

Committee: Cabinet	Date: 2 nd December 2009	Classification: Unrestricted	Report No: (CAB 091/090)	Agenda Item:
Report of: Corporate Director Development and Renewal		Title: Use of the Council's "well-being" powers to maximise community benefit from property transactions.		
Originating officer(s) Andy Algar, Service Head, Asset Management		Wards Affected: All		

1. **SUMMARY**

- 1.1 This report sets out a proposed approach for the Council to adopt when considering selling land at less than market value. The Council has broad "well-being" powers that give it the discretion to sell land at less than market value where it can be shown that clear community benefits will arise.

2. **RECOMMENDATIONS**

Cabinet is recommended to

- (a) Note the contents of the report, and
- (b) Agree that all future sales at less than market value be subject to a transparent and public process that clearly identifies and "costs" the service benefit of any transaction.
- (c) That a similar approach be adopted if leasing properties at less than market rental value.
- (d) That the "costs" and benefits of transactions be articulated by the relevant service director(s).

3. **BACKGROUND**

THE LEGISLATIVE FRAMEWORK

- 3.1 If selling non Housing Revenue Account (HRA) land the Council needs to meet its obligations under s 123 of the Local Government Act 1972. Scope exists for the Council to dispose of such land at less than market value if it can bring itself within the provisions of the General Disposal Consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained ("the Consent").

- 3.2 S.123 Local Government Act provides a general obligation on Councils to sell land at “the best price reasonably obtainable”. The 2003 Disposals Consent provided local authorities with some discretion to sell at less than market value.
- 3.3 Under the Consent a local authority has to discretion to sell at an “undervalue” of up to £2,000,000 per transaction. Undervalue is defined as “the difference between the unrestricted value of the interest to be disposed of and the consideration accepted”
- 3.4 If an authority wishes to dispose at less than market value it has to demonstrate that the disposal is likely to contribute to the achievement of one or more of the objects set out in its “well-being” powers. The full definition from the Consent is:
- “(a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;*
- i) the promotion or improvement of economic well-being;*
- ii) the promotion or improvement of social well-being;*
- iii) the promotion or improvement of environmental well-being; and*
- (b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds)”.*
- 3.5 If selling at less than market value Members also need to fulfil their general fiduciary duty. European State Aid issues will also need to be considered on a case by case basis but this can prevent or delay sales at less than market value.
- 3.6 Where property is sold at less than market value it is vital that the service or social benefit is clearly defined. Assessment of such benefits is not part of the sales process – property staff are not qualified to make such judgements. It is considered to be best practice to separate the property element from the assessment of benefits.
- 3.7 This approach will require clear definitions of roles and responsibilities when dealing with sales at less than market value and a brief summary of suggested roles and responsibilities is set out below.
- 3.8 The Service Head, Asset Management will ensure proper advice is obtained about market value in accordance with the Disposals Consent. He/she will also

ensure the terms of any transaction are adequate to enable the delivery and measurement of the benefits of the transaction.

- 3.9 The relevant Service Director will assess the financial and non-financial benefits of the proposal against the “well being” powers outlined above and provide a statement that they are satisfied that the benefits are equal to or in excess of the proposed undervalue. Any reports should consider whether there are alternative methods of achieving the same outcome (e.g. if a sum equivalent to the undervalue were made available) to ensure that this is the most efficient use of resources.
- 3.10 The Chief Executive, Director of Resources and Assistant Chief Executive (Legal) will review the service justification and be satisfied that the Council’s statutory and financial duties have been met.
- 3.11 Cabinet’s role is to consider reports and the justification and to ensure Cabinet’s fiduciary duty is met.
- 3.12 This approach will require a new process to be adopted that can ensure a consistent approach. It is suggested that in each case the Service Director makes an assessment of the financial and non-financial benefits of any proposal, who the beneficiaries are and which of the well-being powers it falls under.
- 3.13 In the case of an existing tenant/occupier, the report will need to demonstrate the **additional** benefit, over and above current service/community benefits released by proposal disposal (e.g. could be investment/expansion).
- 3.14 In relation to land held for Housing purposes a separate statutory regime exists which governs the disposal of such land. Section 32 Housing Act 1985 states that a local authority has a power to dispose of land held for housing purposes but such disposal requires the consent of the Secretary of State.
- 3.15 To assist local authorities the Secretary of State has issued what are termed the General Housing Consents 2005. These are a series of consents issued pursuant to powers contained in sections 32, 33 and 34 Housing Act 1985 and sections 25 and 26 Local Government Act 1988. The purposes of these consents are to allow certain disposals to occur without the need to secure express consent. Each of the consent sets out the situations when they can be relied on.
- 3.16 There are six consents issued under the Housing Act 1985 and they are identified as A to F. They deal with the general disposal of dwelling houses, the disposal of dwelling houses for Right to Buy, the disposal of dwelling houses for shared ownership, disposal of dwelling houses which are not held for housing purposes, disposal of land held for housing purposes and the disposal of freehold interests in houses and flats where long leases have been granted.

- 3.17 It should be noted that none of these consents permit a disposal of dwellings or land at an under value. They all refer to a disposal at market value and then set out a discount that may apply or the best consideration that can reasonably be obtained.
- 3.18 In relation to the second set of consents mentioned above, those issues pursuant to powers under section 25 and 26 Local Government Act 1988 the position is slightly different. Section 24 Local Government Act 1988 provides a local a housing authority with the power to provide any person with financial assistance in connection with the acquisition, construction, conversion, rehabilitation, improvement, maintenance or management of any property which is or is intended to be privately let as housing accommodation. Section 25 Local Government Act 1988 then goes on to say that in addition to financial assistance a local housing authority may provide a person with any gratuitous benefit for any of the purposes for which financial assistance can be given.
- 3.19 Section 25 Local Government Act 1988 goes on to state that when a gratuitous benefit can include land be given either free of charge or at a value significantly less than its true value. In order to enable local authorities to exercise these powers a series of consents have been issued. The consents, which form part of the General Housing Consents 2005, are a discrete group within the overall scheme of consents.
- 3.20 There are a total of eight consents which have been issues under the umbrella of sections 25 and 26 Local Government Act 1988 and are described as A to H. They deal with a wide range of issues but for the purposes of this report the relevant ones are A and B. Each of the consents allows for the transfer of land to a registered social landlord and such transfer could be for no consideration or at a reduced value.
- 3.21 It should be noted that any such transfers must be for one of the purposes set out above in connection with the provision of housing accommodation. In relation to consent A, the maximum value of assistance, which can be provided in any one year, is £10 million. Consent B does not set a value for the amount of assistance that can be provided but instead places a cap on the number of the greater of 50 or one quarter of one percent of the number of dwellings owned by the authority.

4. CONCLUSION

- 4.1 Sales at less than market value cost the Council “real” money through reduced income to the capital programme. It follows that the Council’s processes in selling at less than market value should be as robust and transparent as if we were providing capital grants to third party – this would include some form of

prioritisation, options appraisal, assessment of benefits and a mechanism to ensure the benefits are recorded.

- 4.2 There are arguments that all transactions should be at market value and remove the wellbeing argument all together. However, this ignores that there are many genuine circumstances (e.g. regeneration) where it makes good sense to lever capital receipts through a reduced sale price. The legislation recognises this and the purpose of this proposal is to ensure continued robust and transparent decision making.
- 4.3 Similar processes and rigour will also apply when leasing property.

5. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 5.1 Assets should be seen as a resource of the authority and the Council's assets are available for it to use to secure the delivery of services and other benefits to local people. The value of any asset held once it is no longer required for service delivery may be realised for other purposes and retaining assets out of use is often a cost to the Council in terms of security, maintenance etc. However, once a decision is made to dispose of an asset, other future opportunities are closed down. A decision whether or not to dispose of an asset is therefore a balance between releasing the value tied up in the asset for the public benefit and the opportunities and costs which may arise from retaining it.
- 5.2 The Council has a duty to secure value for money in all its transactions, which in this case means ensuring that there is sufficient public benefit from the disposal of land at an under value to justify that approach. The report sets out the position in relation to the authority's powers.
- 5.3 As in all transactions, it is important that resources are used in accordance with the Council's policies and priorities.

6. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

- 6.1 As indicated in the body of the report local authorities have a variety of powers to dispose of land held by them. In relation to the power contained in section 123 Local Government Act 1972 the presumption is that any such disposal will be for a consideration for not less than the best that can reasonably be obtained.
- 6.2 In acknowledgement of the fact that there can be situations when a local authority may wish to secure an outcome which requires land to be disposed of at an undervalue a specific consent has been granted to facilitate this. As indicated in the body of the report a local authority may only use this consent if certain criteria are met and there is a cap on the value of the reduction in value, which can be granted.

- 6.3 A further issue which has to be taken into account when exercising the power granted by the consent is whether the disposal complies with what are termed the State aid rules. The State aid rules are designed to ensure fair competition and a single common market. If favoured treatment is given to some business it would harm business competitors; risk distorting the normal competitive market and hinder the long-term competitiveness of the European Community. The term State is not restricted solely to national governments but also applies to local authorities.
- 6.4 If the Council were to dispose of a piece of land to a body it could be argued that it has given that body an unfair advantage over its competitors and thereby distorted the market. State aid is however allowed if it promotes economic development and other legitimate policy objectives where this benefit outweighs any distortion of competition. In order for the disposal of land at an under value to be held as State aid it is necessary to show that the disposal is to a body involved in an economic activity and that it operates in a market in which there is trade between states who are members of the European Community. It should be noted that the nature of the body is not relevant in this context (even a not for profit body can engage in economic activities).
- 6.5 Thus if the Council were to dispose of land to a development company and land development is an activity which takes place in the European Community then such a disposal could constitute State aid. As indicated above there are certain exemptions that apply and it would be necessary to determine on a case-by-case basis as to whether an exemption might apply.
- 6.6 Turning to the consents issued under the provisions of the Housing Act 1985 it is clear that they do not provide for disposals at an under value. Those exemptions approach the issue of consideration for a disposal from another angle. In essence, they state that the disposal should be at a market value but then provide for certain discounts to apply in limited situations.
- 6.7 The final raft of provisions to consider are the consents, which have been issued pursuant to, sections 25 and 26 Local Government Act 1988. As explained in the body of the report these allow for disposals at an under value subject to the disposal being for specific purposes and to identified organisations. In respect of both the relevant consents limitations exist in respect of the amount of discount, which can be provided.
- 6.8 In conclusion in any situation where the Council would wish to dispose of land at an undervalue it will be necessary to identify which provision applies and ensure compliance with any restrictions which exist. Matters will have to be considered on a case-by-case basis.

7. ONE TOWER HAMLETS CONSIDERATIONS

- 7.1 Property is a key factor in delivering services. The proposed approach will ensure that any service benefits arising from property transactions are identified and maximised

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no implications

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 This proposal will ensure a robust approach to sales at less than market value and reduce the risk of any challenges to the Council on such sales.

10. EFFICIENCY STATEMENT

- 10.1 This will help ensure the efficient use of the Council's resources if selling land at less than market value

**Local Government Act, 1972 Section 100D (As amended)
List of "Background Papers" used in the preparation of this report**

Brief description of "background papers"

None