

# Property Procedure Rules

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*These Rules constitute the Council's Standing Orders in relation to property contracts and the redeployment of property.*

## **1.0 INTERPRETATION**

**1.1** These terms will have the following meanings in the Property Procedure Rules:-

<b>Acquisition</b>	The acquisition of Property by the Council, including the extension of an existing lease (other than by exercise of an option to renew) and the surrender or assignment of a lease to the Council but excluding a mortgage of property owned by a third party in favour of the Council
<b>Council</b>	North Yorkshire County Council
<b>CDFCS</b>	The Corporate Director- Finance and Central Services
<b>Director</b>	A Corporate Director of the Council including the Chief Executive Officer for the purposes of his group
<b>Disposal</b>	The disposal of Property by the Council, including the surrender or assignment of a lease by the Council, but excluding the granting of a mortgage in respect of property owned by the Council
<b>HLS</b>	The Head of Legal Services
<b>Officer</b>	A Council employee or other authorised agent
<b>Property</b>	Any estate or interest in land and/or buildings
<b>Property Contract</b>	A contract relating to Property including (but not limited to) transfers, leases, easements, tenancy agreements and licences
<b>Redeployment</b>	The use of Property by the Council for a purpose different to that for which it has hitherto been used
<b>Surveyor</b>	A professionally qualified surveyor or valuer employed or otherwise retained by the Council to provide expert advice on Property Contracts
<b>Tenderer</b>	A person who has expressed an interest in tendering for a Property Contract or who has tendered for a Property Contract

**1.2** References in these Rules to:-

- (a) any legislation (e.g. Act of Parliament, Statutory Instrument, EU Directive) include a reference to any amendment or re-enactment of such legislation;
- (b) the singular include the plural and vice versa;
- (c) the masculine include the feminine and vice versa;
- (d) Directors, the CDFCS and the HLS shall be taken to include such Officers as are designated by them to undertake the duties and responsibilities set out in these Rules.

**0.3** References in Rules 6.1, 7.2 and 8.1 to values for the purpose of the approvals which are necessary for Acquisitions, Disposals and Redeployments of Property are to the values

estimated at the time the approval is given; any such approval is not invalidated by the fact that the actual Acquisition or Disposal figure differs from the estimated figure. The value of any transaction shall be taken to be the Surveyor's opinion as to the open market value as between willing parties.

- 0.4** Where these Rules refer to approvals being sought or given for the Acquisition, Disposal or Redeployment of Property, such approval may relate to one particular Property or to a particular description or class of Property; but where it relates to more than one Property, the value shall be calculated as the aggregate value of all of the Property of that description or class.

## **2.0 GENERAL**

- 2.1** These Rules are made by the Council on the advice of the CDFCS, in consultation with the HLS.
- 1.2** These Rules apply to all Property Contracts, other than those entered into by school governing bodies under their delegated powers.
- 1.3** These Rules shall be applied in conjunction with the following documents:
- (a) Asset Management Planning Framework: Acquisition Process
  - (b) Asset Management Planning Framework: Redeployment Process
  - (c) Asset Management Planning Framework: Disposals
- 2.4** The Council has made Financial Procedure Rules ('**FPR**') which apply to budgetary and other issues relating to property; the FPR shall be applied in conjunction with these Rules. The Council has also made Contract Procedure Rules, but they do not apply to Property Contracts.
- 2.5** The CDFCS (in consultation with the HLS) shall, as a minimum, annually review the application and effect of these Rules and shall propose such amended Rules to the Council as the CDFCS may consider appropriate.
- 2.6** Property Contracts and documentation and correspondence relating to them shall be retained for the periods prescribed by the Council's Records Retention and Destruction Schedule.
- 2.7** Every Officer shall comply with these rules unless a waiver is granted under paragraph 9.1. Failure to comply may lead to disciplinary action.
- 2.8** Each Director shall ensure that Officers within their Directorate, and contractors working for the Council, are aware of and comply with these Rules and the documents referred to in Rule 2.3.
- 2.9** The CDFCS shall be responsible for monitoring adherence to these Rules.

## **3.0 COMPLIANCE WITH LEGISLATION**

- 3.1** Every Property Contract shall comply with all relevant applicable legislation and government guidance including:-
- (a) EU Law
  - (b) Acts of Parliament
  - (c) Statutory Instruments

**3.2** The HLS shall ensure that the Council has the legal power to enter into any Property Contract and that the Council does not purport to enter into any such contract which is ultra vires.

#### **4.0 SIGNATURE/SEALING OF PROPERTY CONTRACTS**

**4.1** No Property Contract shall be completed unless proper approval has been given in accordance with these Rules.

**4.2** Subject to Rules 4.3 and 4.4, every Property Contract must be: -

- (a) executed as a Deed by the HLS; or
- (b) signed by the HLS (if the value is less than £50,000); or
- (c) signed by the HLS and another officer authorised by HLS (if the value is £50,000 or more)

**4.3** The CDFCS is authorised to sign Property Contracts comprising wayleaves, agricultural tenancy agreements or agricultural licences provided that:-

- (a) the Property Contract is in a nationally recognised form or in a form prepared or approved by the HLS; and
- (b) two signatories are required if the value is £50,000 or more.

**4.4** All Directors are authorised to sign licences provided that:-

- (a) the licence is for a period not exceeding one year; and
- (b) the licence is in a form prepared or approved by the HLS.

#### **5.0 ROLE OF SURVEYOR**

**5.1** The CDFCS shall instruct the Surveyor to act on behalf of the Council in connection with Property Contracts in accordance with these Rules.

#### **6.0 ACQUISITIONS**

##### **6.1 Approval for Acquisitions**

**6.1.1** Whenever it is proposed that Property should be acquired by the Council, the CDFCS is responsible for seeking the approval which is necessary in accordance with this Rule 6.1.

**5.0.2** No approval shall be sought or given for the Acquisition of any Property unless there is adequate budgetary provision for the Acquisition and any expenditure consequent upon the Acquisition.

**6.1.3** In respect of the Acquisition of Property **other than** by lease or licence for a rent or licence fee:

- (a) the CDFCS may approve any Acquisition up to £250,000 in value;
- (b) the Executive Member for Corporate Affairs may approve any Acquisition up to £1,000,000 in value;
- (c) the Executive may approve any Acquisition and must approve any Acquisition over £1,000,000 in value.

**6.1.4** In respect of the Acquisition of Property by lease or licence for a rent or licence fee:

- (a) the CDFCS may approve any Acquisition where the annual rent or fee is £25,000 or less;
- (b) the Executive Member for Corporate Affairs may approve any Acquisition where the annual rent or fee is £100,000 or less;
- (c) the Executive may approve any Acquisition and must approve any Acquisition where the annual rent or fee is more than £100,000.

For the purpose of this Rule, the annual rent or fee means the initial rent or fee payable by the Council (but ignoring any discount or rent-free period).

### **Approval for Rent Reviews**

**5.0.5** The CDFCS may approve the completion of a rent review memorandum provided that the original lease included provisions for the rent review; in all other cases Rule 6.1.4 shall apply.

### **Variation of Lease Terms**

**5.0.6** The CDFCS may approve any variation to the terms of an existing lease or licence (including the grant of a licence to assign or sublet), except that, if the variation would result in an increase to the rent or licence fee, Rule 6.1.4 shall apply.

## **6.2 Terms of Acquisition**

**6.2.1** The CDFCS is responsible for determining the terms for the Acquisition of Property, and shall report such terms to the HLS.

**6.2.2** The HLS is responsible for preparing and completing the documentation for the Acquisition of Property in accordance with the terms referred to in Rule 6.2.1, subject to any variations agreed with the CDFCS and subject also to such further terms as the HLS considers appropriate in the best interests of the Council.

## **7.0 REDEPLOYMENT OF PROPERTY**

**6.1** As soon as a Director identifies the fact that a Property used by his/her Directorate is no longer required for its current use, the Director shall inform the CDFCS. The CDFCS shall thereupon enquire whether the Property is of use to any other Director in connection with the service(s) for which they are responsible.

### **6.2 Approval for Redeployment**

**7.2.1** Whenever it is proposed that Property should be redeployed by the Council, the CDFCS is responsible for seeking the approval which is necessary in accordance with this Rule 7.2.

**6.1.2** In the case of any Redeployment of Property which is **not** held by the Council on a lease or licence:

- (a) the CDFCS may approve any Redeployment of Property up to £500,000 in value;
- (b) the Executive Member for Corporate Affairs may approve any Redeployment of Property up to £1,000,000 in value;
- (c) the Executive may approve any Redeployment, and must approve any Redeployment of Property over £1,000,000 in value.

**6.1.3** In the case of any Redeployment of Property which is held by the Council on a lease or licence:

- (a) the CDFCS may approve any Redeployment where the annual rent or fee is £25,000 or less;
- (b) the Executive Member for Corporate Affairs may approve any Redeployment where the annual rent or fee is £100,000 or less;
- (c) the Executive may approve any Redeployment and must approve any Redeployment where the annual rent or fee is more than £100,000.

For the purpose of this Rule, the annual rent or fee means the rent or fee payable by the Council at the time of the Redeployment (but ignoring any discount or rent-free period).

## **6.2 Terms of Redeployment**

**7.3.1** Once approval for Redeployment has been given, the CDFCS is responsible for arranging the Redeployment in accordance with the Redeployment Process Guidance which forms part of the Asset Management Planning Framework referred to in Rule 2.3(b).

## **8.0 DISPOSALS**

### **8.1 Approval for Disposals**

**8.1.1** Whenever it is proposed that Property should be disposed of by the Council, the CDFCS is responsible for seeking the approval which is necessary in accordance with this Rule 8.1.

**8.1.2** Subject to Rule 8.1.4, in respect of the Disposal of Property **other than** by lease or licence for a rent or licence fee:

- (a) the CDFCS may approve any Disposal up to £500,000 in value;
- (b) the Executive Member for Corporate Affairs may approve any Disposal up to £1,000,000 in value;
- (c) the Executive may approve any Disposal and must approve any Disposal over £1,000,000 in value.

**7.0.3** Subject to Rule 8.1.4, in respect of the Disposal of Property by lease or licence for a rent or licence fee:

- (a) the CDFCS may approve any Disposal where the annual rent or fee is £25,000 or less;
- (b) the Executive Member for Corporate Affairs may approve any Disposal where the annual rent or fee is £75,000 or less;
- (c) the Executive may approve any Disposal and must approve any Disposal where the annual rent or fee is more than £75,000.

For the purpose of this Rule, the annual rent or fee means the initial rent or fee payable to the Council (but ignoring any discount or rent-free period).

**7.0.4** Where any property is to be disposed of by sale or by long lease (ie 7 years or longer) at an undervalue the approval of the Executive is required, and where the amount of the undervalue

is more than £2,000,000 the Disposal may only proceed with the prior consent of the Secretary of State.

### **The Right to Buy**

- 8.1.5** Where right to buy applications are made to the Council under the Housing Act 1985 the HLS, in consultation with the CDFCS, shall be responsible for the admission or denial of the application of the right to buy and, where the right to buy is admitted, the HLS shall dispose of the Property in accordance with the said Act.

### **External Consents to Disposal**

- 8.1.6** The CDFCS is responsible for obtaining such external consents (if any) as are required for a Disposal (except in relation to the disposal of school playing fields, for which the Corporate Director Children and Young People's Service shall be responsible for seeking any necessary approvals).

## **8.2 Terms of Disposal**

- 7.1.1** The CDFCS is responsible for determining the terms for the Disposal of Property and shall report such terms to the HLS.
- 7.1.2** The HLS is responsible for preparing and completing the documentation for the Disposal of Property in accordance with the terms referred to in Rule 8.2.1 subject to any variations agreed with the CDFCS and subject also to such further terms as the HLS considers appropriate in the best interests of the Council.
- 8.2.3** Except where the approval of the Executive has been obtained in accordance with Rule 8.1.4, the CDFCS shall ensure that whenever terms for a Disposal of a Property are being determined, the best consideration for the Disposal shall be obtained by the Council pursuant to Section 123 of the Local Government Act 1972.

## **8.3 Method of Disposal**

- 8.3.1** The CDFCS shall take such professional advice from the Surveyor as is necessary to ensure that the most appropriate disposal process is used.
- 8.3.2** The Surveyor's advice shall take account of all relevant factors relating to a Disposal including the following: -
- (a) the likely value of the Property;
  - (b) the potential market for the Property;
  - (c) the likelihood of obtaining alternative planning consents for the Property and their effect upon the valuation;
  - (d) the costs of the Disposal process (including advertising and other marketing);
  - (e) the time likely to elapse between offering the Property for Disposal and the projected completion date of the Disposal; and
  - (f) all other relevant factors.

## **7.4 Disposals by Tender**

**8.4.1** This Rule 8.4 applies to all Disposals of Property by tender whether the tender is subject to contract or is capable of immediate acceptance.

**8.4.2** A tender may only be considered if: -

- (a) it has been received in a sealed envelope marked “Tender” and indicating the Property referred to in the tender; and
- (b) the identity of the Tenderer cannot be ascertained from the tender envelope; and
- (c) subject to Rule 8.4.5, the tender has been returned to the HLS before the tender closing date (which shall be a time and date when County Hall is open for business)

**8.4.3** The HLS shall be responsible for the reception and safe custody of tenders until they are opened.

**8.4.4** Tenders must be opened at the same time and in the presence of the HLS who shall maintain a record of the tenders received. Such a record shall include the date and time of tender opening, the identity of the Officer present, the identities of Tenderers and the tendered amounts. A copy of such a record shall be provided as soon as practicable to the CDFCS.

**8.4.5** If a tender is received after the specified tender closing date it may not be considered unless the HLS is satisfied that the tender was posted or otherwise dispatched in sufficient time to be delivered before the specified time but that delivery was prevented by an event beyond the control of the Tenderer **and** that other tenders have not been opened.

### **Tender Evaluation**

**8.4.6** Tenders shall be evaluated by the CDFCS in consultation with the Surveyor. The CDFCS shall accept the tender which offers the best consideration for the Property in accordance with Rule 8.2.3 above. The CDFCS shall ensure that the tender evaluation process is fair, and so far as consistent with the achievement of best consideration by the Council, that the basis on which tenders are to be evaluated has been established before tenders are opened. If all of the tenders are not submitted on the same basis (for example, if some tenders are conditional on planning permission being granted for a particular use of the property), then the CDFCS shall consult the Surveyor in relation to the evaluation of the bids, and a document will be produced by the CDFCS, setting out the reasoning which has been applied to determine which tender has been judged to offer the best consideration for the Property.

### **Alterations to Tenders**

**8.4.7** Tenders may not be altered by Tenderers after the tender closing date except where the CDFCS is satisfied that arithmetical errors having been inadvertently made by the Tenderer, the Tenderer can be invited to correct them.

### **Post Tender Negotiations**

**8.4.8** Post tender negotiation may be undertaken in accordance with the following conditions: -

- (a) The CDFCS considers that added value may be obtained;
- (b) the post tender negotiations are undertaken either with all Tenderers, or with such Tenderer(s) as the CDFCS considers it appropriate to invite having regard to the value of their tenders and any conditions attached to them;
- (c) the post tender negotiations are conducted by a team comprising the Surveyor and



suitably experienced Officers approved by the CDFCS and trained in post tender negotiations;

- (d) a record of the negotiations and any added value obtained from them is kept by the CDFCS; and
- (e) any such added value obtained by the post tender negotiations is incorporated into the Property Contract with the successful Tenderer.

## **9.0 MORTGAGES**

- 8.1 The CDFCS may instruct the HLS to enter into a mortgage of property owned by a third party where it is considered appropriate for the Council to secure its interests in respect of a grant or loan made to such a third party.
- 8.2 In respect of mortgages of property owned by the Council:-
  - (a) only the Executive may approve such a mortgage and
  - (b) the terms of the mortgage shall be determined by the CDFCS in consultation with the HLS.
- 8.1 The HLS shall take such steps as are necessary to discharge a mortgage (whether the Council is mortgagee or mortgagor) upon the instruction of the CDFCS.

## **10.0 EXCEPTIONS TO PROPERTY PROCEDURE RULES**

- 10.1 The CDFCS and the HLS may agree specific waivers to the Property Procedure Rules, other than Rules 6.1, 7.2, 8.1 and 9.2.