

Key Decision Required:	No	In the Forward Plan:	No
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**AUDIT COMMITTEE
20 FEBRUARY 2014**

REPORT OF THE CORPORATE DIRECTOR (CORPORATE SERVICES)

A.1 REVIEW OF PROPERTY DISPOSAL PROCEDURES

(Report prepared by Andy White and Richard Barrett)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To consider the council's procedures for property disposal.

EXECUTIVE SUMMARY

- On 12 December 2013 the Audit Committee resolved to hold a special meeting following a discussion around property disposal.
- Given its wider corporate governance role and as there is currently a review of the Council's Constitution in progress, it is timely for the Committee to provide a view on the Council's Property Dealing Policy.

RECOMMENDATION(S)

That the Committee considers the Council's procedures for property disposal and whether it wishes to make any comments to Cabinet

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

This management or disposal of the Council's assets has potential to contribute to the full range of the Council's priorities.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The management or disposal of the Council's assets can incur costs, gain income or capital receipts.

Risk

The Council has legal and fiduciary duties to properly manage public assets. There are risks of cost and liability if it fails to do so.

LEGAL

Section 123(1) Local Government Act 1972 indicates that, a local authority may dispose of land held by it in any way it wishes so long as (section 123 (2)) the land is disposed for a consideration not less than the best that can reasonably be obtained.

The General Disposal Consent Order (England) 2003 gives consent for disposal at below best consideration reasonably obtainable provided that the undervalue is less than £2m and the proposal enhances the environmental economic and social wellbeing of the area.

Section 123(2A) Local Government Act 1972 indicates that, a local authority may not dispose of land held by it without advertising its intention to do so in the local press.

In coming to decisions in relation to management of assets, the Council must act in accordance with its statutory duties and responsibilities. Under case law following Section 120 of Local Government Act 1972, the Council is obliged to ensure that the management of its assets are for the benefit of the district.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder/Equality and Diversity/Health Inequalities/Consultation/Public Engagement

There are no direct implications associated with this report.

PART 3 – SUPPORTING INFORMATION

BACKGROUND AND CURRENT POSITION

At its meeting on 12 December 2013, the Audit Committee discussed the Council's approach to property disposal and in particular the decision to demolish Westleigh House.

In respect of Cabinet's specific decision to demolish Westleigh House, this was called in and upheld by the Service Development and Delivery and Committee on 24 October 2014.

Notwithstanding the above, further discussions at the Audit Committee on 12 December 2013 revolved around the Committee's role in terms of property disposal and it was highlighted that the Committee's role in such decisions was from a general value for money / governance perspective.

With the above in mind and as the Council is currently reviewing its Constitution, there is a timely opportunity for the Committee to give its views on the Council's property dealing element of the Constitution.

The Council's current Property Disposal Policy is attached at **Appendix 1** for consideration by the Committee.

BACKGROUND PAPERS

None

APPENDICES

Appendix 1 Property Dealing Policy, Procedure for Property Disposals and appendix.

PROPERTY DEALING POLICY

[This is an extract from the Council's current constitution which is subject to review and reference to Officer's titles may differ to the most up to date position]

1. Negotiation of Property Deals

1.1 Members must not engage in negotiations of any kind relating to any property dealing or proposed property dealing. In this context, property dealing means the acquisition or disposal by the Council of any interest in land, including freehold, leasehold, by way of tenancy, any rent review, lease variation, lease renewal or any other dealing or proposed dealing with an interest in land or licence to use land.

1.2 Any proposed property dealing involving the grant or renewal of a lease at less than open market value or rent review (not in accordance with the rent review provisions of the applicable lease) at less than open market value, which the Legal Services Manager and Corporate Property Officer consider to be valid and lawful shall be decided by the Cabinet. A full written officer report shall be made to Cabinet, giving full and proper reasons for the proposed discounted value.

2. Procedure for Property Disposal

2.1 In this section "disposal" means any disposal by the Council comprising property dealing as defined in paragraph 1.1 above. Every request to the Council from any party for a disposal shall be referred to the Corporate Property Officer. This procedure does not relate to the sale of dwellings under right-to-buy requirements nor to the granting of licences or tenancies at will by Heads of Department in consultation with the Legal Services Manager for one year or less. "Disposal Process" or "DP" means all applicable steps of this Procedure leading up to a final decision on disposal.

2.2 The Corporate Property Officer will carry out a basic feasibility appraisal and decide whether it is appropriate to submit a brief written report to the Finance and Asset Management Portfolio Holder seeking authority for the initiation of formal consideration of potential property dealing. The report may also seek a decision from the Finance and Asset Management Portfolio Holder that the Council intends to dispose of any of the land which is public open space and authority that notice of this intention be advertised in accordance with paragraph 2.9 below unless the Corporate Property Officer, having carried out his investigations, consultations and negotiations referred to below is satisfied that he will not recommend disposal of any of that open space to Cabinet in accordance with paragraph 2.10 below.

2.3 Where the Finance and Asset Management Portfolio Holder grants any authority in accordance with paragraph 2.2 above, the Corporate Property Officer will then undertake:

2.3.1 appropriate consultations and investigations regarding whether some or all of the land is or could be surplus to requirements; and

2.3.2 negotiations, marketing and/or other actions in accordance with this Process which lead up to a formal decision on whether to dispose of the property.

2.4 As part of the consultations and investigations, the Corporate Property Officer will take all appropriate steps identified in Appendix A and:

2.4.1 consult with the Council Department that uses the land

2.4.2 consult with the relevant Portfolio Holder(s) for that Department and the relevant Ward Councillor(s)

2.4.3 consult all TDC Departments to ascertain whether the land or property is or could be surplus to requirements

2.5 The Corporate Property Officer will appoint professional valuers on such terms as he sees fit to provide professional valuations and advise how best to maximise the likely sale proceeds. The professional valuations will be based on existing use or (where applicable) any increased value likely to be realised by any means of disposal advised by the valuer.

2.6 The Corporate Property Officer will lead the Disposal Process including any negotiation, marketing, tenders, preparations for auction or other measures which the Corporate Property Officer in consultation with the valuer considers necessary, expedient or in the Council's interest.

2.7 Any face-to-face meetings carried out during the negotiations will be attended by the Corporate Property Officer and at least one other Officer. All negotiations will be fully documented and be "subject to contract" and "without prejudice" as applicable. The proposed final agreement will be subject to any other terms and conditions deemed advisable by the Legal Services Manager.

2.8 All terms proposed must comply with the Council's duty under Section 123 of the Local Government Act 1972 to achieve the "best consideration reasonably obtainable"; unless lower consideration is approved by the Cabinet under the General Disposal Consent (England) 2003 or other statutory provision.

2.9 Where land which is public open space is subject to an Officer recommendation or proposed recommendation that it is declared surplus to requirements, the Corporate Property Officer will cause advertisement of the proposed disposal in a newspaper for 2 consecutive weeks in accordance with Section 123(2A) of the Local Government Act 1972.

2.10 The Corporate Property Officer and/or such other Head(s) of Department as required by the Chief Executive will prepare a full report to Cabinet. Unless the Corporate Property Officer advises against disposal, recommendations to Cabinet will include any one or more of the following:

2.10.1 If the Council has already received one or more written objections to a proposed disposal of public open space within the consultation period stated in the newspaper advertisement(s), details of such objections and an Officer recommendation on whether or not to proceed with the disposal

2.10.2 That the land or property (or some of it) is declared surplus to Council requirements

2.10.3 Specific terms and conditions for the disposal

2.10.4 An authority for specific Officer(s) to conclude the disposal

2.10.5 Any other relevant provisions

2.10.6 Where land declared surplus to requirements is public open space, authority to advertise the proposed disposal in a newspaper for 2 consecutive weeks in accordance with Section 123(2A) of the Local Government Act 1972

APPENDIX A [To the Property Dealing Policy]
Supplemental internal procedure – Disposal

During the Disposal Process, before agreeing any provisional terms and reporting to Cabinet the Corporate Property Officer or authorised Officer or agent will:

1. Appraise of relevant plan(s) in the Council's title deeds and an Ordnance Survey extract plan of the site.
2. Carry out a site inspection.
3. Examine the title deeds to identify any relevant covenants and easements and, where appropriate how these may be varied or discharged.
4. Identify whether there are any physical constraints on site which are likely to affect its value, such as boundary encroachment or underground services and make appropriate enquiries with the statutory undertaker or other interested parties where appropriate.
5. Provide details of the property to Essex County Council to ascertain if they may wish to acquire it.
6. Consult the Head of Planning and Regeneration regarding the prospects of planning permission for the proposed or a more valuable use.
7. In consultation with the valuer, appraise the likely effect on price of selling the Council's land with adjoining land owned by the Council or a third party.
8. Where the land is subject to a lease or licence, ensure that the valuer fully considers whether the merger of legal interests in the land could increase the overall freehold value.
9. Take any other steps which he considers necessary, advisable or in the Council's interests.