

Property Procedure Rules

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PROPERTY PROCEDURE RULES

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

1.0 INTRODUCTION AND KEY PRINCIPLES

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

Asset Management System

Asset Management software package that contains Property information

ACELDS

The Assistant Chief Executive Legal and Democratic Services

Acquisition

The acquisition of Property by the Council by whatever means, including but not limited to:

- a purchase or a lease
- an option for a purchase or a lease
- a new lease for a Property previously leased in (a lease renewal), including an option to renew contained in an existing lease
- a Co-habitation Arrangement with another organisation in a non-Council Property
- the surrender or assignment of a lease to the Council, including the operation of a break clause

but excluding:

- a mortgage of Property owned by a third party in favour of the Council
- a licence with a term of no more than one year and at a fee of no more than £15,000

Co-habitation Arrangement

An arrangement with a third party to use space in a Council Property or for the Council to use space in a third party's Property without a lease or licence or the payment of a rent or fee, but normally with payments for a share of running costs. This often relates to space shared by cross-organisation teams.

Compulsory Purchase Order

An order for the acquisition of land authorised by or under an Act to enable the acquisition of land compulsorily in order to carry out statutory functions, such as to develop land or construct road schemes

Council	North Yorkshire Council
County Farms estate	All of the Council's agricultural Property
CDR	The Corporate Director of Resources
Director	A Corporate Director of the Council including the Chief Executive Officer
Disposal	<p>The disposal of Property by the Council by whatever means, including but not limited to:</p> <ul style="list-style-type: none"> • a sale • a grant of a lease • the surrender or assignment of a lease by the Council including the operation of a break clause • a Co-habitation Arrangement with another organisation in a Council Property • the grant of a licence of all or part of a Property to a third party <p>but excluding:</p> <ul style="list-style-type: none"> • the granting of a mortgage in respect of Property owned by the Council • a licence with a term of no more than one year and at a fee of no more than £15,000
Heads of Terms	A document which sets out the terms of a Property transaction agreed in principle between the parties during the course of negotiations
Licence from a third party	An agreement for the non-exclusive use of Property owned by a third party. This is usually limited by hours of operation or by sharing occupation
Licence to a third party	An agreement for use of Council owned Property by a third party. This is usually limited by hours of operation or by sharing occupation
Market Rent	The estimated amount for which Property should be leased after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion

Market Value	The estimated amount for which a Property should exchange after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion
Officer	A Council employee or other authorised agent
Officer of the Property Service	A Council employee within the Property Service whose role, competence or, where required, professional qualification enables them to undertake the relevant task. Their competence will be determined by the CDR
Property	Any estate or interest in land
Property Contract	A contract relating to Property including (but not limited to) transfers, leases, options, easements, (except easements for highway drainage granted under, or as a consequence of an agreement made under Section 38 (adoption of new highways) or Section 278 (development of existing highways) of the Highways Act 1980) tenancy agreements, licences, and variations and releases from restrictive covenants, user rights granted under local government reorganisation arrangements and wayleaves, but excluding those contracts entered into by school governing bodies under their delegated powers
Property Portfolio	All of the Property held by the Council
Property Service	The Council's team of Officers who manage the Property Portfolio
Reallocation of Property	The re-allocation of a Property by the Council for a purpose different to that for which it has hitherto been used including to disposal
Subsidy Control	The system for regulating public sector or economic interventions as set out in subsidy control legislation and guidance
Tenderer	A person who has expressed an interest in tendering for a Property Contract or who has tendered for a Property Contract

- 1.2 The Property Procedure Rules (PPR) form part of the overall control framework within which North Yorkshire Council operates. They aim to facilitate sound, innovative service delivery in the administration of all Property matters throughout the Council, supporting effective Property management that provides value for money and good decision-making.
- 1.3 The PPR should be read in conjunction with the Financial Procedure Rules and the Procurement and Contract Procedure Rules (together with other relevant parts of the Constitution).
- 1.4 All decisions taken under the PPR must be in accordance with all relevant legal requirements and government guidance, including: -

- (a) Acts of Parliament; and
- (b) Statutory Instruments

1.5 The PPR apply to all Property, subject to the following exceptions: -

Property type	Exception	Person / Body with Responsibility
Operational Landfill Sites	Day-to-day management.	Corporate Director of Environment
Nursery schools Primary Schools Secondary Schools Special Schools Pupil Referral Units	Day-to-day management. Investment decisions.	Corporate Director Children and Young People's Service and Schools' Governing Bodies
Property designated as an event venue which is hired out for functions including entertainment and other events, conferences, and exhibitions.	Authority to negotiate and enter into agreements for the hire of the venue for functions including events, conferences, and exhibitions and the supply of associated services.	Corporate Director of Community Development

The Rules apply to all activities associated with the ownership and occupation, and management of Property which include, but are not limited to: -

- (a) a future or current Property transaction involving the Council
- (b) the re-allocation of a Property to a new use by the Council
- (c) the payment of Property-related compensation by or to the Council
- (d) investment in a Property by the Council
- (e) the strategic and operational management of Property used by the Council.

1.6 Where a decision is made under these Rules in respect of investment in a Property by the Council or the management of Property used by the Council and that decision necessitates a procurement of works or services then the Procurement and Contract Procedure Rules will apply.

1.7 All Property owned or occupied by the Council is held and managed as a corporate resource. Responsibility for its management lies with the Corporate Director of Resources (CDR), and is delivered through the Property Service in accordance with arrangements determined by the CDR.

1.8 The CDR is authorised to acquire, manage and dispose of all Property held by the Council in accordance with these Rules and the Council's budgetary and policy framework.

For the avoidance of doubt this authority includes, but is not limited to: -

- (a) Acquisitions and disposals, including leases and licences
- (b) Renewals of leases and licences
- (c) Management of all Property, including the allocation of operational space (including for both Council and third party use) the management of associated facilities, the commissioning of all facilities services and the reallocation of Property
- (d) Repair and maintenance of all Property. This includes, but is not limited to, repair and maintenance obligations relating to Property ownership, contributions to maintenance and repair carried out by third parties, service charge obligations and dilapidations
- (e) Investment in all Property. This includes, but is not limited to, the commissioning and delivery of construction projects and contributions to third parties.

The CDR will exercise their delegated powers to ensure efficiency within the management of the Property Portfolio and the delivery of associated services.

- 1.9 The CDR will ensure that arrangements are in place so that all decisions taken in accordance with these Rules are informed by Officers in the Property Service, or consultants commissioned by them, who are competent to do so. These decisions will take account of both future and contingent liabilities arising from the properties as such liabilities will be the responsibility of the Property Service.
- 1.10 Officers employed in Service Directorates or services other than the Property Service are not authorised to make the decisions referred to in these Rules except where stated explicitly.
- 1.11 The CDR will maintain a forward schedule of decisions that are to be taken under these Rules.
- 1.12 The CDR will also maintain a schedule of all decisions that have been taken under these Rules.
- 1.13 References in these Rules to:-
 - (a) any legislation (including but not limited to Act of Parliament, Statutory Instrument) 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) Reference to the CDR and the Assistant Chief Executive Legal and Democratic Services (ACELDS) shall be taken to include such Officers as are designated by them to undertake the duties and responsibilities set out in these Rules.

2.0 APPLICATION

- 2.1 The Rules apply to Property (any estate or interest in land).
 - 2.1.1 Land is the land surface, everything below the surface, buildings and other structures on or under the surface, and such airspace as is reasonably necessary for the ordinary use of the land.

2.1.2 Land also includes plant, equipment and other things fixed to a building that could not be removed without damaging the fabric of the building.

2.2 Under these Rules, a Property transaction is a transaction that affects a Property, including but not limited to: -

- (a) a freehold/ leasehold transfer
- (b) a lease or tenancy agreement
- (c) a licence to use
- (d) a recurring hiring in or a recurring hiring out or a one-off hiring out or a one-off hiring in
- (e) an option
- (f) user rights granted under local government reorganisation arrangements
- (g) a co-habitation arrangement with another organisation either in or out
- (h) a wayleave
- (i) an easement (except as excluded by Rule 2.3)
- (j) a mortgage
- (k) a legal charge
- (l) variations and releases from restrictive covenants

2.3 Under these Rules a Property transaction is not:

- (a) an easement for highway drainage granted under or as a consequence of an agreement made under Section 38 (adoption of new highways) or Section 278 (development of existing highways) of the Highways Act 1980
- (b) a contract entered into by a school governing body under its delegated powers including hirings out.
- (c) a one-off hiring in for a formal Council event.
- (d) a hiring of any or all of the Harrogate Convention Centre, Scarborough Spa, Whitby Pavilion and Scarborough's Open Air Theatre (see also Rule 1.5).

2.4 The management of the Council's housing stock is excluded from the application of these Rules

2.5 A decision about a Property transaction is a decision in respect of Property, which includes, but is not limited to, a decision to:-

- (a) acquire or dispose an estate or interest in Property by any means
- (b) acquire or dispose a licence or hiring
- (c) surrender or accept a surrender of a lease or tenancy agreement or licence
- (d) operate / not operate a break clause in a lease or tenancy agreement
- (e) implement conditional terms contained within a Property contract
- (f) vary or release restrictive covenants
- (g) change the terms of a transaction after it has been completed
- (h) implement and agree rent reviews under a lease or tenancy agreement
- (i) impose or accept or remove a restriction on title
- (j) provide or secure or discharge a mortgage.

2.5 A Property-related compensation payment is a payment made under the Land Compensation Act 1973 or other legislation covering highway schemes or other projects. It can be made either: -

- (a) by the Council to another party; or
- (b) to the Council by another party.

It includes payments in relation to claims known as 'Part 1' and 'Section 10'.

2.6 Under these Rules an investment in a Property is considered to be one that takes the form of capital or revenue expenditure that results in one of the following:-

- (a) responsive maintenance to a Property
- (b) preventative maintenance to a Property
- (c) planned maintenance of a Property
- (d) a response to compliance issues at a Property
- (e) the securing of an empty Property
- (f) improvement of a Property (a project)
- (g) addition of accommodation (a project)
- (h) demolition of all or part of a building or structure.

3.0 GENERAL ARRANGEMENTS

Approvals

- 3.1 All decisions and approvals under these Rules must be made in accordance with the provisions outlined below and in accordance with the Access to Information Procedure Rules and any other relevant parts of the Constitution including (but not limited to) the Financial Procedure Rules and the Procurement and Contract Procedure Rules.
- 3.2 All decisions under these Rules must be made in writing and entered in the schedule of decisions (except where specified otherwise in these Rules) that will be maintained (here, 'writing' includes decisions recorded in the Asset Management System.)
- 3.3 The only exceptions to rule 3.2 are: -
- (a) a decision for a one-off hiring out; or
 - (b) a decision to commission investment in a Property, including individual responsive maintenance projects, where the value is £50,000 or less.

These decisions can be approved under other operational delegated authorities.

- 3.4 A proposed decision and its approval must take into account, along with all relevant considerations, value for money to the Council, including in relation to any alternative options that are considered.

Compliance

- 3.5 All Property decisions must be taken in accordance with these Rules unless a waiver is granted under Rule 3.8.
- 3.6 Each Corporate Director or Assistant Chief Executive must ensure that Officers within their directorate and consultants working for the Council are aware of the Rules and must take all reasonable steps to ensure that Officers and consultants comply with them. Failure to comply with the Rules may lead to disciplinary action.
- 3.7 The **CDR** must monitor adherence to these Rules.

Waivers

- 3.8 The CDR in consultation with the ACELDS may grant a case-specific waiver to the application of the Rules, except in relation to Rules 1.6 and 9.2. A waiver must be recorded in writing.

Review

- 3.9 The CDR, in consultation with the ACELDS, shall periodically review the application and effect of these Rules and report to the Audit Committee on the outcome, including any proposed amendments to the Rules.

4.0 ALL PROPERTY TRANSACTIONS

Identifying Need

- 4.1 Officers in a directorate may identify the possible need for a Property transaction from an operational service point of view.
- 4.2 Any report that is required covering changes to service delivery and associated decisions that necessitate a Property transaction may be arranged by the Corporate Director who manages the affected service. Where this is the case, the CDR will provide confirmation for the report that the proposed transaction is appropriate and required.
- 4.3 Officers in a directorate must not:-
- (a) make contact with an owner or agent or possible tenant about a specific Property;
 - (b) discuss or negotiate or agree any terms for a Property transaction with an owner or agent or possible tenant.
- 4.4 Officers in the Property Service may identify the possible need for a Property transaction or identify other decisions linked to a Property transaction from a strategic or operational point of view.
- 4.5 The CDR must approve any identification of need for a Property transaction, in so doing taking account of, amongst other relevant factors, likely capital and revenue cost implications and must confirm that appropriate funds are available before any action is taken by the Property Service.

Approving in principle proposals

- 4.6 Only Officers in the Property Service can: -
- (a) submit a report with a proposed in principle decision for approval;
 - (b) provide the Property input to a report to the Executive that covers both service and Property transaction issues and provide the wording for a resolution related to a proposed Property transaction.
- 4.7 The value to be used to determine the approval arrangement for a proposed decision is the value as estimated by an Officer in the Property Service or by a consultant appointed to provide Property advice or services, at the time that the report about the decision is prepared. It is recognised that the actual value may differ from that identified in the in principle report.

Negotiating and instructing

- 4.8 Only Officers in the Property Service can instruct a consultant to negotiate terms for a proposed Property transaction.
- 4.9 Only Officers in the Property Service or in a consultancy appointed to provide Property advice or services can:-
- (c) negotiate the terms of a proposed Property transaction
 - (d) propose terms for approval.
- 4.10 Rule 4.9 does not prevent an in principle decision from setting terms that are critical to that decision.

Approving terms

- 4.11 The CDR can approve the proposed terms of a Property transaction (Heads of Terms).
- 4.12 Terms must be approved only if they are in accordance with the in principle decision. If they are not in accordance then a new decision is required.

Entering into a Property contract or documenting the implementation of the decision

- 4.13 A Property contract can be completed only if approval has been given to the transaction in accordance with these Rules.
- 4.14 The ACELDS shall ensure that the Council has the legal power to enter into a specific Property contract and that the Council does not enter into a contract which is ultra vires.
- 4.15 The ACELDS must prepare and complete the documentation for a Property contract in accordance with the approved terms, subject to:
- (a) any variations agreed with the Corporate Director of Resources
 - (b) any further terms as the ACELDS considers are appropriate and in the best interests of the Council
 - (c) the specific arrangements set out in Rule 4.17.
- 4.16 A Property contract must be signed or sealed in accordance with the provisions of Section 11 of these Rules.

Management of Property transactions after their completion

Approval for Rent Reviews

- 4.17 The CDR may approve the completion of a rent review memorandum provided that the original lease included provisions for the rent review.

Variation of lease terms

- 4.18 The CDR may approve any variation to the terms of an existing lease or other agreement (including the grant of a licence to assign or sublet) except that, if the variation would result in a decrease to the rent or licence fee, Rule 5.2 shall apply.

Lease management of a Lease In

- 4.19 The CDR may approve any lease management action provided that the proposal would result in the rent or licence fee being static or decreasing. In the event that the Council's rent or licence payment were to increase then the approvals identified at Rule 5.3 will apply

A lease management action for this rule includes:

- (a) a variation of the terms of a lease, licence or other agreement.
- (b) obtaining a licence to assign or sublet.
- (c) exercising of a break clause or other surrender of a lease, licence and other agreement.

Lease management of a Lease Out

- 4.20 The CDR may approve any lease management action provided that the proposal would result in the rent or licence fee being static or increasing

- (a) a lease management action for the rule includes:
- (b) a variation of the terms of a lease, licence or other agreement except those related to rent or fee
- (c) a grant of a licence to assign or sublet.

Dilapidations Claims

- 4.21 The CDR may approve the settlement of dilapidations claims where the Council is landlord or tenant, and to any value.

Release or variations of restrictive covenants

- 4.22 In respect of the release or variation of restrictive covenants:-

- (a) the CDR may approve any release or variation up to and including £500,000 in value;
- (b) the Executive Member for Finance and Assets may approve any release or variation up to and including £1,000,000 in value;
- (c) the Executive may approve any release or variation and must approve any release or variation over £1,000,000 in value.

For the purposes of this Rule, the value is the value of the payment to effect the release or variation.

Restrictions on Title

- 4.23 The CDR may instruct the ACELDS to place or remove restrictions on the title of any Property owned by the Council, or to place restrictions on the title of Properties owned by third parties, provided that such restrictions are to secure a grant or other loan to or from the Council.

County Farms Management

- 4.24 The CDR may approve any transaction associated with the management of the County Farms estate provided that the proposal is in accordance with, or not in conflict with, the County Farms estate policy.

Other approvals

- 4.25 A decision that is required to change the status of land from being highway maintained at the public expense in order to allow the land to be used for another purpose by the Council or for disposal is made under separate arrangements under the Constitution. Such a decision must be taken before a decision is taken under these Rules about the future of the site.

5.0 PROPERTY TRANSACTIONS – ACQUISITIONS – ADDITIONAL ARRANGEMENTS

Approvals

- 5.1 In respect of the Acquisition of Property other than by lease or licence or other agreement for a rent or licence fee or other annual payment or by option:-
- (a) the CDR may approve any Acquisition up to and including £500,000 in value;
 - (b) the Executive Member for Finance and Assets may approve any Acquisition up to and including £1,000,000 in value;
 - (c) the Executive may approve any Acquisition and must approve any Acquisition over £1,000,000 in value;

For the purposes of this Rule, the value in relation to the surrender of a lease to the Council is the capitalised value of the rent or licence fee foregone as a result of the surrender.

- 5.2 Subject to Rule 5.3 in respect of the Acquisition of Property by lease or licence or other agreement for a rent or licence fee or other annual payment:
- (a) the CDR may approve any Acquisition where the annual rent or fee or other annual payment is up to and including £150,000;
 - (b) the Executive Member for Finance and Assets may approve any Acquisition where the annual rent or fee or other payment is up to and including £250,000;
 - (c) the Executive may approve any Acquisition and must approve any Acquisition where the annual rent or fee or other annual payment is more than £250,000;

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

- 5.3 In the case of the payment of a premium by the Council for a lease the approvals required shall be sought according to the value bands in Rule 5.1.
- 5.4 In respect of the Acquisition of Property by option:

- (a) the CDR may approve the securing of an option providing that the anticipated total cost payable to secure the option does not exceed the available budget provision
- (b) the Executive may approve the securing of an option and must approve the securing of any option for which the anticipated total cost payable to secure the option exceeds the available budget provision
- (c) approval for the exercise of any option shall be subject to the same value bands as set out in Rules 5.1 and 5.2
- (d) should it become necessary to vary the terms of an existing option, approval shall be sought subject to the same value bands as set out in Rules 5.1 and 5.2

For the purpose of this Rule, the relevant value for securing options is the cost of securing the option plus the value of the resulting transaction. The relevant value for exercising options is the value of the transaction to be entered into.

Funding

- 5.5 No approval must be sought for the acquisition of a Property unless budget provision has been made for the cost of acquisition and any one-off or recurring expenditure as a result of the acquisition.
- 5.6 If a directorate is funding the cost of an acquisition that will form part of the Property Portfolio then it must transfer base budget to the Property Service budget for day-to-day running costs (for the avoidance of doubt this includes, but is not limited to, rent, service charge and insurance rent) and for repair and maintenance in the event that liability will be incurred.
- 5.7 The availability of the funding referred to at 5.5 and 5.6 must be confirmed by the CDR.

Transactions at over value

- 5.8 A transaction may be approved at a price that is above the Market Value or at a rent that is above the Market Rent if it would be in the Council's best overall interest and in line with the Council's fiduciary duty to the taxpayer. The opinion as to the Market Value or Market Rent is that of an Officer of the Property Service or in a consultancy appointed to provide Property advice or services.
- 5.9 If the likelihood of such a transaction is known when the report for the in principle decision is being written then the report must include:
 - (a) A detailed justification for the transaction on this basis.
 - (b) An assessment of the legal implications by the ACELDS associated with Subsidy Control; and
 - (c) A statement about how any Subsidy Control issues have or will be resolved by the directorate wishing to acquire the Property.
- 5.10 If the best terms that can be agreed for a transaction are above the Market Value or Market Rent then before the terms are approved:
 - (a) The CDR must be informed.
 - (b) Any Subsidy Control issues must be identified by the ACELDS.
 - (c) Any Subsidy Control aid issues must be resolved by the directorate wishing to acquire the Property.

Auction or tender

- 5.11 If the Council wishes to acquire a Property that is for sale or for lease by an auction or by a formal tender exercise or an informal tender exercise then:
- (a) An in principle decision must be sought as with any other acquisition.
 - (b) A valuation of the Property must be obtained from an Officer of the Property Service or a consultancy appointed to provide Property advice or services.
 - (c) An upper limit upon the value for a bid must be agreed by the CDR.
 - (d) The bid must be placed by an appropriately qualified officer in the Property Service or in a consultancy appointed to provide Property advice or services.

Compulsory purchase

- 5.12 If a Corporate Director, in consultation with the CDR and the ACELDS considers that it is necessary to use compulsory powers to acquire Property in connection with a Council function then the Corporate Director must seek:
- all necessary approvals in respect of the cost of the acquisition.
 - approval from the Executive to the proposed exercise of the powers
 - all other approvals as are necessary to enable the compulsory powers to be used, including approvals from the Secretary of State.
- 5.13 An approval given by the Executive to use compulsory powers is deemed to include the in principle approval to acquire the Property that is the subject of the Compulsory Purchase Order using the powers or by negotiation regardless of: -
- (a) the number of sites to be acquired
 - (b) the value of the sites to be acquired.

Hirings in – recurring

- 5.14 A recurring hiring in is a sessional booking that occurs on a repeat basis.
- 5.15 Recurring hirings in are handled in the same way as any other acquisition transaction.

6.0 PROPERTY TRANSACTIONS – DISPOSALS – ADDITIONAL ARRANGEMENTS

General

- 6.1 The CDR is authorised, in accordance with the Council's budgetary and policy framework, to implement all processes required in accordance with good practice to ensure that all Property disposals comply with all relevant legislation, codes of practice and guidance.
- 6.2 The best consideration must be obtained for a disposal in order to meet the requirements of Section 123 of the Local Government Act 1972 – subject to the provisions set out in rules 6.7 to 6.10.
- 6.3 If a Property was purchased or improved using grant funding then the disposal and allocation of proceeds must comply with any grant conditions. Any grant conditions

that conflict with these Rules take precedence. If there is a conflict then the advice of the CDR and the ACELDS must be sought before an in principle approval is given.

Approvals

- 6.4 Subject to Rule 6.7 in respect of the Disposal of Property other than by lease or license or other agreement for a rent or license fee or other annual payment: -
- (a) the CDR may approve any Disposal up to and including £1,000,000 in value;
 - (b) the Executive Member for Finance and Assets may approve any Disposal up to and including £1,500,000 in value;
 - (c) the CDR may approve any Disposal of Property that forms part of the County Farms estate, irrespective of value
 - (d) the Executive may approve any Disposal and must approve any Disposal over £1,500,000 in value subject to Rule 6.4(c)

For the purpose of this Rule, the value in relation to options means the value of the transaction resulting from the option and not the value of the option itself. For the purposes of this Rule, the value in relation to the surrender of a lease by the Council is the capitalised value of the rent or licence fee which would have been paid, but for the surrender.

- 6.5 Subject to Rules 6.6 and 6.7 in respect of the Disposal of Property by lease or license or other agreement for a rent or license fee or other annual payment: -
- (a) the CDR may approve any Disposal where the annual rent or fee or other annual payment is up to and including £150,000;
 - (b) the Executive Member for Finance and Assets may approve any Disposal where the annual rent or fee or other annual payment is up to and including £250,000
 - (c) the Executive may approve any Disposal but must approve any Disposal where the annual rent or fee or other annual payment is more than £250,000

For the purpose of this Rule, the annual rent or fee or other payment means the initial rent or fee payable or other payment to the Council (but ignoring any discount or rent-free period). For the purposes of this Rule in relation to options, the annual rent or fee means the initial rent or fee payable to the Council under the lease or licence resulting from the option.

- 6.6 In the case of the Disposal of Property by lease where a premium is payable to the Council the approval required shall be sought pursuant to the value bands referred to in Rule 6.4.

Transactions at under value

- 6.7 A transaction may be approved at a price or rent that is at less than best consideration if it would be in the Council's best overall interest and in line with the Council's fiduciary duty to the taxpayer and providing that it is permitted under a general consent issued by central government.
- 6.8 A report proposing such a transaction must include:
- (a) the justification for undertaking the transaction at less than best consideration
 - (b) the authority that is to be used

- (c) an assessment of the legal implications about any Subsidy Control from the ACELDS
- (d) a statement about how any Subsidy Control issues have or will be resolved.

6.9 In respect of Disposal of Property other than by lease or licence or other agreement for rent or licence fee or other annual payment the relevant approvals shall be sought in accordance with the following:-

Approver	Maximum market value	Maximum undervalue authority
Corporate Director of Resources	£50,000	100%
Corporate Director of Resources	£250,000	50%
Executive Member for Finance and Assets	£250,000	100%
Executive Member for Finance and Assets	£500,000	50%
Executive	No limit	100% except where the undervalue is £2m or more
Secretary of State	No limit	No limit

6.10 In respect of Disposal of Property by lease or licence or other agreement for rent or licence fee or other annual payment the relevant approvals shall be sought in accordance with the following:-

Approver	Maximum annual rental value	Maximum undervalue authority
Corporate Director of Resources	£25,000	100%
Corporate Director of Resources	£50,000	50%
Executive Member for Finance and Assets	£25,000	100%
Executive Member for Finance and Assets	£100,000	50%
Executive	No limit	100% except where the undervalue is £2m or more
Secretary of State	No limit	No limit

In respect of Disposal of Property by lease or licence involving the payment of a premium the approvals shall be sought according to the value bands in the table in Rule 6.9 above.

For the purposes of this Rule, the undervalue is the difference between the unrestricted value of the Property to be disposed of and the consideration for the disposal.

Statutory Transfers

- 6.11 The CDR will approve all transfers that are required by or under statute. This includes transfers to a diocesan body under the School Standards and Framework Act 1998 or to an academy trust under the Academies Act 2010. The approval will include the extent of the transfer and can include any other terms that are critical to the decision, as for any other transaction.

External consents

- 6.12 The Corporate Director Children and Young People's Service, or person nominated by them, must seek any external approvals required in the relation to the disposal of school Property that falls under Section 77(1) of the School Standard and Framework Act 1998 and or Schedule 1 under the Academies Act 2010.
- 6.13 The CDR must seek all other external consents that may be required for a transaction.

Hirings out – one-off and recurring

- 6.14 The CDR may enter into agreements with individuals and organisations to hire out Properties, or parts of Properties, on both one-off and recurring bases.

Right to Buy under the Housing Act 1985

- 6.15 The ACELDS, in consultation with the CDR, will consider and determine the application of the right to buy to a Property.
- 6.16 If the right to buy is accepted, then the ACELDS must dispose of the Property in accordance with the Housing Act 1985.

Method of disposal

- 6.17 All relevant factors must be taken into account in selecting the most appropriate method of disposal of a Property, including, but not limited to:-
- (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
 - (d) the effect of alternative planning consents upon value
 - (e) the costs of interim management (including security) and of disposal (including advertising and other marketing)
 - (f) the likely time required to reach completion.

Disposal by tender

- 6.18 This Rule 6.18 applies to all Disposals of Property by tender whether the tender is subject to contract or is capable of immediate acceptance.
- 6.19 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 6.20, the tender has been returned to the ACELDS before the tender closing date (which shall be a time and date when County Hall is open for business).
- 6.20 The ACELDS shall be responsible for the reception and safe custody of tenders until they are opened.
- 6.21 Tenders must be opened at the same time and in the presence of the ACELDS 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 CDR.
- 6.22 If a tender is received after the specified tender closing date it may not be considered unless the ACELDS 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

- 6.23 Tenders shall be evaluated by the CDR. The CDR shall accept the tender which offers the best consideration for the Property in accordance with Rule 6.4 above. The CDR 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 CDR shall produce a report 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

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

Post Tender Negotiations

- 6.25 Post tender negotiation may be undertaken in accordance with the following conditions:-
- (a) The CDR 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 CDR 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 suitably experienced Officers approved by the CDR and trained in post tender negotiations;
 - (d) a record of the negotiations and any added value obtained from them is kept by the CDR; and
 - (e) any such added value obtained by the post tender negotiations is incorporated into the Property Contract with the successful Tenderer.

- 6.26 The basis on which tenders are to be evaluated must be established before tenders are opened, in so far as this is consistent with the achievement of best consideration.
- 6.27 If all of the tenders that are received 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 Officers in the Property Service must set out and then apply the approach that is used to determine which tender offers best consideration.

Surrender of a lease or a licence

- 6.28 The surrender of a lease in or a licence in, whether by the operation of a break clause or by negotiation, is a disposal to which the Rules in this section apply.

7.0 PROPERTY TRANSACTIONS – MORTGAGES – SPECIFIC ARRANGEMENTS

Property owned by others

- 7.1 The CDR may instruct the ACELDS to enter into the mortgage of a Property owned by another party, provided that the mortgage is to secure the Council's interests linked to a grant or loan made to another party.

Property owned by the Council

- 7.2 The CDR may instruct the ACELDS to enter into the mortgage of a Property owned by the Council.

Terms

- 7.3 The CDR must set the terms of a mortgage in consultation with the ACELDS.

Discharge

- 7.4 The CDR may instruct the ACELDS to discharge a mortgage.

8.0 PROPERTY TRANSACTIONS – RESTRICTIONS ON TITLE – SPECIFIC ARRANGEMENTS

- 8.1 The CDR may instruct the ACELDS to place or remove restrictions on the title of a Property owned by the Council.
- 8.2 The CDR may instruct the ACELDS to place or remove restrictions on the title of a Property owned by another party.

9.0 RE-ALLOCATION OF A PROPERTY TO A NEW USE BY THE COUNCIL, INCLUDING APPROPRIATION

General

- 9.1 This section covers all re-allocations of a Property to a new use by the Council, except for a proposed decision to:-
- (a) dispose of a Property (to allocate it to the for sale Property type)

- (b) grant a lease out or a licence out
- (c) surrender a lease in or a licence in.

The exceptions listed above are covered by Section 6.

- 9.2 A decision to reallocate a Property to a new use represents a decision to appropriate the Property to the new use where such a decision is required under S123 of the Local Government Act 1972 or other legislation. Any report on which a decision is based will carefully identify this.
- 9.3 The specific arrangements set out in S122 of the Local Government Act 1972 or other legislation that requires appropriation or sets out specific arrangements for an appropriation must be followed alongside the Rules in this section. If there is any conflict between the Rules and the legislation then the legislation takes precedence.
- 9.4 The CDR will be responsible for seeking the required approval for the reallocation of Property.

Approvals

- 9.5 In the case of any Reallocation of Property other than for disposal which is not held by the Council on a lease or license: -
 - (a) the CDR may approve any Reallocation of Property up to and including £1,000,000 in value;
 - (b) the Executive Member for Finance and Assets may approve any Reallocation of Property up to and including £1,500,000 in value
 - (c) the Executive may approve any Reallocation of Property, and must approve any Reallocation of Property over £1,500,000 in value
- 9.6 Subject to Rule 9.6 in the case of any Reallocation of Property other than for disposal which is held by the Council on a lease or license: -
 - (a) the CDR may approve any Reallocation of Property where the annual rent or fee is up to and including £150,000
 - (b) the Executive Member for Finance and Assets may approve any Reallocation of Property where the annual rent or fee is up to and including £250,000
 - (c) the Executive may approve any Reallocation of Property, and must approve any Reallocation of Property where the annual rent or fee is over £250,000

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 Reallocation (but ignoring any discount or rent-free period).
- 9.7 In the case of a Property held by the Council on lease where a premium has already been paid the approvals required shall be sought pursuant to Rule 9.6.
- 9.8 The value to be used to determine the appropriate approval arrangement for a proposed decision is the value, as estimated by an Officer of the Property Service or in a consultancy appointed to provide Property advice or services, at the time that the report about the decision is prepared. It is accepted that the actual value of the Property or other action may differ from the estimated figure.

10.0 PROPERTY-RELATED COMPENSATION PAYMENTS

Financial provision

- 10.1 A Corporate Director must make financial provision for the payment of Property-related compensation for any project that may result in compensation becoming payable.

Negotiating and instructing

- 10.2 Only an Officer of the Property Service or in a consultancy appointed to provide Property advice can negotiate the terms for a proposed Property-related compensation payment.
- 10.3 Only an Officer of the Property Service can instruct a consultant to negotiate terms for a proposed Property-related compensation payment.

Approving terms

- 10.4 The CDR can approve the terms of a Property-related compensation payment (in the form of Heads of Terms).

Documenting the implementation of the decision

- 10.5 The ACELDS must prepare and complete the documentation for compensation payments linked to Compulsory Purchase Orders and other activity that triggers statutory Property-related compensation payments.

Making a payment

- 10.6 The ACELDS must arrange the actual compensation payment.

11.0 SIGNATURE / SEALING OF PROPERTY CONTRACTS

- 11.1 No Property Contract shall be completed unless proper approval has been given in accordance with these Rules.
- 11.2 Subject to Rules 11.3 and 11.4, every Property Contract must be: -
- (a) executed as a Deed by the ACELDS;
 - (b) signed by the ACELDS (if the value is less than £50,000); or
 - (c) signed by the ACELDS and another officer authorised by the ACELDS (if the value is £50,000 or more).
- 11.3 The CDR 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 ACELDS; and
 - (b) two signatories are required if the value is £50,000 or more.
- 11.4 All Directors are authorised to approve and sign Licences to or from third parties provided that:-

- (a) the Licence is for a period not exceeding 12 months; and
- (b) the Licence is for a fee not exceeding £15,000.

12.0 INVESTMENT IN PROPERTY

General

- 12.1 The CDR is authorised, in accordance with the Council's budgetary and policy framework, to implement all processes required in accordance with good practice to ensure that all Property remains safe and fit for the purpose of service delivery, and complies with all relevant legislation, codes of practice and guidance.
- 12.2 For the avoidance of doubt this includes, but is not limited to: -
- (a) responsive maintenance to a Property
 - (b) preventative maintenance to a Property
 - (c) planned maintenance of a Property
 - (d) works required to secure an empty Property
 - (e) a response to compliance issues at a Property
 - (f) improvement of a Property (a project)
 - (g) addition of accommodation (a project)
 - (h) demolition of all or part of a building or structure.

Identifying Need

- 12.3 Officers in a directorate may identify a requirement for investment in a Property from an operational perspective to either address a maintenance issue or meet a service requirement.
- 12.4 Only Officers in the Property Service are authorised to commission and instruct either contractors or consultants to undertake work in respect of the investment in Property.
- 12.5 Officers in the Property Service may identify the possible requirement for investment in a Property from an operational or strategic perspective.
- 12.6 The CDR must approve the identification of the need for investment in Property, in so doing taking account of the likely capital and revenue cost implications; and must confirm that such funds are available before any work is commissioned or undertaken by the Property Service.

Commissioning of Consultants and Contractors

- 12.7 Only Officers in the Property Service can commission and instruct and manage consultants to provide advice and other services associated with investment in Property.
- 12.8 Only Officers in the Property Service, or consultants commissioned by the Property Service, can commission and manage contractors to undertake work in respect of investment in Property.

Approvals

- 12.9 An approval related to financial or contractual matters must be given in accordance with the Financial Procedure Rules and / or the Procurement and Contract Procedure Rules and the terms of any contract or framework.

- 12.10 For the avoidance of doubt, where approvals are required under the Financial Procedure Rules and / or the Procurement and Contract Procedure Rules, and these Rules, then these approvals can be obtained contemporaneously.
- 12.11 Officers in the Property Service are responsible for ensuring that all necessary approvals have been obtained before the commencement of any work or project.