

***Extract from the Council's Constitution dated 27.10.2006 – Part 5
Codes & Protocols.***

**PROTOCOL ON DISPOSAL OF LAND FOR LESS THAN BEST
CONSIDERATION**

1. Cabinet approved the Corporate Property Policy on the 4th July 2005.

2. The Policy provides that the Council should seek to achieve best consideration in respect of any disposal unless a case for disposal at an undervalue can be sustained. Generally best consideration will be achieved by an offer for sale subject to competition.

3. This Protocol sets out the principles to be applied when considering disposal of land for less than the best consideration reasonably obtainable.

A. The Local Government Act 1972, Section 123 provides that the Council may dispose of land in any manner it sees fit subject to the constraint that, except in the case of leases for less than 7 years, disposal must be for the best consideration reasonably obtainable.

B. Section 123 applies to land held for most local authority functions subject to certain exceptions such as disposal of land held for housing purposes (governed by the Housing Acts) and for planning purposes (governed by Planning legislation).

C. It is Government policy that local authorities should dispose of surplus land wherever possible. The Corporate Property Policy is consistent with this expectation. Generally it is expected that land will be sold for the best consideration reasonably obtainable. However, the Government recognises that there may be circumstances where an authority considers it appropriate to dispose of land at less than best price.

D. When disposing of land at an undervalue, the authority must remain aware of its fiduciary duty to council tax payers.

E. The General Disposal Consent (England) 2003 provides a general consent removing the requirement CPR's 27/10/2006 426 for local authorities to seek specific approval from the Secretary of State for a wide range of disposals at less than best consideration. Authorities are granted consent in circumstances when the undervalue does not exceed £2m and where the disposal authority considers that the disposal is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the whole or any part of the area (the general power of wellbeing)

F. It is for the Council to decide whether any particular disposal meets these criteria or continues to require specific consent under the 1972 Act.

G. In determining whether or not to dispose of land for less than best consideration the Council should obtain the view of a professionally qualified Chartered Surveyor (Valuer) as to the likely amount of the undervalue. Legal advice should also be obtained on the question of whether the disposal is capable of falling within the terms of the consent. In certain cases it may also be prudent to consult with the District Auditor in relation to any action that is proposed.

H. In considering the application of the wellbeing criteria under the General Disposal Consent, the Council must have regard to the Community Strategy and reasonably consider the extent, if any, to which the proposed disposal supports the aims and objectives in the Strategy.

I. The Council must demonstrate that it has acted reasonably in agreeing undervalue transactions in order to be in a position to respond to any potential challenge. Regard must therefore be had to the adopted Corporate Property Policy, the terms of this Protocol and the Council's fiduciary duty.

J. In considering the financial considerations of any disposal at an undervalue there must demonstrable evidence that the outcome will be equally beneficial as compared to a disposal at market value.

CPR's 27/10/2006 427

K. As a general principle disposal of land at less than best consideration should take place on an exceptional basis and should not be regarded as the rule.

L. Local authorities are state aid authorities for the purposes of the European Commission's State Aid Rules. Disposal of land at less than best consideration effectively involves subsidising the purchaser, Developer and/or occupier of the land. The Council must therefore ensure that the nature and amount of any subsidy complies with the State Aid rules. Failure to do so would render the provision of any aid unlawful.

M. Any proposal to dispose of land at less than best consideration should, in the first instance, be referred to the Corporate Asset Management Group for consideration of a business case and options appraisal.

N. Any subsequent recommendation to dispose of land at less than best consideration should be referred to the Cabinet for a decision. In reporting to Cabinet, the following mandatory requirements must be fulfilled:

(i) A valuation report, undertaken by a Chartered Surveyor (Valuer), setting out the restricted and unrestricted values of the property

(ii) An assessment with supporting evidence of the capital value to the Council of those benefits of the proposal which are capable of monetary assessment together with an assessment with supporting evidence of the value of non monetary benefits (i.e., social, economic and environmental benefits)

(iii) Confirmation that the disposal will contribute positively to the Council's priorities

(iv) A statement that the benefits that the Borough will derive from the proposed disposal cannot be achieved unless the sale takes place at an undervalue and confirming that no reasonable alternative means of funding are available to the purchaser

(v) In cases where the proposed disposal is to an identified person/organisation without a tender process, this should be subject to consideration of a robust business case and an analysis of the financial standing of the organisation/person

(vi) Details of the proposed terms of the transaction which will ensure that the disposal will contribute to the achievement or improvement of the social, economic and environmental wellbeing of the area

(vii) A statement from the Monitoring Officer on whether it is considered that the disposal is capable of falling within the terms of the General Disposal Consent

(viii) A statement from the Section 151 Officer in relation to the financial implications of the proposal, particularly in respect of the impact on resources for capital spending as set out in the Medium Term Financial Plan

O. In all cases, subject to the particular circumstances and legal advice, consideration should be given to recovery of all or part of the undervalue in the event of a subsequent disposal at full market value.

P. In any case of urgency - i.e. where it is not reasonably practicable to submit a report to Cabinet pursuant to this Protocol - the Chief Executive will have delegated authority to approve the disposal of land at less than best consideration subject to the requirements set out in paragraph N, in consultation with the Leader and relevant Portfolio Holder.