should step back, review and not be slave to the process.

Integration with Decision-Making Processes

Finally, integrate the community value matrix into the decision-making process for asset disposal. This is to be used alongside financial assessments to provide a balanced view of the overall value.