

Swale Borough Council

Draft – Property Procedure Rules November 2023

Introduction

Property Procedure Rules intend to set out adopted procedures for the acquisition, disposal and management of property assets held by the Council through a Corporate Landlord Model.

1.1 Scope

These Rules apply to all property assets in which the Council has, or proposes to have, a freehold or leasehold interest, including licenses, concession, tenancy at will and hire agreements.

In considering all property matters, Council Members, employees and appointed Agents will be aware of and comply with these rules.

All property assets controlled by Swale Council are considered to be corporate assets and are managed corporately under the Property Asset Strategy

- to deliver services in line with corporate priorities,
- to generate income
- to provide a return on investment,
- to enable regeneration or
- to provide social value.

The implementation of these Rules is supported by the Council's adopted Scheme of Delegation and should be read in conjunction with them.

Adherence to the Rules will:

Fulfil Swale Borough Council's responsibilities under S123 of the Local Government Act 1972 and S1 of the Localism Act 2011.

Provide consistency in the application of the Council policies and procedures and in the management of its property assets.

Ensure that all property transactions are completed only if there can be clear benefit demonstrated for the Council or the wider Borough, or if required to by statute or for the provision of effective estate management.

Provide a clear rationale for retaining an interest in a property asset including performance, return from investment and community benefit.

Ensure a joined-up, systematic, corporate approach to property asset planning, acquisition, disposal, management, maintenance and capital investment.

Deliver and maintain high quality property records

Ensure no property asset (or part) is occupied without appropriate legal documentation authorising the occupation

1.2 Definitions

“Property Asset Strategy”

means the adopted document that sets out the strategic approach to the Council’s complete property portfolio and management of Swale Borough Council’s property assets.

“Concession”

means a type of occupation arrangement granting a benefit to provide a defined activity or trade from the Council’s property.

“Disposal”

means the sale or exchange for other property asset(s) of any of the Council’s property asset(s) that has been declared an “asset for sale” or a “surplus asset” as defined by Chartered Institute of Public Finance Accountants (CIPFA) but also includes the leasing-out of Council-owned property and the granting of easements and rights-of-way. Disposal includes leaseholder enfranchisement.

“Freehold”

means the permanent tenure (absolute or possessory) of land with or without buildings.

“HRA”

means the Housing Revenue Account.

“Lease”

means a contract granting exclusive use or occupation of a property asset for a specified period in exchange for a specified rent.

“Leased-In”

means a property asset or part of a property asset that the Council leases in from an individual or organisation.

“Leased-Out”

means a property asset or part of a property asset that the Council lease out to an individual or organisation.

“Licence”

means a permission to use a property asset for an agreed purpose that does not confer any interest (such as exclusive possession) in the property. A licence may include (but is not limited to) oversailing licences, investigation licences and building works licences.

“Market Value”

Means the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.

“Officer Property Review Group”

means the Council’s officer group, with terms of reference that covers strategic recommendations or decisions within delegations for corporate assets.

“Operational Procedures”

means those procedures and best practice in place at the relevant time, defined and employed by Property Services.

“Property Asset”

means land and/or buildings and all improvements thereon or any right in on or over the same.

“Property Transaction”

means the transfer of rights in a property asset between two or more parties (for example but not limited to the transfer of a freehold interest, the creation of a leasehold interest or the granting of a licence).

“Social Return on Investment (SROI)”

means a framework for measuring and accounting for a broader concept of value that seeks to reduce inequality and environmental degradation and improve wellbeing by incorporating social, environmental and economic costs and benefits. The methodology is defined by the Cabinet Office (2009): A Guide to Social Return on Investment, Society Media, London or other updated guidance.

“Surplus Property”

means a property asset that is not required to meet the current or future programme or operational requirements of the Council and that has been declared by the Council or its delegated authority to be a “surplus asset” or an “asset held for sale” as defined by CIPFA.

“Valuation”

means a valuation by an appropriately qualified (internal or external) valuer.

1.3 Management of Property Assets

The Head of Service must effectively manage all property assets to ensure full alignment with the Council’s Property Asset Strategy.

Effective management includes (but is not limited to):

- Acquisition and disposal of freehold and leasehold property

- Agreements regarding rights of way, easements and wayleaves with statutory undertakers, public utility and telecommunications companies and adjoining property owners

- Reviewing the corporate Property Asset Management Strategy

- Agreeing Concessions with the relevant Service department

- Corporate Landlord responsibilities

- Development options and appraisals

- Lease issues such as new lettings, lease renewals, rent reviews, repairs, surrenders, assignments, sub-lettings, changes of use, alterations, dilapidations, collection of service charges and rents etc

Marketing activities in relation to Property Assets

Planning applications for marketing or development purposes

Repair and Maintenance of Property Assets

Restrictive covenants including the modification or release of restrictions in freehold titles and leases

Property valuations including asset valuations, insurance valuations, Right to Buy valuations and valuations for appropriation, balance sheet, grant application, internal rate of return, statutory subsidy, stock transfer purposes

Regular review of all Property Assets to ensure that under utilised property is managed effectively and, where appropriate, identified as potentially surplus

Any other arrangement that involves a Council Property Asset.

All Directors will agree an asset management approach for their service areas with the relevant Heads of Service, for inclusion in the corporately held asset management strategy and through their membership of the officer property review group.

The officer property review group will be responsible for delivering the corporate property Asset Management Strategy, corporate asset review programme and the prioritised capital investment in assets.

1.4 Acquisition – General

The acquisition, by any means, of a freehold interest or a leasehold interest over one year in duration requires the approval of the relevant Director and the Head of Service, unless the acquisition is:

Covered by the Property Scheme of Delegation

Vested by statutory authority

Owing to the Council acting as trustee

Made under planning and highways legislation as a condition of a planning permission or a planning obligation.

Any acquisition with a market value above that defined in the Scheme of Delegation has also to be approved by the relevant Committee.

Every acquisition must be undertaken in conjunction with the Council's Acquisitions Policy and be accompanied by the relevant Director's report that states:

the acquisition's contribution towards the provision of the Council's services and/or delivery of corporate aims

The life-cycle costs whereby the Council is able to demonstrate its ability to fund all costs (including running costs), expenses, impacts and risks and any other costs associated with the acquisition (for example allowed/required by legislation).

The report is approved by the Head of Service and the Director of Resources.

The Head of Service has approved the provisional terms for the acquisition

The Head of Service has certified that the price and terms and conditions represent value and, in most circumstances, has obtained an independent valuation.

1.5 Acquisition - Compulsory Purchase

A resolution to make a Compulsory Purchase Order must be made by the relevant Committee, following a recommendation by the appropriate Director and the Head of Service.

Compulsory purchases or purchases by agreement prior to a Compulsory Purchase Order being confirmed, are considered as acquisitions and subject to these Rules.

1.6 Acquisition - Gift

The acceptance of a gift of a Property Asset to the Council requires:

A report prepared by the Head of Service stating the purpose of the gift, the value of the Property Asset and any rights, restrictions or liabilities, including life cycle costs associated with the gift

The approval of the relevant Committee where a market value is in excess of the Scheme of Delegation threshold.

1.7 Appropriation

Any proposed appropriation of property from one purpose to another or any proposed transfer of property between the General Fund and the Housing Revenue Account, requires the approval of the relevant Director(s) and the Head of Service. Any appropriation will be in accordance with legislation and any regulations in force at the time and may be subject to Secretary of States consent and/or statutory advertising requirements.

1.8 Concessions

Where a Property Asset (or part) is to be let and the Council wants to either control an aspect of trade that is not normally part of a commercial lease or goes beyond what could be required through the planning regime or wishes to use the Property Asset for community use, the transaction must be subject to the general principles of ensuring value for money, equal treatment, non-discrimination and the obligation of transparency.

The opportunity to manage/operate a Concession with the type of restrictions set out above must be run as a tender process in accordance with the Council's Procurement guidelines.

1.9 Demolition

Demolition of any building or part of a building is not permitted without the authorisation of the Head of Service who is to ensure that the Council's Finance Team (for accounts purposes) and other appropriate officers are aware.

On completion of any demolition, the project owner must complete a “Demolition Completion Notice” and the Head of Service must undertake amendment to the rating list.

1.10 Disposal – General

The Local Government Act 1972 s123 applies to all disposals. For Section 123 purposes, a disposal includes the grant of a lease of more than 7 years or an assignment of an existing lease which has more than 7 years to run.

To ensure transparency in all property transactions, disposals or lettings to any organisation, including charitable, voluntary or not-for-profit organisations, must be on the basis of market value, with any financial assistance to be provided by way of a grant rather than reduction in the disposal terms.

The Council may occasionally wish to dispose of a Property Asset at less than best consideration, but where this is approved by the relevant committee under exceptional circumstances, the Council is potentially providing a subsidy to the new owner, developer and/or the occupier of the Property Asset such that there may be a distortion of competition. Where this occurs, the Council must ensure that the nature, recipient and amount of subsidy complies with UK Government Subsidy Control rules.

When a corporate Property Asset or part of an asset is/are becoming surplus to requirements:

The Director of the occupying department:

- Must give at least 6 months notice to the Head of Service that the accommodation is no longer required and such notification should set out a reasoned justification why the site or accommodation is no longer required and define the timescale to vacate/handover

- Remains responsible for all running and other costs of the property during the notice period and up to the point of disposal or transfer to another Service. (If the property is a HRA property, the property costs cannot be transferred from the HRA)

- Remains responsible for ensuring vacant possession of the property prior to its transfer to the Head of Service.

On the expiry of the notice period the Head of Service will become responsible for maintaining and disposing or transfer of the property asset.

The Head of Service must prepare a report recommending whether the property is to be:

- Retained for use by another service, use by a partner organisation or voluntary community sector organisation

- Disposed of, or

- Kept under review pending greater clarity

The Head of Service will:

- Ensure that the disposal method and negotiation process are transparent and that auditable processes are followed.

- Prepare a report to the relevant Committee which:

Recommends the proposed disposal and its method

Recommends the disposal mechanism to be adopted

States the disposal is for the best consideration reasonably obtainable

If valuation advice is included, uses valuation advice that has been certified by a Valuer in accordance with practice guidance issued by the Royal Institution of Chartered Surveyors

Includes the Heads of Terms (if appropriate)

Ensure no property is disposed of in any transaction unless it has been placed on the open market and advertised publicly subject to the exceptions stated below "Disposal – Off Market"

Ensure that in any competition all individuals or organisations are given equal opportunity to succeed

The relevant Committee must endorse the disposal of any interest (except where acting as trustee or under a statutory obligation). Disposals required by statute (for example but not limited to, lease extensions, enfranchisements) will be delegated to appropriate officers however in all other respects these rules must be followed

Any Property Asset owned by the Council that is identified as an Asset of Community Value (as defined by the Localism Act 2011) will be considered in accordance with the statutory framework.

Requests for an asset transfer to a community organisation may be considered in relation to the Council's Community Asset Transfer Policy (an appendix to the Property Asset Strategy).

1.11 Disposal - Auction

The appointment of an auctioneer shall comply with the Council's contract procurement rules.

A sale by auction must be openly and publicly advertised by appropriate methods in agreement with the auctioneers.

The reserve price:

Will be set by the Head of Service in consultation with the auctioneer

Must be at a figure that is not less than a valuation that complies with the s123 of the Local Government Act 1972

Should a Property Asset fail to sell at auction, the Head of Service may instruct the auctioneer to proceed with a post-auction sale, if it can be demonstrated that the Property Asset has been properly exposed in the market and disposal terms represent the best price reasonably obtainable

1.12 Disposal - By offering on the open market

An offer on the open market is to be appropriately widely advertised in the most suitable format.

The receipt and opening of tenders must be carried out in accordance with the Council's contract procurement rules.

If the Head of Service is of the opinion that an offer other than the highest should be accepted, the reason must be fully documented. For example, should a sale to a party offering a lower amount enable one of the Council's core strategic aims or provide another business opportunity of significant value to the Council.

Negotiations with any interested parties are permitted after the closing date for offers has passed, providing they are open, transparent and clearly documented. If such negotiations are considered to prejudice other persons who have made an offer, then in the interests of fairness and transparency a "call for best and final offers" should be made or the property re-marketed.

If the Head of Service considers that offers received do not represent the best price which can be reasonably obtained, then the Property Asset should be re-marketed if the reasons for not attracting satisfactory offers can be addressed or withdrawn temporarily from the market.

1.13 Disposal - Off Market

There may be instances where a disposal by way of open market sale would not achieve the best consideration reasonably obtainable. Examples include (but are not limited to) sales to a tenant, disposal to a development partner, disposal to an adjoining owner.

Such disposals are subject to a report prepared by the Head of Service, and approved by the relevant Committee, that includes:

Justification for such a disposal as being in the best interest of the Council

Written advice, including a market value, from an external registered valuer.

1.14 Insurance of Property Assets

All buildings owned by the Council are insured by the Council's corporate insurance policy. Insurance for leased-in buildings will be in accordance with the lease of those premises.

1.15 Interpretation and Review of the Rules

Issues regarding interpretation of the Rules shall be referred in the first instance to the Head of Service.

The Director of Regeneration & Neighbourhoods shall regularly review the application and effect of these Rules in consultation with the Director of Resources and shall propose such amended Rules to as he/she may consider appropriate.

1.16 Leased–Out Property

Requirements of the Local Government Act 1972 s 123 (that except with the specific consent of the Secretary of State) the Council may not dispose of land for a consideration less than the best that can reasonably be obtained other than by way of a short tenancy. A short tenancy is one not exceeding seven years.

Leased-out property must be advertised in the open market and must comply with the process set out in the Operational Procedures. However, there will be instances where letting a property on the open market would not be in the best interest of the Council. Examples include (but are not limited to) providing premises to an individual or organisation that has been displaced by compulsory purchase. In such cases officers will act with due probity, good governance and transparency.

No Property Asset (or part) shall be occupied without appropriate legal documentation authorising the occupation.

1.17 Operational Procedures

The Head of Service is responsible for developing and reviewing the Operational Procedures to assist with the delivery of these Rules. and shall be reviewed as appropriate. In the event of any conflict with operational procedures, the Rules will always take precedence.

1.18 Record Keeping

All Council officers must keep accurate electronic records of their compliance with the Rules.

Records are to:

- Include notes of interviews, negotiations and valuations

- Be retained in accordance with the periods set out in the Council's Records Policy?

- Where it is necessary to keep original paper documents, such as a signed documentation, a hard copy file must be maintained.

1.19 Valuations

In preparing for the disposal or acquisition of a Council interest in property, the Head of Service shall ensure that a formal, written valuation report is provided for the property in question.

Where a disposal or acquisition has not reached completion within 6 months of the date of the corresponding disposal valuation report, an updated valuation report shall be prepared.