



# Penrith Town Council

Unit 1, Church House, 19-24 Friargate, Penrith, Cumbria, CA11 7XR  
Tel: 01768 899 773 Email: [office@penrithtowncouncil.co.uk](mailto:office@penrithtowncouncil.co.uk)

## **DISPOSAL OF LAND AND PROPERTY**

### **OVERVIEW**

### **DEFINITION OF SURPLUS ASSET FOR DISPOSAL**

Land and property owned by the Council normally has a use or function within the Council's remit, but sometimes assets may not present an economic case for retention. Before considering whether an asset is surplus to requirements, due consideration should be given to other uses such as plots of land that are strategically placed to ensure that the Council can affect a level of control over developments that are otherwise open to normal market force.

The Council's presumption is that land and property is not for sale unless there is a clear need or desire to do so.

The Finance Committee should however regularly review the Council's asset list for sufficiency, suitability, condition and cost or retention. A site will only be determined as surplus if it meets all the following criteria:

- I. It makes no contribution to the delivery of the Council's services and is unlikely to be required for service delivery in the future.
- II. It is no longer appropriate for service provision.
- III. It has no potential for future strategic or regeneration/ redevelopment purposes
- IV. (including affordable housing)
- V. The net income generated from the site is below that which could be achieved from disposing of the site and investing the capital receipt/ proceeds.
- VI. The land or property is not adjacent to a larger area of land or property in the ownership of the Council.
- VII. The land or property does not have social or environmental benefits as amenity land or open/recreational space.

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# **LAW RELATING TO DISPOSAL**

The Local Government Act 1972 section 126 gives the Town Council the power to dispose of land and property. It states that a council may appropriate land for any purpose approved by the Secretary of State.

## **1. OPTIONS FOR DISPOSAL OF LAND AND PROPERTY**

- 1.1 Disposal under the Local Government Act 1972 deals with all types of disposal, freehold, leasehold and short tenancy agreements. The leasehold term should be appropriate for each asset as determined by Councillors on a case by case basis.
- 1.2 The disposal of the Councils land and property could therefore be progressed in several ways and does not necessarily have to result in a freehold sale. The following options are available:
  - a) Freehold disposal - the sale of the property with or without future covenants to restrict or protect future use.
  - b) Permanent grant of rights over land – i.e. easement in fee simple.
  - c) Leasehold disposal – leasehold interest can be agreed for any time period. A leasehold interest of 7 or more years must be registered as an interest in land with the Land Registry. All leasehold disposals will be agreed outside the Landlord and Tenant Act 1954 to exclude business protection, unless the property is categorised as an investment property where terms will be agreed based on advice from an Independent Valuer to seek best consideration for the lease.
  - d) Non-permanent grant of rights over land – i.e. access licence, way leave etc.
  - e) Short tenancy – tenancy for a term of less than 7 years or the assignment of a term which at the date of the assignment has not more than 7 years to run. All short tenancy disposals will be agreed outside the Landlord and Tenant Act 1954 to exclude business protection.

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## **2. DETERMINATION OF THE METHOD OF DISPOSAL**

- 2.1 Except where certain criteria apply, open market disposal will be the preferred method of disposal. Disposals by private treaty (the agreement for the sale of a property at a price negotiated directly between the vendor and purchaser or their agents), should not normally be undertaken in the interests of openness and accountability, however it may be appropriate for small plots valued independently at under £20,000 where the plot forms part of an otherwise privately-owned garden. To use a private treaty would require Full Council approval, listing the reasons.
- 2.2 The generally accepted methods of disposal are:
- a) Open Market disposal
  - b) Joint Development
- 2.3 The method for the disposal of assets will be assessed and determined on a case-by-case basis by reviewing all the options and completing an option appraisal.
- 2.4 All issues relating to the land or property, including social, environmental and economic benefit and legal issues and agreements, will need to be considered when determining the method of disposal.
- 2.5 The Council would appoint a solicitor and external surveyors and valuers, where necessary, on the type and method of disposal.
- 2.6 In principle the Council will choose the method of disposal which provides best consideration. This may be more than just financial consideration and can include social, environmental and economic considerations, and will be the method which best secures the desired objectives/outcomes for the land and/or property.

### **3. OPEN MARKET DISPOSAL**

- 3.1 For freehold disposal and leasehold interests over 7 years the properties will be advertised, bids invited in the form of sealed bids by an agreed date or through open auction.
- 3.2 When appropriate independent agents will be appointed to manage the advertisement and the disposal of the land or property and report to the Council the value of the bids received and recommend which they consider to be the best consideration of both financial and non-financial benefits.
- 3.3 Short tenancies of less than 7 years may be considered by the Finance Committee each time a lease ends or when a variation is required.

### **4. PARTNERSHIPS**

- 4.1 Where a redevelopment proposal includes Council land or property and adjoining land, the Council may choose to pursue a joint development with the adjoining landowner and/ or Developer or Registered Social Landlord (RSLs).
- 4.2 The details of a joint development arrangement are likely to differ from scheme to scheme but will broadly involve sharing the cost, risk and return from the project.
- 4.3 The benefits and risks of pursuing this method of disposal would require detailed assessment as part of the appraisal for the development. This is likely to be a viable option for large redevelopment projects only.
- 4.4 This form of development may result in EU procurement legislation becoming applicable. Any joint development proposal will require independent legal advice.
- 4.5 Joint development proposals must be approved by Full Council only.

## **5. OBTAINING BEST CONSIDERATION AND DISPOSAL AT AN UNDERVALUE.**

- 5.1 The Council should seek, for all disposals, to achieve the best financial consideration available for the type of property and the agreed terms.
- 5.2 However, where appropriate the Council can consider non-financial benefits as part of the consideration for a disposal.
- 5.3 Land should not be disposed of at an undervalue unless in accordance with the guidelines set out in Circular 06/03 Local Government Act 1972: General Disposal Consent (England) 2003. To do otherwise would require consent from the Secretary of State and may constitute State Aid.
- 5.4 Valuations for the land or property should be carried out by an independent valuer appointed by the Council and the valuation must be carried out in accordance with the Local Government Act 1972: General Disposal Consent (England) 2003. This requires valuations of the restricted sale value (allowing for all the conditions which the Council has placed on the sale and including nonfinancial benefits) and an unrestricted sale value.

## **6. FINANCIAL CRITERIA FOR DISPOSALS**

- 6.1 An option appraisal should be carried out which assesses the capital and revenue implications of each option, the impact of the current economic conditions and the VAT implications.
- 6.2 Valuations should be obtained for all viable options, provided by an independent valuer.
- 6.3 Once sites are approved as being suitable for disposal and a programme for disposal has been agreed this should be included on a disposal plan which is then used to inform the medium-term financial plan. However, until exchange/completion of contracts has taken place, or the lease has been completed, there will always be a risk that the disposal will not take place in the time periods programmed.

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## **7. COMMUNITY ASSET TRANSFER**

- 7.1 The purpose of community asset transfer is to enable the transfer of under-used land and buildings from the public sector to community ownership and management - helping organisations to develop those assets and deliver long-term social, economic and environmental benefits which may not otherwise be achieved.
- 7.2 The Council will consider any request for an asset transfer to a Community organisation where the organisation can provide an adequate business case and where the transfer would meet the Councils priorities and objectives.
- 7.3 The Council will seek best consideration for the transfer unless social, environmental or economic benefits are provided.
- 7.4 The Council may, where appropriate, agree covenants or overage clauses to deal with additional development.

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