

NORTH YORKSHIRE COUNTY COUNCIL

CORPORATE & PARTNERSHIPS OVERVIEW & SCRUTINY COMMITTEE

21 July 2014

PROPERTY DISPOSALS

1.0 PURPOSE OF REPORT

- 1.1 To inform the Committee of the County Council's approach to property disposals.
- 1.2 This report provides a comprehensive overview of the Council's approach to property disposals. It will be supplemented by a brief presentation by officers at the Committee meeting.

2.0 BACKGROUND INFORMATION

2.1 *Overview*

- 2.1.1 If a property is no longer needed for its immediate past use then its fate is reviewed. The available options are considered, including disposal. A decision is taken and this is recorded formally. If the decision is to dispose then a disposal strategy is agreed. In due course, the terms of the disposal are agreed and approved. This is recorded formally.
- 2.1.2 The management of the process is undertaken or arranged mainly by Asset Management within the Property Service, although some decisions about the fate of properties are arranged by directorates as part of wider reports on changes to service delivery. All the terms of a disposal or other transaction are approved by Asset Management. Marketing and the negotiations of terms are undertaken mainly by Bruton Knowles.
- 2.1.3 The County Council normally seeks market value for its disposals, but there are some exceptions to this. These are described in 2.9.

2.2 *The Redeployment Process*

- 2.2.1 Property can become available for a decision on its fate as a result of:
1. service reviews – resulting from changes in service delivery philosophy or service delivery methods or level of demand or budget issues
 2. property reviews
 3. the end of leases to third parties
 4. approaches from third parties to acquire – including tenant farmers.
- 2.2.2 The County Council has a Redeployment Process for property. It ensures that decisions are taken in the best overall interests of the Council.

2.2.3 Officers in Asset Management consider several options when identifying the proposed future of a property, although they may not all be relevant in all cases. Sometimes, it may be sensible to reach separate decisions on different parts of a property. For example, to sell part of a farm and add part to an adjoining farm. The usual options considered are set out in the table below.

<i>Re-use now</i>	Does the property meet another known immediate service delivery need? Directorates are asked if the property meets such a need. For a County Farm this could include inclusion in an adjoining farm.
<i>Disposal now</i>	Does it make sense to sell the property now?
<i>Future need</i>	Does the property meet another known future service delivery need? Directorates are asked if the property meets such a need.
<i>Future disposal</i>	Does the property have medium or longer term development potential of sufficient magnitude to delay a disposal or are there other reasons for keeping the property in the medium to long term that are not related to service delivery?

2.2.4 A recommendation is made and is forwarded to the decision-maker for approval – or otherwise. The Property Procedure Rules (PPRs) identify the decision-maker based on value. There is more about the PPRs in 2.3.1. Local members are informed of all decisions. A copy of the report for each decision in their division is sent to them. Some Members can receive several reports in a year, others may not receive any for several years. This is because the distribution of the County Council's property is uneven across the county and so are the changes that take place to it.

2.2.5 If a decision is made to dispose then, in most cases, Asset Management instructs Bruton Knowles to market the property or negotiate terms direct with a single party. In some small value cases and for non-commercial work, officers in Asset Management will undertake the work because it is more cost-effective to do so.

2.2.6 Terms for a disposal are presented to Asset Management for approval – or otherwise. Terms are rejected sometimes for issues of quality or if they do not seem to represent sufficient value. Following the approval of terms Asset Management instructs Legal & Democratic Services to complete the legal paperwork.

2.3 *The Property Procedure Rules (PPRs)*

2.3.1 The PPRs form part of the Constitution. They set out who has the authority to take decisions in relation to the various types of property transaction, including disposals. For most work there is a hierarchy of approvers based on value. The sequence of possible approvers from low value to high value is Corporate Director – Strategic Resources, Executive Member for Central Services and the Executive. Most of the authority of the Corporate Director –

Strategic Resources is delegated to officers in Asset Management. The rules are reviewed each year to ensure that they remain up to date and relevant. Proposed changes have to be approved by the Audit Committee.

2.4 *Types of disposal*

2.4.1 Property disposals can take the form of:

1. a freehold interest (a sale)
2. a leasehold interest (a lease – sometimes called a tenancy, particularly for residential property and farms)
3. a more informal arrangement (a licence or similar)
4. a right to buy or lease within a fixed period of time on pre-agreed terms (an option).

Note : Item 4 is not the same as the Right to Buy scheme for social housing.

2.4.2 Asset Management identifies the most appropriate method for each proposed transaction. In the cases of leases and licences, the most appropriate length of the arrangement from the Council's point of view is also considered, although this may be amended during negotiations.

2.4.3 The table below summarises the number of disposals in the past three financial years by type.

Type	2011-2012	2012-2013	2013-2014
Sale	22	36	25
Lease	30	34	23
Licence	11	6	11
Option	0	0	0

Note : The leases row does not include leases of farms under normal farm management.

2.5 *Disposal strategy*

2.5.1 Bruton Knowles identifies the best approach for each sale and it is reviewed and approved by Asset Management. Asset Management may require amendments.

2.6 *Methods of disposal*

2.6.1 Property can be disposed by:

- A. private treaty – most private house sales use this method
- B. formal tender – written, binding bids – similar to a procurement exercise
- C. informal tender – best and final offers
- D. auction – normally oral, binding bids – in person or via telephone or instructions.

2.6.2 Private treaty and informal tender pose issues for the Council if there are several serious bidders because of the requirement under S123 of the Local Government Act 1972 for Councils to obtain 'best consideration'. (There is more about the Local Government Act and 'best consideration' in 2.6 and 2.7.) This means that, although the Council may have agreed a price with a potential purchaser or tenant, it must, at least, consider any higher offers that are received prior to exchange of contracts. The Council can decide not to accept a higher offer if the judgement is that it does not represent best consideration (for example, if it is conditional upon the receipt of planning permission and this is uncertain in the short term). The receipt of higher bids after a price is accepted can arise more than once during a single negotiation, can extend the process and can result in complaints from the unsuccessful prospective purchasers. Informal tender has the most potential issues and is no longer used by the Council.

2.6.3 In the past few years, greater use has been made of auctions, either through Bruton Knowles (mainly farms) or via a sub-consultant (for other property). This method has proved to be very effective and has the following advantages:

- A. there is a clear process and timetable for all interested parties
- B. there is a definite outcome
- C. it can be quick – which can minimise holding costs
- D. the price is set openly
- E. the exchange of contract takes place on the day
- F. receipts often exceed estimates because of explicit competition between interested parties.

2.6.4 The most significant disadvantages of auctions are:

- 1. there is a limited window of marketing (although the marketing tends to be more intensive and to be targeted at the likely market)
- 2. the potential market is limited to those people or companies able to raise funding by the date of the auction.

2.6.5 Reserve figures (minimum prices) are agreed for all properties that are to be sold by auction, following discussion with the auctioneer.

2.7 *Development potential, restrictive covenants and overage (claw-back)*

2.7.1 Some of the Council's property may be worth more if it is used or redeveloped for a purpose other than its present purpose. Resolving these issues to the point where they have an explicit effect on the market value of a property - for example, obtaining planning permission for a new use - can be a lengthy and costly process. In most cases, the decision is taken to sell property without seeking planning permission, but to include restrictive covenants and arrangements for 'overage' – the right to share in any development value achieved within a set number of years – where there is the prospect of future development. This protects the Council's financial interest, particularly where

any development potential may not be immediate or is uncertain. Overage arrangements are included automatically in all farm sales.

2.7.2 In the past, the Council entered into 'conditional contracts' for some sites. These can be seen as a type of informal option – the transaction will proceed when the purchaser obtains a specific planning permission within a set period of time. Overall, this approach has proved time consuming and expensive. This approach would only be used now in very limited circumstances, for example, if the Council was a minor owner in larger, potential development site.

2.7.3 If there is the prospect of significant gain to be made by pursuing planning permission on a property then this is done. However, the Council does not own a portfolio of high value development sites and so this is not a frequent activity.

2.8 *Local Government Act 1972*

2.8.1 Section 123 of the Local Government Act 1972 requires Councils to obtain 'best consideration' for almost every property disposal. This is to help ensure that public assets are not disposed cheaply or inappropriately. In most cases, this means obtaining the highest possible price, in the particular circumstances.

2.8.2 Best consideration is a complex area, but many of the Council's disposals are made on the open market and so, for all practical purposes, it is not relevant. However, it is relevant to transactions at less than market value and this area is examined in the next section, together with the exemptions that exist to allow such transactions to take place.

2.9 *Disposals at less than market value (disposals at an under value)*

2.9.1 There are two main situations in which disposals by the County Council take place at less than market value:

1. where the Council wishes to ensure that service delivery by an external organisation takes place in circumstances where it may not be viable financially, at least initially, and wishes to do so without providing an explicit subsidy
2. where a local group or community wishes to use Council property, but is unable to afford the market value or market rent.

2.9.2 Examples of the first situation are the provision of sites for Extra Care schemes at less than market value or nil value and the provision of property to the community groups running the community libraries at 'peppercorn' rents (payment of a peppercorn as rent).

2.9.3 Examples of the second situation are some leases to playgroups and out-of-school clubs on school sites.

2.9.4 The PPRs contain specific internal approval arrangements for transactions that are proposed to take place at less than market value. These allocate greater authority to the Executive for taking decisions and less authority to officers and the Executive Member for Central Services compared to other types of transaction. Reports seeking consent to dispose at less than market value state the size of the undervalue.

2.10 *State Aid*

2.10.1 Disposals at less than market value or ones that cannot be proved readily to be at market value may come under the state aid provisions set by the European Union. These provisions are intended to prevent the distortion of markets as a result of explicit or implicit public subsidies. All potential state aid has to be referred to the European Commission so that the commission can assess whether or not the transaction constitutes state aid and, if it does then, whether or not the aid is compatible with the common market. State aid that is not approved by the commission is unlawful and may result in the value of the aid being recovered, together with interest, from the recipient. The state aid regime is being reviewed by the European Union.

2.10.2 State aid is held not to occur or the commission does not have to be notified in the following situations:

1. A disposal on an open and unconditional bidding procedure, accepting the best or only bid.
2. A disposal conducted at market value as established by independent valuers.
3. A disposal that creates state aid, but the aid is of low value and not covered by other arrangements. This is called *de minimis* aid. A recipient of aid can be given up to €200,000 of such aid in total over a rolling three year period. The total relates to *de minimis* aid from all public sources and not just from the County Council.
4. A disposal that falls under the General Block Exemption Regulation (2008). This is being replaced as part of the review.

2.11 *County Farms – disposal to tenants*

2.11.1 The Council has a long-standing approach of allowing its tenants to submit requests to purchase the farms that they rent. This is not a right to purchase and, in each case, Asset Management considers if the Council would be prepared to dispose of some or all of the property. There are several reasons for retaining some or all of the property, for example, development potential or the possibility of adding part of the holding to an adjacent property to add value. Conversely, there may also be advantages to a sale that go beyond a receipt, for example, where a property has substantial future maintenance liabilities, although this would be reflected in the price.

2.11.2 If there is no reason to retain the property then a number of sale options may be provided to the tenant. For example, the house only, buildings and an appropriate area of land (the minimum area which would be added to the

house and buildings if offering the property for sale on the open market), or the whole holding. The options are priced based on market value (provided by Bruton Knowles) reduced by a discount reflecting the age of the tenant. The maximum discount used has been 30%.

2.11.3 If land is to be retained then Bruton Knowles and Asset Management ensure that it has access and will remain saleable, in due course. They investigate and resolve any issues associated with the property, for example, water pipes and access tracks.

2.11.4 If the tenant confirms that they wish to purchase the property then the sale proceeds in the normal way. Terms for transactions include restrictive covenants on use, the reservation of mineral rights and 'overage' clauses that are triggered in the event of development or on re-sale. If a tenant buys only part of the property that they rent then they can continue to rent the remainder and the tenancy is amended to reflect this. Some tenants have made more than one purchase, as their funding permits.

2.12 *Crichel Down rules – offer back to former owners*

2.12.1 The rules apply to property acquired by or under the threat of compulsion and to property acquired under statutory blight provisions. The Department for Communities and Local Government recommends that local authorities follow the rules and the County Council has chosen to so do.

2.12.2 If property that is subject to the rules is to be disposed by the Council then the former owner or successor is given an opportunity to repurchase the property before it is marketed. This only occurs if the character of the property has not changed materially since the acquisition. There are various other exemptions to the application of the rules, including the time that has passed since the acquisition. Any transaction is at current market value.

2.13 *Consents for disposals of educational assets*

2.13.1 If the County Council wishes to dispose of any part of a school site then it must seek approval from the Secretary of State for Education, with a few exceptions. The Secretary of State will also consider if the property represents an opportunity for the opening of a free school or an academy. The disposal of school playing fields also requires consent from the Secretary of State. Officers in CYPS submit the requests for approval. The arrangements are covered by the Academies Act 2010 and S77 of the School Standards Framework Act 1998. These approvals are in addition to any internal approval that is required.

2.14 *Assets of Community Value*

2.14.1 Under the Localism Act 2011 property can be listed as being of community value after its nomination by certain types of local group. The property can be owned by the public or private sectors. If a property or part of one is listed and the owner wishes to dispose of the property then a window of opportunity

is created within which local groups can consider if they wish to bid to acquire the property and if they do then another window opens in which they can prepare a business case and raise funds. Any sale process is put on hold until the end of the two windows. This is a right to bid and not a right to buy. It provides local groups with an opportunity to compete more effectively with commercial organisations. The owner does not have to sell to a local group. The net effect for the owner can be a delay on undertaking a transaction.

2.14.2 None of the Council's freehold property has been nominated or listed as an asset of community value at the time of writing this report. One property that the Council leases in has been nominated. This represents an issue for the owner rather than for the Council. Listings could affect the timing of the rationalisation of parts of the property portfolio. For school property the assets of community value arrangements could apply after the approval process described in the previous section.

2.15 *Use of receipts*

2.15.1 The receipts from disposals are used to meet the capital requirements of the Council. These include funding items in the capital programme and debt redemption.

2.15.2 The receipts from some disposals are linked directly to specific reinvestment. For example, the receipts from the sale of the schools at High Bentham and Low Bentham have been pre-allocated to cover part of the cost of building the new school that will serve both communities. The approval of pre-allocations is arranged via the budget process.

3.0 **RECOMMENDATION**

3.1 That the approach to disposals is noted.

Author of report: Roger Fairholm
Corporate Asset Manager, Corporate Property Management

County Hall
Northallerton

July 2014

Background Documents: None