

Pembrokeshire County Council

Property Transactions Policy and Procedures 2015

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1 Purpose of this Document

- 1.1 To set out the Council's policies and operational arrangements for effectively managing transactions affecting its property portfolio.

2 Background

- 2.1 Property is the Council's most valuable asset after people, and is essential to the effective provision of all Council services. It is a major producer and user of both capital and revenue. The Council views property as a dynamic asset which must be continuously reviewed, improved and rationalised to drive efficiencies and ensure that our property is an effective platform for delivery of first class Council services to the people of Pembrokeshire.
- 2.2 This document sets out the framework, policy and procedures to be followed to ensure that the process of acquiring, leasing or disposing of property by the Authority is clearly defined and controlled, to achieve best value and avoid any impropriety. This policy comprises an appendix to the Council's Strategic Asset Management Plan (SAMP) and replaces any previous policies of the Council regarding the general acquisition, review and/or disposal of property. It does not replace the separate management arrangements which cover the method of disposal; the Standing Orders already agreed within the Constitution which provide for disposal by formal sealed tender remain in force. It does not affect arrangements for the leasing of Council dwellings to individuals on secure tenancies.

3 The Meaning of "Corporate Property"

- 3.1 The property belonging to the Council is a Corporate Asset and the various services are occupiers. The services do not therefore 'own' the property they occupy and whilst they have a responsibility to ensure that the property is responsibly occupied and managed, to keep costs to a minimum, minimise risks and report maintenance needs, they do not gain any right to remain in any particular property. Neither do occupiers have any authority to agree terms for leasing or sale of any property (as further detailed below).
- 3.2 The Council will strategically consider its property holdings, continuously reviewing the portfolio and making necessary changes in occupation, releasing surplus property and making capital investment, to ensure that overall the property holdings are contributing to the Council's long term vision and accord with the SAMP.
- 3.3 Capital receipts arising from property sales may be a persuasive argument in making a business case for a particular scheme. However Capital receipts are dealt with corporately and there is no expectation that the sale of a particular asset will result in the capital receipt being allocated to the last occupying service. Capital receipts will be added to the general capital funds of the Council and allocated as part of the Corporate Capital Programme according to corporate priorities at the time the capital programme is approved.

4 Legal Framework

4.1 All property transactions carried out by the Council are governed by the general land law applying in England and Wales. In addition there are particular areas of legislation applicable to local authorities only.

4.2 "Section 123"

4.2.1 When the Council is disposing of land and property in its ownership it is subject to the provisions of Section 123 of the Local Government Act 1972 which states that "Except with the consent of the Secretary of State, a Council shall not dispose of land ... otherwise than by a tenancy of less than seven years, for a consideration less than the best that can reasonably be obtained".

4.2.2 However, the General Disposal Consents of WAG allow disposal of property at less than 'best consideration' without the consent of the Assembly Government, providing that the authority consider the disposal would contribute to the promotion or improvement of the economic, social or environmental well-being of the whole or any part of its area, or all or any persons resident or present in its area and the sale price is not more than £2 million **below** 'best consideration'.

4.3 Crichel Down

4.3.1 The "Crichel Down" rules were developed by central government in relation to large tracts of land such as military airfields, training camps, weapons ranges, etc., and apply where land was acquired by compulsory purchase or the threat of such. The rules require Central Government departments to initially offer any such surplus land back to the original owner at full market value as if the land had not been developed. The rules are recommended to local authorities but, due to the complexities resulting from successive local government reorganisations which make tracing original owners and identifying the purpose/method of acquisition very time consuming, are not mandatory. This Authority does not, therefore, always implement the rules, although will be careful not to take advantage of the original owner. Implementing the rules does, however, remain an option and where property is known to have been compulsorily acquired and the particular circumstances make offering it back to the original owners desirable then this route may be pursued.

4.4 Compulsory Purchase Powers

4.4.1 A raft of legislation gives the County Council the powers to acquire property through compulsory purchase for purposes such as housing, leisure, planning schemes, highways, etc. The process first requires identification of the land required for a particular scheme. A schedule of ownership and statement of reasons for compulsory purchase are then publicised and submitted to WAG. A Public Inquiry will follow if objections are received. If the Compulsory Purchase Order (CPO) is confirmed by WAG then the ownership of the land will pass to the Council and the former owners will receive compensation based on the market value of their interest and other qualifying losses resulting from the CPO.

4.4.2 These powers need to be used sparingly as they deprive owners of their property and in some cases their homes. However, CPO is a useful means of forcing action from landowners who are prepared to allow their property to become derelict or stand in the way of much needed public schemes.

5 Council Policy

5.1 Property dealings by the Council are governed by the following Council Policies:

Strategic Asset Management Plan (SAMP) - Provides an overall strategy for the effective planning and management of all of the Council's property Assets

Occupation Policy - A framework describing how third parties will be treated when they wish to become occupiers of Council land and property.

Constitution - Sets out how the Council is governed and includes delegations to officers that allow them to deal with day to day property transactions and management. The Constitution delegates the disposal of property where the value is not likely to exceed £100,000 or which is not the disposal of a 'point of service delivery' to the Director of Development. A register of delegated decisions is maintained by the Director of Development. All sales at a price of £100,000 or more and/or disposals of a point of service delivery must be approved by Cabinet, except where Cabinet has already delegated such a decision to the Director.

Member's Code of Conduct and Code of Conduct for Local Government Expenses - A series of rules that govern the conduct of Members and officers to ensure that they are aware of the need to act with propriety and care throughout their work for the Council.

6 PCC Corporate Property Objectives

6.1 The following Corporate Property Objectives are set out in the Strategic Asset Management Plan 2015/16 to 2019/20.

- To secure a lean, efficient, high-performing portfolio, which is driven by Pembrokeshire priorities
- To recognise that property ownership is not always essential to service delivery, to justify fully the continued ownership of all property no matter what its use and to release property immediately if its retention cannot be fully justified
- To retain and occupy only those properties which the Authority can afford to maintain
- To optimise efficient use of property by considering alternative and multiple uses to best utilise space and facilities
- To achieve a reduction in the size of the property portfolio in terms of built floor space
- To provide cost effective and up to date property and accommodation to support the delivery of the Council's objectives and its services.

- To ensure that we have sufficient and suitable property, in good condition, to meet our service requirements
- To ensure that the definition of our property requirements is customer, rather than provider led and that all of our property is functional, fit for purpose and appropriately located.
- To improve access to Council property for all those wishing to use it and to use property to support the Council's objectives of improving its customer focus.
- To use our property in an environmentally sustainable manner. Whenever we construct new assets, or improve or extend existing assets, to embody sustainability and whole life principles in the design and construction.
- To ensure compliance with statutory carbon reduction and energy management requirements, whilst delivering energy savings.
- To ensure that our asset portfolio is financially sustainable, that total revenue costs of property are reduced, and that sterile capital is released from our portfolio to support our future investment programme.
- To achieve value for money and efficiency in every aspect of property running costs and procurement.
- To limit our exposure to financial, environmental or technical risk through efficient and effective risk profiling and management.
- To ensure that our property is of high quality, in good condition and compliant with all relevant statutory requirements and safety standards.
- To ensure that we provide a good environment for our staff which matches our requirements for effective work styles, and which supports our objective of high performance and encourages recruitment, retention and motivation.
- To optimise rental income, reduce rent arrears and reduce voids within the managed property portfolio
- To review disposal options for surplus property and deliver additional rental income where appropriate
- To maximise capital receipts where appropriate
- To contribute to economic development and the securing of jobs, attracting business and inward investment, facilitating regeneration initiatives and improving the environment.
- To anticipate future property needs of the Council (in the context of partnership working) by effective forward planning of property and accommodation requirements (because of the long lead in times needed for property change).
- To ensure that all of our core asset resources (property, IT, human resources and finance) work in harmony in an efficient and effective manner.

- To recognise the opportunities to lever benefits and share risk through strategic partnering with other public and private sector partners and through potential co-location of public service provision, and to recognise the potential for private sector provision.

7 Disposal of Surplus Property

7.1 Property Review

7.1.1 The identification of surplus property will be facilitated by the continuous property review process guided by the SAMP. In order to ensure that the Council achieves optimum performance from property it is continuously reviewed by area and service user, to ascertain present and future property needs. This process is augmented by each service identifying future property requirements and property problems, as an integral part of Service Planning and Service Asset Planning. These processes reveal where property is surplus, or acquisition is required. It is then necessary to follow the procedures set out below to dispose, lease or acquire as appropriate.

7.2 Procedure for Disposal

7.2.1 When the Property Division identifies property that it considers might become surplus it will contact the occupying/managing Service and establish a timescale for disposal.

7.2.2 If a Service expects that a property it occupies may become surplus to its needs, then that service will formally inform the Property Division and advise them of the likely timescale.

7.2.3 In either case, the Property Division will consider other Service's requirements as recorded within service asset planning and will liaise with other Services to ascertain whether they have a need for the surplus property. This consultation will not be required when it is obvious that the property has no further useful service purpose or it has already been decided to dispose of the property.

7.2.4 Responses received will be used to help in assessing the best future use for the property. There is no presumption that the property will stay with the Directorate or Service that is declaring it surplus to their needs, or that other Services requesting the property will be allowed to take up occupation. A decision on future use will be made in light of the entire property needs and priorities of the Council in accordance with the SAMP.

7.2.5 If no Council use is appropriate, authority will be sought to have the property declared surplus and it will either be sold or, if appropriate for generating a rental income, added to the non-operational portfolio. Where a decision of Cabinet is required the report will include delegation to the Director of Development for a recommended method of sale and the concluding of any disposal.

- 7.2.6 Once the decision to dispose is made the Property Division will inform the local Member and the Town or Community Council.
- 7.2.7 If disposal is identified as the correct course of action then the Property Division will market the property in accordance with the agreed method of sale. The proceeds of sale will be added to the corporate capital funds, unless there is a legal requirement to do otherwise.
- 7.2.8 The costs of holding the property until disposal will be transferred to the Property Division by the last occupying Service at the point at which the property is vacated by the Service or the property is declared surplus, whichever is the latter. This will ensure that occupying Services are encouraged to notify their intentions at the earliest possible opportunity, thus allowing time for site investigations, the submission of planning applications, and disposal to take place potentially before the property is finally vacated, thereby saving revenue costs.

8 General Policy

- 8.1 The Director of Development is authorised to agree terms for the disposal, acquisition or leasing of Council property. The only exception is the leasing of houses, bungalows or flats to individuals under Secure Tenancies covered by the Housing Acts, to provide individuals with a home. The terms of these Secure Tenancies may only be agreed by the Head of Housing and are otherwise outside the scope of this document.
- 8.2 Surveyors within the Property Division are authorised to quote and negotiate draft terms on any property for sale or lease, or for property proposed for acquisition by purchase or lease. No other officer may quote or negotiate terms for the sale, lease or acquisition of (non council house) property. Conveyancing staff within the Legal Division may agree changes to the proposed terms of property transactions where these are minor in nature and do not constitute a material divergence from the instructions of the Director of Development.
- 8.3 For disposals of freehold and ground leasehold interests, The Head of Property will prepare a report stating the agreed draft terms, and submit this to the Director of Development seeking authority to instruct Legal to complete the transaction.
- 8.4 For leases (and other similar agreements), the surveyor will prepare a report stating the agreed draft terms, supported by a valuation signed or countersigned by an officer who is a chartered surveyor, and submit this to the Head of Property seeking authority to instruct Legal to complete the transaction.
- 8.5 Following these procedures will ensure that no officer can be accused of impropriety or negligence in dealing with the sale or lease of property. Officers breaching this policy could leave themselves open to possible accusations of failing to get the best price, agreeing terms detrimental to the Council's interest, or unwarranted favouritism of a particular party.

- 8.6 Seeking consent from WAG for sales at less than full market value will only be considered in rare circumstances where there are significant advantages to the County Council and only after a full report has been submitted to Cabinet.

9 Definition of Roles and Responsibilities

9.1 Conflict of Interest and the Code of Conduct

- 9.1.1 Officers and Members are required to avoid any conflict of interest in the exercise of their duties both under their respective Codes of Conduct and the requirements of any relevant professional body of which they are a member. Where a Member or an officer of the Council is the prospective purchaser of surplus property an independent written valuation is to be obtained.
- 9.1.2 Members or officers who have been directly involved in the decision to declare a property surplus, or in the management or marketing of the property will be prohibited from purchasing or leasing the property other than at Public Auction and only then if the Director of Development is satisfied that no conflict of interest has arisen. In the case of a sale by auction, formal written permission for the officer or Member to bid for the property must be sought from the Director of Development as soon as the property is brought to the market.

9.2 Member roles and responsibilities

- 9.2.1 Members have a broad role on behalf of the Authority to promote the local economy and regeneration of Pembrokeshire. To this end they may discuss in general terms property that the Council has on the market and introduce third parties who wish to invest in Pembrokeshire, to the Property Division.
- 9.2.2 To ensure transparency in decision making, no Member may quote or negotiate terms for the acquisition or disposal of property involving the Council (whether as vendor, purchaser, lessee or mortgagee) nor be present during such negotiations save where the Member is ordinarily employed in such capacity on behalf of clients whereupon they must immediately declare a prejudicial interest and not engage in lobbying other Members or officers relating to that transaction.
- 9.2.3 No Member should bring undue pressure on other Members to attempt to influence the terms of any property transaction relating to price, against the advice of professional officers. Members may convey the concerns or aspirations of their ward constituents as a community to the Head of Property who will decide whether these should be reflected in the draft terms, if appropriate.

10 Disposals to Community Groups

- 10.1 A range of Community Groups lease or purchase property from the County Council to further their aims. These transactions will almost always be carried out at a market value, which takes account of proposed terms which restrict the use of the property.

- 10.2 Sales to Community Groups may, in exceptional circumstances, proceed at less than best consideration and in those cases where this is considered appropriate, the amount of “subsidy” must be clearly identified in the report to the Director of Development or Cabinet, and a decision made on whether this is acceptable to the Council in the light of the wider benefits that will arise from releasing the property for the proposed project.
- 10.3 In the event of proposed leases to Community Groups (or similar organisations) at less than market rent, the relevant service which covers such a group (e.g. Cultural Services for a local museum) will be consulted to ascertain whether it is prepared to provide, as part of its budgeting, financial support to that group, to ensure that a market rent is paid and there is no ‘hidden rental subsidy’.

11 Sales to Housing Associations

- 11.1 Many disposals of surplus property are made to Housing Associations, mainly Pembrokeshire Housing Association, and in the north of the County, Cantref Housing Association. In such cases the Housing Association undertakes developments that fall within an identified programme which is set by the Council according to housing need, and the Housing Association can only develop the mix of dwellings that the Council require and agree to.
- 11.2 The Council will often offer sites considered appropriate for social housing to the Housing Associations before offering them on the open market, to support its own Housing Strategy. The exception would be sites that due to location or exceptional development costs will not be funded by WAG for social housing development.
- 11.3 The Property Division will hold discussions with the Housing Association with a view to agreeing the market value of the property in each case. The Housing Association has to obtain an independent valuation from the District Valuer to accompany the Housing Association’s application to the Welsh Assembly Government for approval of the proposed scheme.
- 11.4 Where the total cost of the scheme is in excess of WAG ‘Acceptable Cost Guidance’, the Authority may consider discounting the price to reflect any exceptional development costs whilst meeting the strategic priorities of the Authority
- 11.5 Section 31 of The Housing Act 1985 allows Councils to sell land for housing at less than market value. Where the Council disposes of land to the Housing Associations under the provisions of Section 31 of The Housing Act 1985 on the basis of the best price that can be reasonably obtained for the specific development proposed, then there will be an element of subsidy by the Council if a higher price could be obtained for the site by sale for open market development. The amount of such a subsidy must be clearly identified in each case, and a decision made on whether this is acceptable to the Council in the light of the wider benefits that will arise from releasing land for social housing.

12 Acquisition

- 12.1 The Council will acquire property either for specific schemes such as road widening, 21st Century Schools or regeneration projects, or as part of the general acquisition strategy to provide for future needs.
- 12.2 Where it is proposed to acquire land for individual schemes in the Capital Programme, the relevant Project Manager will instruct the Property Division directly to negotiate suitable terms for recommendation to the Cabinet or Director of Development. As the time taken for acquisition is often lengthy, it is the responsibility of the Project Manager to identify likely timescales and budgets before drawing up a project plan and to issue instructions at the earliest opportunity. If insufficient time is allowed by the Project Manager (and the possibility of needing to use Compulsory Purchase Order powers should not be underestimated) the project may fail.
- 12.3 The Constitution includes delegations to the Director of Development that authorise acquisitions where the purchase price does not exceed £100,000. Purchases at a price of £100,000 or more must be approved by Cabinet.
- 12.4 Where the owner of land to be acquired is a Member or Officer of the Council or a close relative of a Member or Officer, then an independent valuation of the property must be obtained from the District Valuer to accompany the report of proposed terms to the Cabinet or Director of Development.

13 Leases

- 13.1 The law relating to leases is complex and varies according to the particular use of the property. Tenants often gain security of tenure and rights to compensation. In some cases the tenants will gain a right to purchase the freehold. It is therefore essential that any occupation of Council property by third parties is governed by appropriate legal agreements negotiated by suitably qualified property professionals from the Property Division. No officer may allow a third party into possession of Council property without first obtaining the consent of the Director of Development.
- 13.2 The only exception to this will be the lease of Council dwellings on Secure Tenancies, the terms of which will be the responsibility of the Director of Social Care and Housing (Director of Development), and any officers within the Housing Commissioning Division that they may authorise.

14 The Roles and Responsibilities of Property Related Services

- 14.1 Property matters are dealt with by various Divisions within the Council and, for the avoidance of doubt, the principal areas covered by the Property Division are set out below. No other officer within the Council should undertake any of these areas of work, as this is in breach of the Council's Property Code of Conduct.
- 14.2 Property Division
Corporate asset planning and property strategy
Service asset planning

Management of property database and asset register
Property reviews and identification of surplus property
Corporate and Service property advice
Capital and rental valuations
Maximising value and disposing of surplus assets
Acquisition of land and buildings
Landlord and Tenant – lettings, rent reviews and lease renewals
Maximising rental income and other direct property income
Management of the non-operational portfolio: industrial estates, retail, offices,
farms, grazing, other land and buildings, markets, harbours, airport.
Other valuations: RTB, rating, insurance