

CABINET

DATE	8 th March 2023
REPORT OF	Councillor Stephen Harness - Portfolio Holder for Finance, Resources and Assets
RESPONSIBLE OFFICER	Sharon Wroot – Executive Director Place and Resources
SUBJECT	DISPOSAL OF PROPERTY AT LESS THAN BEST CONSIDERATION – Leasehold of the Pavilion, Playing Fields and Play Areas at Roval Drive, Immingham
STATUS	Open
FORWARD PLAN REF NO.	CB 02/23/11

CONTRIBUTION TO OUR AIMS

The disposal of the Roval Drive recreation site (the “Site”), by way of a leasehold disposal, will enable the Immingham Town Council (the “Group”) to continue with the management, maintenance and use of the Site to fulfil their aims and objectives.

The current lease is limited only to the existing Pavilion and Car Park which has a remaining term of under 18 years. There is the opportunity to surrender the lease of the Pavilion and regrant a lease of the Pavilion, Playing Fields and Play Areas, at less than best (market) value which is based on the submission of a revised proposal setting out the social, economic and environmental (community) return on investment; the benefits of which outweigh the monetary value that would be requested if the Site were to be leased at market value.

The disposal supports the Council’s outcome of ‘Stronger Communities’ by ensuring the continuation of the current provision, as well as the opportunity for proposed investment in to the wider Site. There would be no ongoing financial constraint on the Council in terms of managing the Site which will meet our determination to be an efficient and effective Council.

EXECUTIVE SUMMARY

This report seeks authority to surrender an existing lease of the Pavilion and regrant a new 125-year full, repairing, and insuring lease, of the subject Site, namely the Pavilion, Playing Fields and Play Areas at Roval Drive, Immingham. The purpose of this report is to gain agreement to a revised proposal from the Group, which will provide a social return on investment, far outweighing monetary equivalent to otherwise proposed rent as part of the Council’s approach to Community Asset Transfers (CAT). Approval to the proposal will allow the granting of a new lease of the Site over the stated term at a peppercorn rent (£1 per annum, if demanded).

RECOMMENDATIONS

It is recommended that Cabinet:

1. approves the principle of a regrant of a full, repairing, and insuring lease of the subject Site for a term of 125-years at a peppercorn rent (£1 per annum if demanded) to Immingham Town Council;
2. delegates authority to the Executive Director of Place and Resources in consultation with the Portfolio Holder for Finance, Resources and Assets the responsibility to ensure that all necessary actions are carried out in order to approve and complete the detailed terms of the disposal;
3. delegates to the Assistant Director Law and Governance (Monitoring Officer) authorisation to complete all requisite legal documentation in relation to the matters outlined above.

REASONS FOR DECISION

A proposal has been received from the Group which has been considered as part of the Council's approach to Community Asset Transfers (CAT). The proposal has been agreed in principle which could result in the transfer of the Site by virtue of a 125-year full, repairing, and insuring lease. The new lease would ensure the Group are able to continue to manage the Site on the current basis, albeit for the wider Site, and remain sustainable and viable over the proposed term.

1 BACKGROUND AND ISSUES

- 1.1 The Council is the freehold owner of the Site, being the Pavilion, Playing Fields and Play Areas at Roval Drive, Immingham. For the purposes of this report, the Site is shown outlined as per the attached plan at Appendix One and is the extent of the Site to be granted a new lease term
- 1.2 The Group hold an existing lease of the Pavilion and Car Park which was granted for 25 years in 2015 and have managed the wider playing fields. The play areas have remained the responsibility of the Council.
- 1.3 The sum of £40,000 has been received through a Section 106 Developer Contribution which will be transferred to the Group who will create a budget line ringfenced specifically for use to invest and maintain the Site as per the conditions of the funding.
- 1.4 The Group may also benefit from further funding to invest in the Site in future, therefore it is good practice to secure a long-term lease agreement.
- 1.5 The Group, being of sound grounding as a constituted Town Council, have submitted a revised proposal which supports the continued use of the Site ensuring the localised ownership and management of a public asset is used by the local community and residents.
- 1.6 The Council has been satisfied that the revised proposal leading to the recommendation to approve a 'less than best' transaction is based on sufficient social and economic benefits. These benefits far outweigh the monetary value that could be requested in rent and supports existing and proposed community benefits which are a direct contribution to the Council's outcomes of 'Stronger Economy' and 'Stronger Communities'.

1.7 The proposal to set the level of rent at a peppercorn ensures the continued community use and management of the Site remains sustainable, with the monetary value being realised through social benefit. The obligations for repair and maintenance of all aspects of the Site will continue to be that of the Group, as would all future investment opportunities.

1.8 Ward Councillors will be engaged as part of the disposal process.

2 PROPOSAL

2.1 A proposal has been received from the Group which sets out the benefits of a localised management approach to maintaining the wider Site which will result in the existing lease being surrendered and a new lease of the wider Site to include the Pavilion, Playing Fields and Play Areas at Roval Drive, Immingham.

2.2 Should the proposal be agreed, and a new lease be granted, the Group will have full autonomy to concentrate on maintaining and improving the sustainable provision of leisure and recreational use of the Site, including protecting and enhancing the biodiversity of the area.

2.3 Investment is proposed to the Play Area using the Section 106 Developer contributions and plans will be put forward for consultation with the local residents as to ongoing use and maintenance of the Site as a valuable resource to the community.

2.4 The Group plan to hold engagement sessions in respect to proposals for new play equipment and ongoing activities and use of the Site. Feedback from those who are eager to see the Site further improved will contribute to these plans progressing. The Group's proposals to enhance the Site and improve on the current provision for the benefit of the community and residents should be considered on merit of the social benefits to be realised.

2.5 The proposal to surrender the current lease and enter in to a new lease agreement would be granted on a full, repairing, and insuring basis across the 125-year term. This would maintain the current position whereby the Council would not incur any ongoing maintenance costs specifically in relation to the Site. Any proposed changes to the Site as part of the lease would need to be reviewed, considered and agreed in advance with the Council as Landlord.

2.6 The Council must consider the strategic reasons in holding assets that are unable to be resourced fully to meet full operational use. The proposed lease will see the Site being further utilised by the Community. The football pitches are included in the Borough's Playing Pitch Strategy (PPS) and therefore will be protected for continued use and be hired at a rate that would be accessible to the Community.

2.7 Ward Councillors will be engaged as part of the disposal process.

3 CONSTITUTIONAL REQUIREMENTS

3.1 The Constitution includes a Protocol on Disposal of Land for Less than Best Consideration ("the Protocol") as set out at Appendix Two. The Protocol contains eight specific procedural requirements that must be addressed and included in any report seeking authority to dispose at less than market value or market rent as follows:

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| (i) A valuation report, undertaken by a Chartered Surveyor (Valuer), setting out the restricted and unrestricted values of the property |
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The Council's qualified Chartered Surveyor has provided a valuation report which contains the following key information.

Unrestricted Value (i.e. market value as a capital sum)	£170,000 (One Hundred and Seventy Thousand Pounds)
Less Restricted Value (i.e. market value subject to proposed lease)	£0 (Nil)
Equals Discount (i.e. total amount of undervalue)	£170,000 (One Hundred and Seventy Thousand Pounds)

The above figures are based on the current market value and the market value under the terms of the proposed transaction and is the amount that will not be received by the Council if the proposal is approved.

- (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)

The value of the proposed lease in non-monetary terms cannot be quantified. Nevertheless, securing a longer period of transfer to the Group supports the Council's outcomes of a 'stronger economy' and 'stronger communities'. It provides the Group with security of a key asset to the community and continue with the management and maintenance of the Site. The lease includes all of the maintenance costs associated with the Site being that of the Group, thus ensuring no change in the financial position of the Council.

The Group's continued commitment to provide a local community amenity ensures community spirit and health and well-being, helping to tackle anti-social behaviour, and boost local prosperity.

These outcomes affect peoples' lives and cannot be directly quantified. Notwithstanding there is a significant cost to the Borough in dealing with issues and any opportunity to reduce the numbers of those affected must be embraced.

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

The new lease will contribute positively to the continued active management and use of the Site in support of the Council's objectives including 'Sustainable Communities', 'Feel Safe and Are Safe' and 'Health and Wellbeing'.

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

<p>The Group are dependent upon a longer-term lease at 'Less Than Best' to enable them to ensure ongoing viability with the management and maintenance of the Site on behalf of the local Community.</p>
<p>(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 proposal and an analysis of the financial standing of the organisation/person.</p>
<p>An updated proposal has been received and considered. The Group is of sound grounding, constituted as a Town Council with a long history of being locally placed to benefit both the residents and the wider community.</p>
<p>(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.</p> <p><i>NOTE: 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></p>
<p>A summary of the Headline terms are below:</p> <ul style="list-style-type: none"> • A 125-year lease term • Peppercorn rent (£1 if demanded) • Full, Repairing and Insuring by the tenant • Restricted to Community Uses throughout the term. • Community Accessible Use to be provided in relation to the Football Pitches and Changing Rooms as this site is important in the provision of sports facilities as set out in the North East Lincolnshire Playing Pitch Strategy.
<p>(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.</p>
<p>See Section 12 of this Report "Legal Implications"</p>
<p>(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.</p> <p><i>There must be demonstrable evidence that the outcome of any undervalue disposal will be equally beneficial to a disposal at market value</i></p>
<p>See Section 11 of this Report "Financial Implications"</p>

3.2 ESTATES PROGRAMME BOARD - The Protocol also requires that any proposal to dispose at less than best consideration should, in the first instance, be referred to the Board for consideration of a business case and options appraisal.

3.3 **SUBSIDY CONTROL RULES** - The Subsidy Control Act 2022 became law at the end of April 2022 with the new regime in force from 4th January 2023. As a result, public authorities are required to comply with the legal obligations under the domestic subsidy control regime. The regime provides public authorities with a framework for designing and awarding subsidies in a way which is consistent with the Subsidy Control Act. The Council now must ensure when providing financial assistance to a business, or other organisation, which gives them an advantage over competitors, it complies with the Subsidy Control Act. The Act sets out the four tests that financial assistance must meet to be considered a subsidy, which is applied as follows:

Does the proposal meet the four-limb definition of a Subsidy under the Subsidy Control Act 2022?

Where one (1) or more of the criteria is not met, then it does not constitute a Subsidy:

Subsidy means financial assistance which	
(a) is given, directly or indirectly, from public resources by a public authority	Yes
(b) confers an economic advantage on one or more enterprises	No
(c) is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services	No
(d) has, or is capable of having, a genuine effect on - (i) competition or investment within the United Kingdom (ii) trade between the United Kingdom and a country or territory outside the United Kingdom, or (iii) Investment as between the United Kingdom and a country or territory outside the United Kingdom	No

4 RISKS AND OPPORTUNITIES

- 4.1 The risk to the Council in progressing with a new lease term to the Group is considered minimal. The Group is a constituted Town Council of sound grounding and in the scenario of a lease, should the proposals no longer be viable, the option to relinquish the Site back to the Council and ultimately seek alternative opportunities would be pursued which could mitigate against the Council incurring any future holding costs.
- 4.2 Future risks remain with the Group in respect to the management and operational costs of maintenance etc. and the obligation of repair and maintaining the Site to an acceptable standard to ensure ongoing use.
- 4.3 There are potential positive identifiable environmental sustainability implications because of the proposal, as it is the intention that the condition of parts of Site will be maintained and improved based on its current operational use. The new lease term will allow the Group to continue with management of the Site and would allow for potential funding to be obtained, allowing for further investment and improvements.

- 4.4 The disposal will enable the Group to direct resources and funding towards ongoing management resulting in the potential for increased usage which will result in a positive reflection to the street scene within this part of the borough, reduce miss-use or antisocial behaviour and will ensure there is no future ongoing financial commitment to the Council.

5 OTHER OPTIONS CONSIDERED

- 5.1 To do nothing would see the Group not being able to take advantage of local management opportunities. This would result in the Site not being invested in and improved and the Group unable to develop their current proposals as well as seek future funding opportunities to improve and maintain the Site for the benefit of the residents and community.
- 5.2 The freehold disposal of the Site has not been considered at this time. This is in respect of the Council's continued interest in the use of the Site and mitigating any risk in the event the Group are unable to continue with maintaining the Site. In such circumstances where the proposal is no longer viable, which impacts on the on-going use of the Site, the Council could take action to seek an alternative management of the Site or to prevent any unauthorised uses of the Site which a freehold disposal would remove.

6 REPUTATION AND COMMUNICATIONS CONSIDERATIONS

There are positive reputational implications for the Council resulting from the decision to support a new lease to the Group. The lease agreement will primarily enable continued use of the Site but will allow current and future investment opportunities for enhancement as well as a continued localised management offer for the benefit and use by local residents and the community. The Council's communications service has been briefed of the proposal and will issue any information requirements in respect to this proposal.

7 FINANCIAL CONSIDERATIONS

- 7.1 The proposal outlined within the report supports the Council's key outcome of 'stronger communities', by enabling The Group and the residents and community to use and enhance the Site.
- 7.2 The repair and maintenance cost of the Site will continue to be financed through resources obtained by the Group. Any investment will be subject to the Group's own resources and access to external grant funding.
- 7.3 On an ongoing basis the proposal will require no capital and revenue expenditure to be provided by the Council. This is consistent with the Council's policy to contribute to improved value for money and supports the financial objective and our determination to be an efficient and effective Council.

8 CHILDREN AND YOUNG PEOPLE IMPLICATIONS

The use of the Site will continue and be enhanced based on the facilities as it is now, with proposals to invest and enhance parts of the Site and its facilities which will result in positive implications so far as Children and Young People.

9 CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

The recommendations outlined within this report have been considered so far as their impact of the proposal on climate change and the environment. In reference to the Council's environmental policy, the proposal supports the Council's environmental priorities:

- By recognising and realising the economic and social benefits of a high-quality environment.
- By working towards a low carbon North East Lincolnshire that is prepared for, and resilient to, the impacts of climate change.

10 CONSULTATION WITH SCRUTINY

There has been no consultation with Scrutiny to date.

11 FINANCIAL IMPLICATIONS

- 11.1 The leasehold disposal of the site will generate a social value return above the value that could be obtained in the form of a capital receipt.
- 11.2 This will also ensure that the Council does not retain any ongoing repairs and maintenance or capital investment liabilities for the site.

12 LEGAL IMPLICATIONS

- 12.1 Local Government Act 1972, s123, 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.
- 12.2 The General Disposal Consent (England) 2003 provides a general consent removing the requirement 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 disposing 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).
- 12.3 Constitutionally and as outlined in the above report the Protocol on Disposal of Land for Less than Best Consideration requires that the Council receives a statement from the Monitoring Officer on whether it is considered that the proposed lease is capable of falling within the terms of the General Disposal Consent (England) 2003.
- 12.4 Cabinet is advised that this proposed disposal is capable of falling within the terms of the consent for the following reasons:
- 12.4.1 the amount of undervalue would be below the £2m threshold
- 12.4.2 it is the professional opinion of the Executive Director Place and Resources that in granting this disposal the monetary loss is outweighed by the positive social, economic and environmental benefits of the proposal.
- 12.4.3 The Scheme of Delegation in the Constitution provides for the Executive Director Place and Resources to refer any proposed disposal at an undervalue to Cabinet in accordance with the Protocol on Disposal of Land at Less than Best Consideration and maintain a register of all undervalue disposals. This report therefore complies with those

provisions.

12.5 In terms of subsidy control, it is clear from the analysis set out earlier in this report that the proposal fails to satisfy the four-limb definition of subsidy under the Subsidy Control Act 2022. The proposed recipient is a public authority and not an economic actor and the site is one of community recreation and not capable of being used for economic purposes beyond community recreational use.

12.6 It is recognised and accepted that long term security of tenure can be advantageous to a provider and sometimes necessary to secure funding or render an investment capable of delivering a return.

13 HUMAN RESOURCES IMPLICATIONS

There are no direct HR implications

14 WARD IMPLICATIONS

This proposal impacts on the Immingham Ward.

15 BACKGROUND PAPERS

There are no background papers in respect of this proposal.

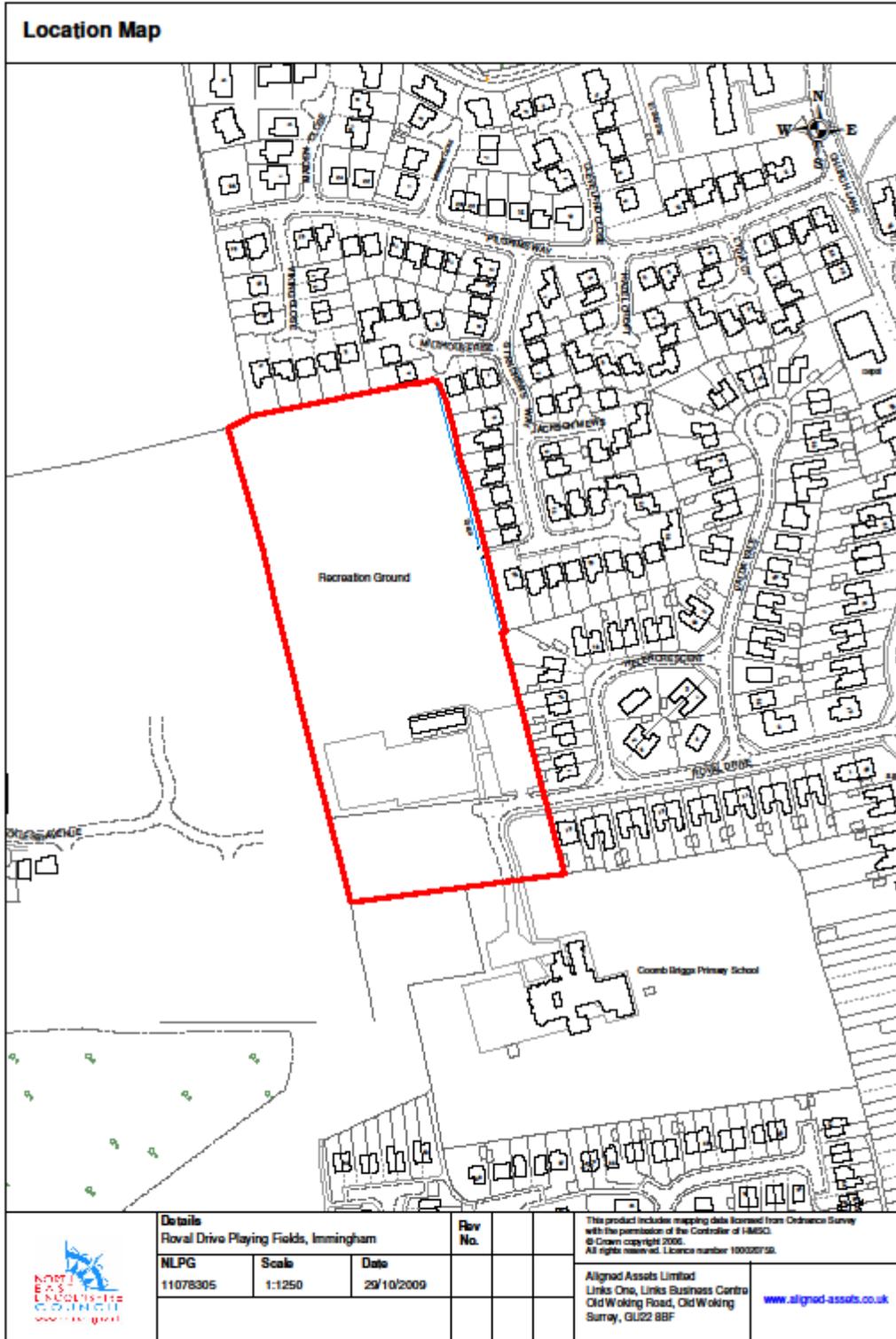
16 CONTACT OFFICERS

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APPENDIX ONE – SITE LOCATION PLAN



APPENDIX TWO – 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.
4. The Local Government Act 1972, Section 123 provides that the Council may disposal 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.
5. 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).
6. 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.
7. When disposing of land at an undervalue, the authority must remain aware of its fiduciary duty to council tax payers.
8. The General Disposal Consent (England) 2003 provides a general consent removing the requirement 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).
9. It is for the Council to decide whether any particular disposal meets these criteria or continues to require specific consent under the 1972 Act.
10. 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.
11. 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.
12. 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.

13. In considering the financial considerations of any disposal at an undervalue there must be demonstrable evidence that the outcome will be equally beneficial as compared to a disposal at market value.
14. 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.
15. 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.
16. 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.
17. 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:
 - (a) A valuation report, undertaken by a Chartered Surveyor (valuer), setting out the restricted and unrestricted values of the property
 - (b) 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)
 - (c) Confirmation that the disposal will contribute positively to the Council's priorities
 - (d) 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
 - (e) 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
 - (f) 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
 - (g) 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
 - (h) 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
18. 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.

19. 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.