

Guiding Principles for Property Asset Release

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1. Introduction

Property is a powerful force for organisational change, in identity branding, in inspiring innovation and in encouraging improvements in productivity and service quality. It is an asset which responds only slowly to change, so it is important to build in the flexibility in property asset management to enable change that meets service demand, political direction and/or financial efficiencies.

The disposal of any property or land, deemed as surplus to requirements, is an important part of the Fire Authority's drive to improve its estate management and create an efficient, fit-for-purpose and sustainable estate that meets future needs. This document sets out the procedures to be adopted specifically with regard to property asset release.

The assessment of Royal Berkshire Fire & Rescue Service's property need is borne out of two key documents – the Corporate and Risk Management Plan (CRMP) and the Strategic Asset Investment Framework (SAIF).

The Authority's CRMP sets out the requirement in terms of provision and location of all fire stations across the Royal County of Berkshire to ensure that the Service is able to respond to changing patterns in risk.

The Authority's SAIF sets out the Authority's 15 year capital investment strategy to maintain and renew the vital capital assets necessary to deliver the Prevention, Protection and Response requirements of Royal Berkshire Fire & Rescue Service.

These two key documents underpin strategic property decision making in terms of prioritising refurbishment, replacement, disposal, or identifying the need to seek a new asset location.

This Guiding Principles document is fully aligned to the Authority's revised Financial and Contract Regulations (November 2020) as well as legislation that governs the disposal of local authority assets.



2. Ethical Approach to Property Disposals

2.1. Core Code of Ethics for Fire and Rescue Services

In 1994, the UK Government established a Committee on Standards in Public Life. The remit of the Committee was to make recommendations to improve standards of behaviour in the public sphere. The Committee was chaired by Lord Nolan and the first report of the Committee established The Seven Principles of Public Life (known as the Nolan Principles).

The Core Code of Ethics for Fire and Rescue Services (Core Code) is based on the Nolan Principles and sets out five ethical principles, which provide a basis for promoting good behaviour and challenging inappropriate behaviour.

These principles run through this document to ensure that the highest behavioural standards are introduced and maintained at all times in order to demonstrate best practice in managing valuable public sector assets.

The table below sets out the five ethical principles and what they mean for public servants.

Putting our Communities First We put the interests of the public, the community, and service users first.
Integrity We act with integrity including being open, honest, and consistent in everything that we do.
Dignity and Respect We treat people with dignity and respect, making decisions objectively based on evidence, without discrimination or bias.
Leadership We are all positive role models, always demonstrating flexible and resilient leadership. We are all accountable for everything we do and challenge all behaviour that falls short of the highest standards.
Equality, Diversity and Inclusion (EDI) We continually recognise and promote the value of EDI, both within the Service and the wider communities in which we serve. We stand against all forms of discrimination, create equal opportunities, promote equality, foster good relations, and celebrate difference.



3. Assessing surplus land or property assets for disposal

The Service should look to dispose of property or land assets which are identified as surplus to requirements and should not look to hold land speculatively. HM Treasury (Managing Public Money) advises that surplus land or property assets should ideally be disposed of within three years of being identified as surplus to requirements. In making an assessment to determine whether land or property assets are surplus, consideration must be given to:

- whether the land is currently used/required to deliver operational functions;
- whether there is a clearly evidenced plan to use the land to deliver future operational functions;
- whether the land is held for commercial purposes and/or is integral to continuity of service delivery;
- whether the land is vital for business continuity or contingency, in line with strategic and /or operational plans.

However, land may also be identified as surplus if:

- it is not used for current delivery or required for future delivery of operational functions;
- the Service has no formally approved strategy and timetable for bringing the land or property back into permanent full operational use.

Each case should be assessed on the circumstances associated with the land or property and the Service's overarching strategic plan.

4. Preparing for Disposal

Through the regular refresh of the CRMP, SAIF and Property Asset Management Strategy (PAMS), surplus assets will be identified. When land or property assets are confirmed as surplus and approved for sale on the open market, disposal objectives will be agreed by the Senior Leadership Team and approved by Members of the Fire Authority's Management Committee.

Any single disposal may support multiple strategic and operational objectives. Typical strategic objectives will include:

- supporting a wider change programme following a CRMP consultation;
- consideration of the need to complete the disposal within a specified timescale to fit in with other investments, disposals, acquisitions or relocations;
- budgetary requirements and cash-flow implications;



- carrying out the disposal in accordance with the approved practices as set out within this document, adhering to the Core Code ethical principles at all times.

4.1. Legislation Governing Asset Disposals

Under section 123(2) of the Local Government Act 1972, and by virtue of section 8(3) of the Fire Services Act 1947, the Authority is not permitted to dispose of land 'for a consideration less than the best that can reasonably be obtained', without the consent of the Secretary of State. The 'consideration' is confined to commercial or monetary value. This means that should the Authority wish to consciously pursue disposal strategies that may offer wider community benefits, and in so doing, reduce the potential financial receipt, it may need to obtain consent from the Secretary of State.

There is an extant general disposal consent issued by the Secretary of State: *The Local Government Act 1972 General Disposal Consent (England) 2003* which permits a local authority to dispose of land for less than best consideration without the need for individual consent from the Secretary of State if the local authority considers that the disposal will contribute to the promotion or improvement of the economic, social or environmental well-being of its area and the extent of the undervalue is no more than £2,000,000. However, the accompanying guidance cautions that a local authority would need to ensure that its disposal is compliant with state aid rules, would need to have regard to its fiduciary duty owed to the public; ensure that its appointed auditor was well sighted on any proposal to rely on the General Disposal Consent if it is not a local authority with 'well-being powers' or has a 'community strategy' in place under the Local Government Act 2000.

4.2. Authority Regulations

4.2.1. Financial Regulations

Section 2.6 vii of the Authority's Financial Regulations states that *all receipts from the sale of assets which were originally purchased from capital financing will be treated as capital receipts and must be notified to the Chief Finance Officer or Deputy. The Chief Finance Officer or Deputy must be notified of all proposed disposals of assets. All assets with a value over £3,000 must be disposed of by competitive quotations, by auction or by other means, such as land swaps, that have been approved by the Chief Finance Officer and demonstrate value for money. The three Statutory Officers must approve and oversee the process that will be used to dispose of land and buildings.*



4.2.2. Contract Regulations

Section CR26 in the Authority's contract regulations relates to the acquisition or disposal of freehold or leasehold buildings and is set out below.

Prior to any formal commitment being made or signed a report must go to the Management Committee to advise:

- *the estimated value of the land or buildings;*
- *the current or most recent building use;*
- *options considered;*
- *recommendation and disposal route to be followed;*
- *proposed sale value and planned use;*
- *if a disposal is for less than best consideration, the report must say whether consent is needed from the Secretary of State or Home Office.*

Tenders for disposal do not need to be submitted via the corporate E-tendering portal and may be managed by a third party. The three Statutory Officers must approve and oversee the process that will be used to dispose of land and buildings.

4.3. Disposal Team

It is essential that a suitably experienced disposal team is assembled. The team should be established at the outset to provide appropriate in-house, commercial, legal and professional support throughout the disposal process.

The disposal team should include representatives from the Estates and Finance teams. Teams must include the correct mix of the core skills needed to successfully deliver the objectives of the disposal. Teams may typically include advisers such as commercial, legal, and professional consultancy and critically have relevant sales and marketing expertise and an established track record in the market.

The Chief Finance Officer is accountable to Members for the disposal and accordingly will have responsibility for the disposal and oversight of the disposal team.

5. Asset Release Strategy

Once surplus land has been assessed as being suitable for sale on the open market the disposal objectives will be incorporated into an Asset Release Strategy. The strategy should take into account the advice of professional advisers and may be revised following receipt of their advice. This must be reviewed and agreed by the



Chief Fire Officer/Chief Executive, Chief Finance Officer and Monitoring Officer, prior to presentation to Members at Management Committee for their approval.

5.1. Considerations to Inform the Strategy

In developing the strategy, there are various factors that should be considered:

- timing - identifying a desired disposal time and an estimate of lead times required;
- pricing the market - taking valuation and agency advice to establish the likely realisation value achievable;
- determining whether either of the above (timing and price) could be improved by undertaking any minor works to the subject property;
- identifying the most appropriate disposal process (private treaty, tender, auction, etc.);
- identifying marketing and advertising avenues;
- considering the impact on the local (and general) property market if a large number of properties are to be placed on the market at the same time or in close succession;
- considering whether the Authority has a need to sell the land under certain conditions (e.g. in a certain timeframe) as this may impact on the price;
- ensuring that the Project Team understands the disposal strategy and maintains the momentum to complete the process;
- ensuring full alignment to the requirements of the Authority's Financial Regulations;
- ensuring full alignment to the Authority's Anti-Fraud, Bribery and Corruption Policy.

The asset release strategy should provide a clear framework setting out the approach to be taken and the justification behind that proposal.

There are a number of factors that can impact on disposing of surplus land and/or property in an efficient manner. The disposal team should develop the appropriate 'client' brief, ensure the land or property is being disposed of under optimal conditions (e.g. that the correct amount of de-risking has been undertaken), that the right contract has been selected and that the right market has been targeted.

Set out below are matters that, if addressed at the appropriate time, can eliminate many issues that delay disposals.

5.1.1. Legal

Legal due diligence should confirm clean title and discover any relevant legal issues or constraints pertaining to the land or property. Time should be taken to ensure that the disposal is permissible under the terms of any lease that might exist. In many



cases there will be restrictions on the use to which a property may be put, or who might be permitted to occupy accommodation - referred to as “Third Party Rights”. Time should be taken to ensure that it is possible to offer the property to third parties, including confirming whether occupation rights are restricted in any way.

There should not be any debate over the title or the interest which is subject to disposal. Nor should there be any legal obstacle to undertaking the planned transaction.

5.1.2. Physical

Physical due diligence should seek to reconcile the legal position with what is actually occurring on site and identify matters such as contamination, party walls, etc.

5.1.3. Financial

Financial due diligence should include establishing the value of the asset as well as the financial and budgetary impact to the Authority if a disposal is undertaken.

5.1.4. Investment Prior to Disposal - De-Risking Sites

Investment prior to disposal (or de-risking) can help to provide more certainty for potential purchasers for a property and deliver an increased receipt. The case for investment prior to disposal should be considered as early as possible and clearly set out in the Asset Release Strategy.

De-Risking activity prior to disposal could include the following:

Planning: pre-application engagement offers potential to improve both the efficiency and effectiveness of a planning application. The approach should be tailored to the nature and potential of the proposed development and the issues to be addressed.

Planning: preparing a development brief, securing a planning allocation or securing outline planning approval. Any decision on planning investment will be influenced by the size of the land offered to the market. It is not always appropriate to seek planning permission prior to the release of a site and this must always be evaluated on the merits of each site.

Technical: producing technical reports and surveys such as ecology, measured surveys, topography and ground investigations.

Prior works: works such as remediation, decontamination and demolition.



Legal: the resolution of title issues.

Consideration should also be given to whether investment will reduce the conditionality of bids and increase the certainty of receipt. The final decision to invest should be based on a robust analysis of the 'return on investment' of a range of options and a clear understanding of the site's viability. Advice should be sought from professional advisers when considering any investment prior to disposal.

5.1.5. Capturing Future Uplift in Development Value

Where a property is being sold with the benefit of the best planning permission reasonably obtainable, or market conditions or other factors indicate that it would be beneficial to do so, the Authority should consider making provision to share in development profit through 'overage' or 'clawback' clauses.

'Overage' means claiming back an element of improved development value where, for example, there is a general uplift in the market, or where the market value of the end development is not known at the time of sale.

'Clawback' refers to claims for all or part of windfall gains resulting from, for example, the purchaser obtaining planning permission for a change of use, or a greater volume of development than anticipated by the planning permission obtained prior to disposal.

Further examples of overage and clawback might include:

- where it is difficult to gauge the commercial potential of a property;
- where a particular type of purchaser may have a better chance of obtaining consent for a development than the Authority;
- where a developer can improve upon a planning permission obtained by the Authority;
- the disposal of a listed building.

However, clawback and overage provisions may be difficult to enforce due to:

- difficulty in monitoring the value of the property when it no longer belongs to the Authority;
- agreeing the increase in value that is due to the agreed event;
- ensuring that payment of the uplift is protected, although contracts and other devices can be used to attempt to enforce the payment of the uplift in value.

Clawback or overage clauses are specialised and may give rise to complex legal issues. The Disposal Team should therefore seek appropriate advice at the outset to determine the best way to proceed. This should include an assessment of the effect of clawback or overage clauses on the sale price. The effect can be explored by inviting offers both with and without clawback or overage provisions. The calculation



to be applied should be clear and explicit in the agreement. Clawback levels are usually designed to diminish over time until they 'expire' and the purchaser is able to dispose of the property without reference to the Authority.

5.1.6. Sitting Tenants

Surplus property earmarked for potential disposal may contain tenants or sub-tenants benefiting from security of tenure and be subject to 'right to buy' which has the potential to discount the value of disposals. An example of this type of property could be investment properties that are occupied by tenants. Occupation of a small area of an otherwise potentially self-contained property, or of a vital area such as a reception hall, may have an effect on the disposal. Disposals of tenanted property should ideally be timed to coincide with a landlord's lease-break option or with the end of the lease to maximise the chance of obtaining vacant possession. If disposal with vacant possession is preferred, then it may be necessary to negotiate with the tenant for a surrender of the lease(s). As tenants have rights to security of tenure under the Landlord and Tenant Act 1954 (unless specifically contracted out in the lease), this can be lengthy and costly.

This is a complex area and property and legal advice should be obtained at an early stage. If vacant possession cannot be obtained, or if the tenant occupies a large proportion of the property, it may be necessary and sometimes preferable to sell the property with a sitting tenant. The presence of an established tenant with immediate rental income could make the property more desirable to potential purchasers.

It is important to seek advice in order to identify:

- how the disposal value will be affected by this situation (valuation advice);
- whether vacant possession is required and how this can be achieved (legal advice).

In cases where the Authority itself holds a lease from a commercial landlord it may sometimes be preferable to surrender the lease to the landlord rather than try to dispose of it to a third party.

5.1.7. Lease Breaks

Where the Authority occupies a leasehold interest in the property identified as surplus, the lease should be reviewed to establish whether there are any break clauses that would allow the Authority to surrender it. Provided a break clause is exercised correctly and there are no severe rental penalties, it may be possible to vacate a property with no further liabilities. Particular care should be taken when exercising break options that any 'conditions precedent' in the lease has been complied with. Failure to fully comply may invalidate the service of a break notice.



There is no de-minimis threshold applied to conditions precedent and the smallest non-compliance may render a break notice invalid.

However, unless contractually excluded, operation of a break-clause will trigger a reinstatement or dilapidations liability. The Authority should take this into account when considering this option. A number of benefits may be achievable by exercising a lease break, particularly where the rent payable is above market value. Notices must be served as required by the lease terms and also by statute, for example, the Landlord and Tenant Act 1954 (Part II). Notices will also need to be served in a specified format and within specified time periods. Failure to adhere to these requirements can result in the Authority being unable to exercise the break.

Break clauses may provide the Authority with opportunities to negotiate existing lease terms, such as rental levels with landlords. A landlord may prefer a rent reduction to a void period. The Authority can also negotiate to exit a lease outside of the lease break options contained within the lease. Officers must take advice on these matters from property and legal advisers.

5.1.8. Vacant Property

The Authority remains responsible for all aspects of stewardship of the property following vacation until disposal, even if not occupying it. If a freehold property, the Authority will remain liable for the capital charge. If it is a leasehold property, then the Authority will remain liable for the covenants under the lease including for the payment of rent. In addition, there will be the normal costs of ownership that accompany any property, such as business rates, insurance and any service charges that might apply. As many of these costs can be mitigated, there may be some advantages in vacating the property. In addition, there may be savings due to not incurring expenditure on energy usage and cleaning costs.

The Authority may also take steps to improve the likelihood of a successful disposal that might not have been possible whilst remaining in occupation such as refurbishment or reinstatement. A risk evaluation should be undertaken to assess the total costs against benefits of the property remaining empty over given periods of time.

5.1.9. Mitigating Costs

There are a number of outgoings that the Authority will remain liable for despite vacating a property. Many of these can be reduced or cut completely.

Rent

This is one cost that cannot be either reduced or avoided. The landlord has a right to receive the rent, whether or not the Authority is in occupation.



Business Rates

The Authority pays business rates on the non-residential properties it occupies. If the property is vacant, an application can be made to the relevant local authority for 'Empty Rates' to be applied. Certain properties are exempt from business rates. The relevant local authority should be advised at the earliest opportunity that a property is vacant. Business rates are not paid on empty buildings for three months, after which most businesses must pay full business rates.

Leases

Leases occasionally include clauses which can indemnify landlords losing the right to rates relief on account of the tenant already having enjoyed such relief. Rating is a specialist area and the Authority should take advice from its rating advisers to ascertain what, if any, relief from business rates will be available.

Insurance and Security

Where a lease contains a specific insurance clause it may be possible to reduce premiums if the property is vacant, provided that the property is adequately secured against illegal entry and potential vandalism.

Utilities

Utilities such as water, gas and electricity can be disconnected, thus removing associated costs. There will be a charge for disconnection, as well as one for re-connection, which may be necessary in order to make a successful disposal. An electricity supply may be necessary if an alarm system is in operation and the Authority decides to maintain that facility.

5.2. Options for asset release strategies

There are various options available for property asset release strategies, such as private treaty, formal and informal tender and public auction. Each release option should be considered in the context of the type of land or property being offered for sale, the nature of the market for that type of land or property at the time of sale, and any specific issues or special characteristics associated with the land or property.

When evaluating options for asset release, the Authority should take advice from its selling agents on the most appropriate disposal route together with advice on costs and associated lead times. Selecting the most appropriate method of sale is vital to achieving a successful value for money sale. The Authority should reserve the right not to accept the highest - or any - offer if there are good commercial reasons for doing so.



5.2.1. Sale by Private Treaty

This is the method most widely used in the United Kingdom. Vendors make it known that a property is for sale, usually through agents who circulate particulars of the property to potential purchasers. Once a potential purchaser has expressed an interest, terms of sale are negotiated. Private treaty relies on an element of goodwill on both sides.

The main characteristics of a sale by private treaty are as follows:

- the timescale for completion of the transaction is not fixed until exchange of contract;
- offers are made 'subject to contract';
- offers are not all received at the same time;
- it is usual for the asking price to be quoted.

The Authority should ensure that the land is fully exposed to all potential purchasers throughout the marketing process to ensure genuine competition. There is therefore the potential for private treaty negotiations to extend over a considerable period of time, either because the purchaser has valid concerns regarding the physical nature of the land or property, or its legal status, or for other reasons such as the purchaser also being interested in another parcel of land.

The steps involved in a private treaty transaction usually include the following:

- openly advertising the land for sale;
- specific markets can be targeted through a choice of advertising media;
- taking offers from interested parties;
- identifying preferred offers, which may or may not be based on the financial levels of the offer;
- managing offers – keeping bidders interested when they are not the 'preferred' bidders, i.e. when there is a better offer but the deal is not yet confirmed;
- negotiating disposal terms;
- agreeing terms, obtaining approval, and proceeding with the legal transaction process.

An example where a private treaty approach might be appropriate would be where a sitting tenant expresses an interest in purchasing the property and is prepared to pay more than the market value. In such an instance, a suitably qualified valuer should give written assurance that the price offered is significantly higher than market value.



Advantages	Disadvantages
The vendor sets the price.	No market testing
The vendor determines the pace of the sale.	May miss out maximising value due to special purchaser.
Special purchaser may bid higher than the market.	There is no firm contract at the point of offer and acceptance.
Marketing costs may be lower.	

5.2.2. Sale by Public Auction

The Disposal team should ensure that suitably qualified professionals are appointed if pursuing a disposal by public auction. A clear advantage of this option is that when the hammer comes down a contract has been created. This focuses everyone's minds, as there is no time to reconsider.

When preparing for a disposal by auction preparation must be meticulous and conditions of sale should be published with the auction prospectus. It is vital that the auction is sufficiently advertised and that the property has sufficient exposure to the market. It is important that the auction prospectus is accurate, as a sale following incorrect auction particulars or misstatements may lead to a rescission or price abatement if the purchaser litigates.

The Authority should decide upon a guide price to assist potential purchasers. The sales agent / property adviser should indicate whether there should be a reserve price on the land or property. Any reserve price should be set close to the time of the auction. This is confidential between seller and auctioneer. Legal advisers should be instructed to draw up conditions of sale in advance of advertising the auction.

If a bid is accepted during the auction then the prospective purchaser must lodge a deposit at the time. Completion follows in accordance with the conditions of the sale issued with the auction prospectus. Professional property advice should be sought to establish whether an auction is the most appropriate method of disposal.

In the case of interest from a special purchaser, a sale by auction should only take place if negotiations with the special purchaser have been unsuccessful.

Advantages	Disadvantages
Quick, certain and fair route to sale, contract is established on the day.	Specialist skills required.
Good for the sale of small, commonplace investment properties or for secondary or tertiary properties where traditional methods of marketing might not attract sufficient interest.	Potential purchasers may have limited time to undertake investigations prior to sale which may lead to more cautious bids.
Interest and competition in the saleroom on the day may generate more interest from potential purchasers and lead to a	Rely on sufficient interest and competition in the saleroom on the day and may miss out on bids from potential special purchasers.



price in excess of the estimated market price.	
Conditions of public accountability are seen to be satisfied.	Some potential purchasers dislike auctions and may be deterred from bidding.
The vender can be satisfied that, on the day, the best possible price was achieved.	Auctions can have high marketing costs.

5.2.3. Sale by Informal Tender

Informal tenders tend to be used in cases where there are either some issues that make either a Private Treaty or a Formal Tender sale difficult, or where demand is likely to be restricted due to the nature of the property to be sold. It is similar to a private treaty sale, except that the land is marketed for a set period of time, after which marketing ends. This allows the vendor to look at a number of bids simultaneously and make a judgement as to which bid to accept.

In an informal tender, bids are usually invited from selected parties, subject to contract. These will be subject to outstanding issues such as planning permissions or details of proposed development schemes being resolved. Bids can also be invited publicly. The vendor is not usually obliged to accept the highest, or any, bid. Offers received will still be 'subject to contract'. However, provided a number of offers are received, there will be an element of competition, which is of assistance to the vendor in subsequent negotiations.

Advantages	Disadvantages
Increased flexibility to purchaser and vendor over the terms of the offer	The purchaser is not bound to proceed.
Gives vendor the opportunity to share in future uplift in development value through mechanisms such as overage and clawback.	Risk that any accepted offer may not complete as bid may be subject to outstanding issues/conditions.
Allows the parties to clarify and negotiate final terms of the sale, especially useful where overage or clawback provisions need to be negotiated.	

5.2.4. Sale by Formal Tender

Formal tender is a useful method of disposing of land but care needs to be taken to ensure that the land has been given the fullest exposure to the market. Formal tenders tend to be used in order to create certainty in terms of timescales but can be lengthy and costly for prospective purchasers. In a formal tender the 'Conditions of Sale' i.e. the contract terms, are sent out with the sales information. Prospective purchasers have to return the entire document, including the conditions of sale,



signed and enclosing a deposit. The vendor then normally has a set period within which to make a decision on the bids received.

Once a bid is accepted and the deposit banked, a contract has been concluded. Prospective purchasers therefore have to carry out detailed investigations into the land prior to submitting an offer without knowing whether they have any real chance of acquiring the land. Unless the market is very strong for the land on offer, the number of bids likely to be received will generally be fewer than if the land was offered by way of informal tender or private treaty.

Formal tenders require specific preparation including:

- property and legal advisers drawing up the 'Conditions of Sale' and tender documents;
- the selling agent or property adviser advising on the reserve price;
- that the land is usually sold to the highest bid above the reserve, although consideration should still be given to lower bids;
- if the highest bid only marginally fails to clear the reserve price, then advice should be sought as to whether it should be accepted;
- the need to thoroughly checking bidders' creditworthiness and sources of finance prior to accepting any bids.

Advantages	Disadvantages
Public accountability is self-evident, clearly demonstrates the sale process has been fair, with the highest compliant bid winning the process.	Time and expense incurred by bidders on detailed investigations without certainty of being successful.
Provides certainty on timing and costs.	Can deter potential bidders and may not be a suitable method in a weak market.
Promotes sale to a wide market, sale above the estimated market value may be achieved.	The tender procedure can involve large numbers of interested parties and can be time consuming and expensive.
Could promote a higher bid from a purchaser with a particular interest (special purchaser).	Difficult to include overage in a formal tender sale.

5.2.5. Negotiated Disposal

Where there is a clear case that this will result in a better outcome for the Authority, it may be necessary to dispose of an asset on a non-competitive basis (negotiated) basis. Scenarios where this may be appropriate include:

- when there is little interest in an asset;
- when bids fail to achieve minimum quality / output levels;
- when a complex development is envisaged;



- when there is evidence that bids have not extracted the full potential (in terms of value, quality or outputs as appropriate) from the asset.

Negotiated disposals should be at market value, in accordance with *Managing Public Money*. Advice should be sought from professional and legal advisers.

5.2.6. Conditional Sales / Conditional Contracts

Conditional contracts either become binding when some event takes place (conditions precedent), or are terminated when some event occurs (conditions subsequent). Offers that are made for a property 'subject to contract' may also be subject to planning consent, asbestos surveys, site surveys, etc. This means that exchange and / or completion of contracts will be conditional on resolution of the issue(s) of particular concern.

The inherent challenge of a conditional contract for the vendor is what happens when a condition is not satisfactorily resolved from the point of view of the purchaser, for example where a planning consent eventually emerges and is subject to unacceptable conditions. In such circumstances, which may occur some considerable time after the sale or transaction has been completed, the contract conditions may not be satisfied and the disposal may not proceed at all. Alternatively the purchaser may proceed but wish to adjust the terms, including the price, to reflect the problems that have arisen. Contracts may specifically allow for the purchaser to withdraw or to adjust the terms. However, this is a complex area and must be carefully controlled by the disposal team in consultation with the Chief Finance Officer working with legal advisers.

It is important to make sure that any conditions attached to the disposal are explicitly stated in the contract. The term "conditions precedent" should be clearly stated in the contract and in all correspondence with the prospective purchaser regarding the disposal. The Authority should be certain that any conditions attached to the disposal are incorporated into the disposal contract. In addition, the negotiating agent should ensure that all negotiations are undertaken on the premise of conditions precedent.

5.2.7. Joint Ventures

In some cases, the Authority may not realise the full potential land value of a site with development potential through an outright sale. Special participation or profit sharing arrangements may yield a better return. These cases need a greater degree of legal, marketing and monitoring expertise than straightforward sales, and it is essential that appropriate advice is obtained. The Authority can also use Joint Ventures to bring in a partner organisation with suitable skills and expertise to take a disposal forward. Where such an arrangement is considered, it is important to check



that the purchaser is backed by adequate financial resources and offers the best combination of financial status and proven track record of successful development, involving the resolution of planning and other project problems. Joint venture arrangements allow the Authority to benefit from growth in values if a development is highly successful.

The main disadvantage is that negotiation to settle the terms of the arrangement can be complex and time consuming. Care must be taken to ensure that any reduced payment at the outset is more than offset by a realistic estimate of later profits, and that the developers' costs and sale terms are realistic and can be professionally checked to ensure that the predicted profit share is in practice likely to be achieved.

A key element is the agreement of a "base value" which is paid at the outset (or in stages at regular intervals, or as the development proceeds), together with a shared "development profit" (which is the difference between the development value and the development costs) to be shared between the parties in accordance with agreed terms.

5.3. Marketing – Securing Interest

Once a disposal strategy has been approved, the Disposal team and the Chief Finance Officer will be responsible for ensuring implementation of that strategy. Where a disposal is complex it is important to appoint professional advisors who can clearly demonstrate that they have experience of similar complex transactions. Disposal agents and legal advisers should be clearly briefed on the objectives, the processes to be undertaken, and the roles and responsibilities of everyone involved with the disposal. It is essential that the Authority and its advisors are open and transparent in all their dealings in line with the Core Code ethical principles, including fully documenting all advice provided, decisions taken and reasons why a particular sale method has been chosen. Disposal agents should regularly report on progress.

It is common to use performance related fees to incentivise delivery. Agents can be expected to advise on the likely market(s) to target and how they propose to undertake marketing. Agents will also advise on advertising costs so that a budget can be agreed. Agents should be encouraged to identify and target any special purchasers. If more than one potential purchaser is identified, then it is important to maintain interest, even after an acceptable offer has been received. By maintaining a level of market tension the Authority's position can be protected in the event of the sale not proceeding.

5.4. Maximising Disposal Opportunities

Markets for property may depend upon a number of factors, including:



- potential occupants of the property in its present use;
- potential occupants of the property for a different use;
- potential investors looking to secure a suitable tenant.

The Authority and its advisers and agents should carefully assess who to target in the marketing strategy based on the above. For any given property there may be a wide variety of potential purchasers, and a broad overview of the different possibilities should be undertaken before focussing on just one target market.

The success of this stage in the process can be tested through an assurance review. This should ensure that all avenues have been explored and the market thoroughly tested for interest. Approval can then be sought from the Chief Finance Officer to proceed to the next stage of identifying preferred buyers and agreeing terms.

In consultation with property and legal advisers, an asset release strategy should be developed that is most likely to achieve the goals and objectives of the disposal. In doing this, the following should be considered:

- the tenure or interest in the property to be sold;
- characteristics associated with that interest, such as restrictive covenants or length of term;
- the situation in respect of the property, such as whether it has sole occupancy and can offer vacant possession;
- whether there is, or could be, a special purchaser for the property;
- any opportunities for realising latent value, for example, by obtaining planning consent for a change of use;
- constraints such as planning restrictions or the building's characteristics (it may be listed or have an unusual structure);
- any other considerations that may impact on the timeliness and value for money of the disposal.

6. The Sale and Completion Process

In most instances the disposal of land will be undertaken through a direct negotiation with the purchasing party by the disposal team who will have the appropriate experience. Assembling a suitably experienced disposal team with an established track record in negotiating disposals will ensure that all due consideration is given to the disposal before the negotiations are entered into.

6.1. Preparation

The aim of the negotiation phase is to achieve the best consideration for asset disposal terms reasonably obtainable for the Authority. Preparation for negotiations



plays an important role in achieving that goal. Although the Authority's appointed professional consultants are likely to be both skilled and experienced in negotiating disposals, they need to be fully briefed about the Authority's parameters for agreement and its negotiating circumstances.

Key considerations prior to negotiations will include:

- strengths and weaknesses of the Authority's negotiating position;
- an assessment of the parameters within which terms would be acceptable.

6.2. Negotiation

The Disposal team should be clear in relation to the Authority's negotiating objectives. This should be done in consultation with statutory officers.

Consideration should be given to the following:

- where the purchasers are 'special purchasers' such that they would benefit more from the acquisition than other purchasers;
- should there be a shortage of properties similar to the subject property such that potential purchasers may be prepared to pay a premium in order to secure the purchase than they might be at other times;
- where there is a surplus of similar properties available on the market such that the potential purchaser could choose to acquire another similar property on better terms;
- where the Authority is facing a potentially large backlog maintenance cost or other ongoing costs if they retain the property.

The Disposal team should also establish a risk register and consider the risks identified in light of any negotiation or offer, amending the register as necessary to reflect the latest negotiating position.

6.3. Agreement of Terms

It is important that agents negotiating on the Authority's behalf clearly understand the parameters within which they must work and are briefed to enable them to plan their negotiations accordingly. This should form part of the initial brief given upon appointing selling agents and must be fully aligned to the Authority's Financial and Contract Regulations.

The agent representing the Authority must clearly understand the decision making process for agreeing terms. This way, the agent will know when proposals can be agreed in principle and when they cannot. Information is often the negotiator's key



tool, and knowing what can be revealed and when can be important in obtaining the best disposal terms. The Disposal team need to be certain about what levels of delegated authority exist in relation to this disposal so that they know when to refer matters to others for decisions. In order to ensure that offers are passed through to the Authority in an appropriate and timely manner, a reporting and decision making process with delegated authorities should be agreed. The legal advisers' role must also be clear with instructions given at appropriate times in respect of contract preparation and the conveyancing process.

There is no guarantee that negotiations with the preferred purchaser will complete successfully. Therefore, it will be important to identify opportunities for keeping other prospective purchasers involved so that a 'reserve list' can be created.

Where the Authority is letting or subletting property, the Service's property advisers should ensure regular reporting and consultation throughout the negotiation of terms. Lease terms should be drafted with care, as they will bind the Authority throughout the term of the lease.

Negotiating agents and representatives working with the disposal team, should consider any proposed purchasers, assignees or tenants in terms of:

- track records and intentions;
- their commercial standing (including availability of funding for the particular transaction);
- risk assessment;
- state Aid implications;
- certainty of success;
- potential implications of their acquisition.

Once a disposal process reaches the stage of contractual negotiation and exchange, it will be important that there is a high likelihood of a successful completion. In addition, any disposal to purchasers that are found to be taking part in illegal or immoral activities will likely result in a high level of scrutiny being levelled at the Authority.

6.4. Liaison with Legal Advisers

Ideally legal advisers and negotiating agents should be appointed at the same time. Although the negotiating agent will be experienced in these matters, contract terms and conditions should still be discussed with the Disposal team's legal advisers prior to final agreement.



6.5. Sales Subject to Conditions

As a general rule sales contracts should be kept as simple as possible. This helps to minimise costs and reduces the risk of deterring potential purchasers with complex contract terms. In some cases, however, the sale of land may need to be dependent on certain conditions being met, e.g. securing planning consent. The most common way of dealing with this situation is a conditional contract.

6.6. Completing the Deal

When a purchaser has been found and terms have been agreed, there are still a number of activities to be undertaken in order that the disposal should be successful. Legal advisers usually handle exchanging of contracts and completing the disposal. A process of reviewing progress should be put in place to deliver the desired outcome.

The Disposal team should track progress and ensure key activities are completed on time including:

- obtaining the necessary approvals and signatures that will enable exchange to take place, allowing for the lead times associated with this;
- arranging for financial sign off to be obtained and monies to be transferred at the appropriate times;
- if the disposal is a lease assignment or subletting, securing any consent required from the superior landlord and allowing for the lead time associated with this;
- ensuring associated costs have been built into the project's budget;
- ensuring the asset has been removed from the asset management system upon disposal.

A risk assessment of the 'deal' should be undertaken, together with a risk management exercise to identify issues that will require attention in order for the disposal to complete satisfactorily.

It would also be prudent at this stage to undertake a due diligence exercise prior to absolute commitment to a transaction to ensure that:

- the disposal has followed due process and all matters have been addressed;
- the proposed purchaser, assignee or tenant will be suitable, i.e. that they will be able to complete the acquisition and meet future commitments and liabilities;
- the disposal represents value for money in terms of the price achieved and benefits gained.



The success of this stage of the process and readiness to proceed to final completion can be tested through an assurance review. This will help to satisfy the statutory officers that all necessary checks have been completed and that the transaction delivers value for money. Following agreements of the terms of the missives, the contract is concluded by the legal advisors and at that stage becomes binding on both parties. In freehold disposals there is often a delay between completion of a contract and settlement, normally 14 to 28 days, to allow conveyancing to be completed. In a leasehold disposal, the settlement often occurs at the same time as the conclusion of missives, with execution of the lease by both parties taking place shortly thereafter.



7. Appendix A - The Approval Process for Asset Release

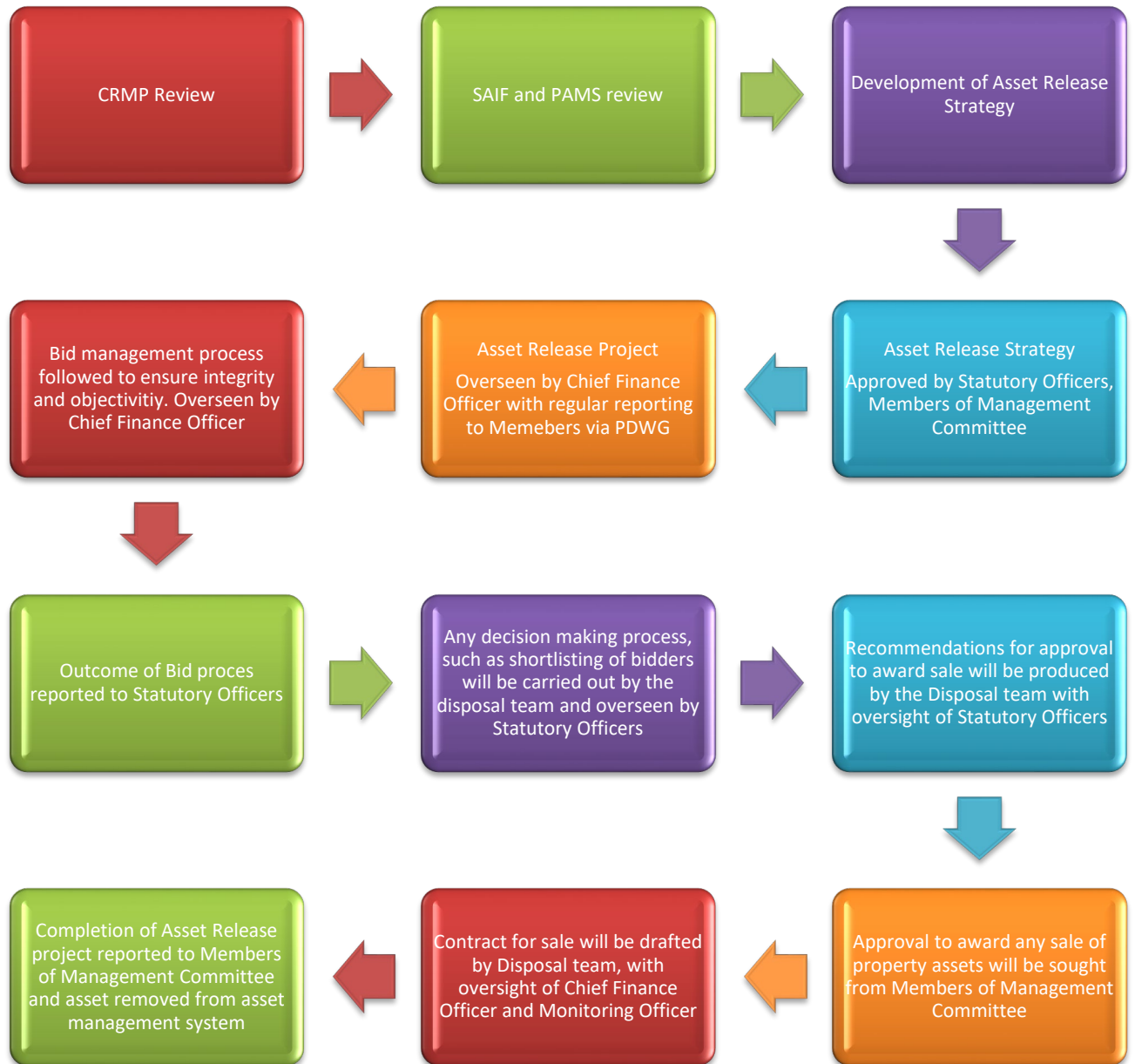
The approval process must demonstrate openness and integrity. Structures should also ensure that power is not overly concentrated in one individual, which can help mitigate any perceived risks. At all times, the decision making needs to ensure a fully transparent process with multiple appropriate decision makers at each stage to clearly demonstrate objectivity. This good governance should promote collective decision making to help the organisation exercise fair and balanced judgement.

In line with the Authority's Financial and Contract Regulations, major financial decisions must be taken by the Members of the Authority based on advice and recommendations from the Disposal team and statutory officers. This ensures that decision makers can be assured of the appropriate breadth of expertise involved at each decision making point through the entire asset release process.

The disposal pathway aligns fully with the Core Code ethical principles as well as the Authority's Financial and Contract Regulations.

At each stage, a written record of any decision making will be maintained and this will be shared with Members via the Property Development Working Group and at a high level with Members of Management Committee as part of regular Capital Projects updates.

Each decision making stage, such as shortlisting of bidders, will be overseen by statutory officers and will follow a process that demonstrates integrity, objectivity, accountability and fairness. The outcome of the asset release process will be reported to Members of Management Committee in order to seek their approval.



Reference to ‘Statutory Officers’ as per the Authority’s Financial Regulations, refers to the Chief Fire Officer/Chief Executive, the Monitoring Officer and the Chief Finance Officer.



8. Appendix B – References

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Heritage Estate Historic England website: <https://historicengland.org.uk/>

Disposal of Heritage Assets: www.historicengland.org.uk/images-books/publications/disposal-heritage-assets/

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Plain English Guide to the Planning System:
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