

# OVERVIEW & SCRUTINY COMMITTEE

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Tuesday, 12 May 2015 at 7.15 p.m., Room C1, 1st Floor, Town Hall,  
Mulberry Place, 5 Clove Crescent, London, E14 2BG

## SUPPLEMENTAL AGENDA TWO

### UNRESTRICTED MINUTES

#### COVERT INVESTIGATION UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000

This meeting is open to the public to attend.

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For further information including the Membership of this body and public information, see the main agenda.

<b>3.</b>	<b>UNRESTRICTED MINUTES</b>		<b>1 - 70</b>
	To confirm as a correct record of the proceedings the unrestricted minutes of the meeting of the Overview and Scrutiny Committee held on 7 <sup>th</sup> April, 2015.		
<b>7 .1</b>	<b>Covert Investigation under the Regulation of Investigatory Powers Act 2000</b>	<b>All Wards</b>	<b>71 - 78</b>

**LONDON BOROUGH OF TOWER HAMLETS**

**MINUTES OF THE OVERVIEW & SCRUTINY COMMITTEE**

**HELD AT 7.15 P.M. ON TUESDAY, 7 APRIL 2015**

**ST PAUL, OLD FORD. ST STEPHENS ROAD. E3 5JL**

**Members Present:**

Councillor Joshua Peck (Chair)	
Councillor John Pierce (Vice-Chair)	
Councillor Asma Begum	(Scrutiny Lead for Adult Health and Wellbeing)
Councillor Denise Jones	(Scrutiny Lead for Children's Services)
Councillor Peter Golds	(Scrutiny Lead for Law Probity and Governance)
Councillor Abjol Miah	(Scrutiny Lead for Resources)
Councillor Rachael Saunders	(Substitute for Councillor Dave Chesterton)

**Co-opted Members Present:**

Rev James Olanipekun	(Parent Governor Representative)
Dr Phillip Rice	(Church of England Representative)
Victoria Ekubia	(Roman Catholic Church Representative)

**Other Councillors Present:**

Councillor Marc Francis	(Representing the Call-In Councillors)
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**Apologies:**

Councillor Dave Chesterton	– (Scrutiny Lead for Development and Renewal)
Councillor Mahbub Alam	–
Councillor Muhammad Ansar Mustaqim Nozrul Mustafa	– (Parent Governor Representative)

**Others Present:**

Stephen Jacobs - OBE Board Chair	– (Circle Housing)
Mark Rogers - Group Chief Executive	– (Circle Housing)

**Officers Present:**

Jamie Blake	– (Service Head of Public Realm, Communities Localities and Culture)
Mark Cairns	– (Senior Strategy, Policy and

Barbara Disney	– Performance Officer) (Service Manager, Strategic Commissioning, Adults Health & Wellbeing)
Ruth Dowden	– (Complaints & Information Manager, Legal Services, Law Probity & Governance)
Maura Farrelly	– (Community Resources Officer - Advice & Anti-Poverty, Third Sector Team, Development & Renewal)
Everett Haughton	– (Third Sector Programmes Manager, Third Sector Team, Development and Renewal)
Chris Holme	– (Acting Corporate Director - Resources)
Rafiqul Hoque	– (Lettings Services Manager, Housing Options Service, Development & Renewal)
Kevin Kewin	– (Service Manager, Strategy & Performance)
Jackie Odunoye	– (Service Head, Strategy, Regeneration & Sustainability, Development and Renewal)
Sarah Williams	– (Team Leader Social Care, Legal Services, Law Probity & Governance)
David Knight	– (Democratic Services Team)

### 1. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Dave Chesterton; Councillor Mahbub Alam; Councillor Muhammad Ansar Mustaqim and Nozrul Mustafa.

### 2. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

There were no declarations of disclosable pecuniary interest.

### 3. UNRESTRICTED MINUTES

The Chair **Moved** and it was:-

#### **RESOLVED**

That the unrestricted minutes of the meetings of the Overview and Scrutiny Committee held on 3<sup>th</sup> and 24<sup>th</sup> March, 2015 be approved as a correct record of the proceedings subject to the following revisions for the 24<sup>th</sup> March:

**Minute 4.2 (3) Delete:** THH should show a high level of respect for leaseholders and consider the work being undertaken to improve leaseholder engagement on Major Works in other boroughs. **Insert:** THH should show a high level of respect for leaseholders and consider the work being undertaken to improve leaseholder engagement on Major Works along the lines of the London Borough of Islington.

**Minutes 4.2 (7) Delete** It receives an explanation as to why there have been vacancies on the TTH Board for such an extended period of time. The Chair indicated that he wanted a response from Corporate Director of Development and Renewal. Officers also agreed to look at the governance arrangements for THH (including the relationship between THH and residents). **Insert:** It receives an explanation as to why there have been vacancies on the TTH Board for such an extended period of time. The Chair indicated that he wanted a response from Corporate Director of Development and Renewal. Officers also agreed to look at the governance arrangements for THH (including those responsible for the appointments).

#### 4. REQUESTS TO SUBMIT PETITIONS

Nil items.

#### 5. UNRESTRICTED REPORTS 'CALLED IN'

The Committee considered and adjudicated on the 'Call In' relating to the Allocations Scheme 2015 and Lettings Plan.

##### 5.1 ALLOCATIONS SCHEME 2015 AND LETTINGS PLAN

The Committee heard that the Allocations Scheme 2015 and Lettings Plan had been considered by the Mayor in Cabinet on 4 March, 2015 and "Called In" in respect of the recommended reduction in the quota of lettings to be allocated to applicants in Band 3 from 10 per cent to 5 per cent.

It was noted that this will have a serious impact on the likelihood of those who are deemed to be "adequately housed" making a successful bid for re-housing. The main points of the discussions may be summarised as follows:

The Committee:

- Heard that as a result of the combination of a reduction in the number of lets to homeless households, the scarcity of available accommodation and the high levels of rent charged to the Council, significant budgetary pressures are being faced. This particularly affects the Housing Benefits budget where a growth bid has been submitted as part of the 2015-16 budget process to set aside additional funding of £1.6 million to finance the pressures that arise from the

effects of welfare reform, together with the impact that high rents have on the Benefits Subsidy received by the Council. Although the Council has a statutory duty to pay benefits, the level of subsidy that is recouped from the DWP is capped.

- Noted that the proposals set out in this report were intended to help to mitigate some of these costs through reducing the numbers of homeless applicants that are placed in bed and breakfast accommodation.
- Felt that this policy would not address that situation and increase the time that some young families will have to live with their parents.
- Expressed concern that some families were currently having to be house outside of London and thereby taking away from their families and communities.
- Heard that this was considered to be a pragmatic temporary measure as the supply of suitable properties is currently severely restricted. Therefore, this proposal is aimed at freeing up properties to address the level of homelessness and keep as many LBTH residents living in the Borough.
- Heard that often those living in temporary accommodation are in properties of good quality and therefore some are unlikely to bid for the available properties waiting for their ideal property even though they have sufficient priority for a move.

As a result of consideration of this report the Chair Moved and it was:-

**RESOLVED** that:

It is recommended that the Mayor agrees to the retaining of the existing 10 per cent quota for Band 3 applicants for at least a further 12 months.

## **6. SCRUTINY SPOTLIGHT**

### **6.1 SOCIAL HOUSING PROVIDER – CIRCLE HOUSING**

The Committee received and noted a presentation from Stephen Jacobs OBE Board Chair and Mark Rogers - Group Chief Executive of Circle Housing, relating to the standard of housing management on those estates managed by Circle in Tower Hamlets. A summary of the discussion on this item is set out below.

The Committee heard that:

- The Circle Housing Group placed on record their apologies to tenants and leaseholders for the unacceptable standards in their repairs and maintenance service and the impact that this has had on tenants and leaseholders.

- In March the Circle Housing Group had ended their contract with Kier and had appointed Mitie as the primary social housing contractor to deliver responsive repairs for the Group.
- The Circle Housing Group remains committed to the provision of affordable social housing for residents and investing in the delivery of not only of responsive repairs but also planned and cyclical social housing maintenance.
- Circle Housing Group through Routes2Work has supported over 622 people into training; employment and apprenticeships.
- The contract to deliver responsive repairs and cyclical housing maintenance had been let with an emphasis on delivery across the Group nationally. The Committee felt that this had meant that there was not an effective dialogue with local residents; Circle Housing and the appointed contractor.
- Circle Housing will now on a weekly basis check all responsive repairs undertaken by Mitie. In addition, other contractors can be called upon to ensure the prompt and effective delivery of the responsive repairs programme. In addition, the Group's Board now monitor's performance on a bi-monthly basis.
- Circle Housing recognises that they need to re-build trust with tenants and leaseholders and that the Board's Chair intends to develop and maintain an effective dialogue with residents.
- Some tenants and leaseholders had also expressed concern at the low levels of compensation that they had received for the delays regarding repairs.
- The ward councillors felt that Circle Housing had been slow to respond to the poor levels of service delivery to tenants and leaseholders. The Committee indicated that it wanted to receive details of the Compensation Scheme for tenants and residents e.g. regarding repairs.
- The Chair of the Group's Board visited the Borough on a bi-monthly basis and was copied into emails received regarding repairs and followed up every such enquiry from tenants and leaseholders.
- There would be an improved communications strategy including regular newsletters to tenants and leaseholders by the Boards Chair to residents.
- Local tenants and leaseholders are to be encouraged to seek appointment to the Group's Local Board and the Committee asked that this be promoted through the newsletter.
- Circle Housing indicated that in their current recruitment round for board vacancies they would ensure that this is given prominence in all of their communications with tenants and leaseholders.
- Circle Housing is committed to ensuring that local tenants and leaseholders play a role in reshaping the repairs service.
- The Group Chief Executive will in future visit the Borough on a bi-monthly basis to meet with tenants and residents.
- The ward councillors felt that Circle Housing should empower tenants and leaseholders through the establishment of a forum. This forum

should play a role in reshaping services; developing job opportunities; and reviewing service charges for leaseholders.

- The ward councillors wanted a meeting to be convened with those tenants and residents of Gladstone Place regarding the matter of shared ownership;
- There should be a review of the block charges for leaseholders as there had apparently been errors on some blocks in relation to major works bills.;
- There had been issues with regard to the late payment for those tenants and residents who are in receipt of housing benefit and the Committee wanted this to be reviewed including looking at best practice from other areas.
- Heard that there was to be a review of the governance arrangements.

As a result of consideration of this report the Chair Moved and it was:-

**RESOLVED** that:

1. The Committee receive details of the Compensation Scheme for tenants and residents e.g. regarding repairs;
2. The Group Chief Executive should visit the Borough on a regular basis e.g. so as to meet with tenants and residents;
3. Board vacancies are given prominence in all of the Groups communications with tenants and leaseholders;
4. Circle Housing should establish a joint tenants and residents panel;
5. There needs to be improvement in Circle Housing's engagement with tenants and residents;
6. A meeting should be convened with the tenants and residents of Gladstone Place regarding the matter of shared ownership;
7. Circle Housing should undertake a review of the block charges for leaseholders;
8. Circle Housing should address the concerns around the late payment for those tenants and residents who are in receipt of housing benefit.

## **7. UNRESTRICTED REPORTS FOR CONSIDERATION**

### **7.1 CIVIC CENTRE**

The Committee received and noted a report that contained recommendations in relation to disposals and entering into contracts; provided an update on the status of the acquisition of the site for the new Civic Centre and presented the business case as requested for the new Civic Centre.

The Committee reviewed and questioned officers on the proposal and programme for procurement of new Civic Centre at Whitechapel, including on implications for One Stop Shop and Idea Stores provision. The main points of the discussion are summarised as follows:



The Committee:

- Expressed concern that the sale of properties to fund the procurement of new Civic Centre at Whitechapel would have a negative impact on service provision.
- Heard that the Council must commit to a new civic centre, or face occupying a number of disparate and poorly sited buildings that will lead to inefficiencies and increased costs of operation.
- Heard that the justification for the further consolidation of Council administrative buildings into a purpose built mixed use civic hub had been predicated on the disposal of some if not all current administrative sites and additional surplus sites for the capital receipts to cross fund the new development. All these disposals were also intended to deliver significant new housing to the Borough.
- Heard that the East India Dock was considered to be a poor location to best serve the needs of the borough's residents. East India Dock Estate, whilst reasonably served by public transport is located in the extreme east of the borough in close proximity to Canary Wharf and has perceived problems of customer access and approachability. In addition, development of the complex was being proposed by the landowner and is currently in discussion with Planners.
- Wanted to know if Gladstone Place was sold how the loss of the One Stop Shop and Idea Stores provision would be addressed. In response it was heard that consideration was to be given as to how services would be re-provided from Whitechapel and other refurbished council offices once a new service model had been developed.
- Heard that the Project Board would be chaired by either a Corporate Director or the Head of Paid Service.
- Wanted assurances that Councillors participating in the proposed scrutiny and governance arrangements for the Civic Centre have full and unrestricted access to all of the paper work and documentation throughout the process. In response it was heard that the necessary paperwork would be made available to the Committee.
- Heard that the Commissioners would have to agree any disposals and that the new service delivery model had been developed in consultation with the Commissioners. The Commissioners would also have to be satisfied that the disposals and delivery model had been systematically researched and verified.
- Questioned assumptions on which officers had decided not to recommend rebuilding on the London Electricity Board (LEB) site. This site the Committee felt should be considered as it was felt to provide a more cost effective solution.
- Expressed concerns about cost, timescales, deliverability, effect on the Borough, and the notice provided to members of the purchase, as well as sequence of events which had seen the Council firstly acquire a building and then seek to build a service delivery model around this.

- Heard that 7 potential civic centre options had been tested in the business case. Having previously identified the practical alternatives and the base case of staying in Mulberry Place the results of these alternatives were outlined in the report e.g. in each case the available disposal receipt and housing delivery from surplus stock had been modelled.

As a result of consideration of this report the Chair Moved and it was:-

**RESOLVED** that the Committee:

1. Questioned the assumptions on which officers had decided not to recommend rebuilding on the LEB Building site; and
2. Expressed concerns about cost, timescales, deliverability, effect on the Borough, and the notice provided to members, as well as sequence of events which had seen council firstly acquire a building and then seek to build a service delivery model around this.
3. Wanted assurances that Councillors participating in the proposed scrutiny and governance arrangements for the Civic Centre have full and unrestricted access to all of the paper work and documentation throughout the process.

The responses received are set out in **Appendix 1**

## **7.2 MAIN STREAM GRANTS (MSG) PROGRAMME UPDATE**

The Committee received and noted a report that provided an update on the Main Stream Grants Programme. The Committee heard that the 2012-15 MSG programme continued the same funding streams as the previous 2009-12 programme. It was heard that a more in depth development of the new programme was required. In addition, a number of issues and weaknesses the Committee heard been identified across the current 11 funding streams. These included an imbalance in the spread of provision across wards. In some funding streams resources had been spread too thinly across too many projects; this affects their viability and the quality and impacts of services delivered. In many of the funding streams services are fragmented with a lack of integration and cross-referral between projects.

The Committee noted that Tower Hamlets has an extensive and diverse Third Sector. That plays a key role in the delivery of the Tower Hamlets Community Plan and in improving the lives of all those living and working in the Borough. The sector is diverse with a broad range of organisations types, approaches and skills. Whilst the sector also faces many challenges it can be effectively mobilised to make a significant contribution to the corporate goals of the Council.

The Committee heard that MSG is a useful funding mechanism for deploying Third Sector organisations to support the delivery of the Council's key priorities. The funding can be effectively targeted toward specialist service providers in order to meet clearly articulated community needs and grant agreements can be negotiated with successful service providers to maximise the potential achievement of targeted outputs and outcomes.

The Committee heard that for clarity it should be understood that MSG is a 'commissioned grant' process where desired service outcomes and other requirements are clearly specified within what is effectively a 'tender document'. Grants are treated as 'restricted funds' within an organisation's accounts and can therefore only be spent on the funded activity.

The main points of the discussion may be summarised as follows:

1. The Committee was concerned that there should be adequate provision to ensure access to jobs;
2. The Committee wanted to see services being provided that are ambitious and address those who are in greatest need;
3. The Committee wanted to see a more dynamic and transformational jobs programme that would have a realistic opportunity of getting residents back into work;
4. The Committee heard that the greatest challenge is working with those furthest from the employment market and the Third Sector have a good record of success in delivering such programmes;
5. The Committee heard that LBTH has a process in place to ensure that those organisations in receipt of main stream grants are fit for purpose and they have been subject to the necessary robust checks prior to the signing of any contracts.

As a result of consideration of this report the Chair Moved and it was:-

**RESOLVED** that:

the Committee should receive details with regards to the number of organisations in receipt of MSG where any questions have been raised regarding their financial health and stability.

### **7.3 CHALLENGE SESSION REPORT: MEMBER INVOLVEMENT IN SECTION 106 DECISIONS AND THE QUALITY OF SECTION 106 FUNDED SOCIAL HOUSING**

The Committee heard that the challenge session had taken place on 22<sup>nd</sup> January 2015. Overview and Scrutiny had identified a concern amongst some Councillors and residents that the social housing being built in the borough through these agreements is not robust enough, with materials being used which are not suitable for high density housing with a much greater intensity of use than private dwellings. During the election campaign of 2014, the Committee heard that councillors out canvassing witnessed, at first-hand, the

wear and tear on some of the properties, many of which were less than 15 years old, and heard from residents that this was having a detrimental effect on their quality of life.

The Committee was advised that focus of this challenge session had been to explore whether there was an issue with the design and build quality of some of the affordable housing in the borough provided through S106 planning obligations; and, if so, what changes to planning policy, practice or procedures could be made to address these concerns, whilst still ensuring the continued provision of affordable housing in the Borough. The session had been chaired by Councillor Dave Chesterton, Scrutiny Lead for Development and Renewal.

As a result of consideration of this report the Chair Moved and it was:-

**RESOLVED** to:

1. Agree the draft report and the recommendations contained in it; and
2. Authorise the Service Head for Strategy & Equality to amend the draft report before submission to Cabinet, after consultation with the scrutiny review group.

#### **7.4 CHALLENGE SESSION REPORT: IMPROVING CYCLING SAFETY**

The Committee heard that this report outlined the findings of a Scrutiny Challenge session held in January 2015 to help identify cost effective measures that can be implemented to improve cycling safety. It also outlined a number of recommendations to improve practice and performance in this area.

The Committee was informed that in recent years, cycling had grown in popularity for both work and pleasure. The Government aims to make cycling a more convenient, attractive and realistic choice for short journeys, especially those made to work and school. It cites the need to reduce congestion, improve health outcomes and create more pleasant places to live as key issues that cycling can help address. However, as cycle usage has grown, the potential for conflict with other road users including motorists and pedestrians, together with the overall safety of cyclists, has become an area of increasing concern. In addition, it was noted that the session had been underpinned by three core questions:

1. What has been the general response to date from cyclists in the Borough to the measures introduced both in terms of training and infrastructure improvements?
2. What further cost-effective measures can the Council implement to improve cycle safety?
3. What issues/areas of concern do cyclists want the Council to address specifically that have not already been acknowledged in the London Cycling Campaign ward asks for Tower Hamlets

As a result of consideration of this report the Chair Moved and it was:-

**RESOLVED** that:

1. The following amendment to one of the recommendations be moved and passed: “The Council explores the costs and feasibility of an affordable scheme in partnership with the Borough’s registered providers for the provision of secure estate cycle parking” and amend to “The Council explores the costs and feasibility of the provision of secure cycle parking across the Borough”.
2. The revised draft report be agreed and the recommendations contained within it for submission to Cabinet; and
3. The Service Head for Corporate Strategy and Equality is authorised to amend if necessary the draft report before submission to Cabinet, after consultation with the Challenge Session Chair.

## **7.5 COMPLAINTS AND INFORMATION GOVERNANCE SIX-MONTH REPORT**

The Committee received and noted a report that outlined information regarding the Council’s handling of complaints and information requests in the first half of 2014/2015.

It was noted that it is good practice for the Council to consider its performance in both complaints handling and responses to information requests. An annual report is therefore prepared which provides more detailed information, but this six-month report provides an overview of the direction of travel, summarising volumes and performance at a high level.

The main points of the discussion may be summarised as follows:

- A 15% rise in FOI requests in the first quarter had seen performance dip to 77%;
- Whilst the volumes of FOI requests remained high in the second quarter an improvement in performance to 91% was achieved;
- SAR performance rose from 45% in quarter 1 to 76% in quarter 2;
- The Council’s performance in respect of information requests remains subject to close monitoring;
- Performance on responding to corporate complaints had remained broadly on target with for all stages of the corporate complaints process;
- The second quarter had seen a dip in performance for adult social care complaints, with 66% completed in 20 working days.
- There is a need to improve performance in respect of children’s social care complaints; law probity and governance and complaints to the local government ombudsman.

- There is an ongoing dialogue with THH regarding complaints handling to ensure that complaints are properly addressed and that THH provide clarity on what is the trigger for the commencement of any complaints process.

As a result of consideration of this report the Chair Moved and it was:-

**RESOLVED** that:

The Committee note the report.

## **7.6 STRATEGIC PERFORMANCE AND BUDGET REPORT: QUARTER 3**

The Committee had received and noted a report that detailed the financial outturn position of the Council at the end of Quarter 3 compared to budget, and service performance against targets. This it was noted had included the projected year-end position for the:

1. General Fund Revenue, Housing Revenue Account and Capital Programme; and
2. An overview of performance for all of the reportable strategic measures.

In considering the report the Committee expressed concern in relation to the delivery of affordable homes, GCSE results and crime performance, including violence with injury.

As a result of consideration of this report the Chair Moved and it was:-

**RESOLVED** that:

The Committee note the report.

## **8. VERBAL UPDATES FROM SCRUTINY LEADS**

The Committee received and noted the following brief verbal updates from the Scrutiny Leads.

- Councillor J. Peck – 8<sup>th</sup> April, 2015 2:00 pm – 5:00 pm Town Centre Policy;
- Councillor A. Begum – A Challenge Session on Care was to be convened;
- Councillor J. Pierce – The report on the outcome of the Challenge Session on Drug Related Anti-Social Behaviour was scheduled to come to the May meeting of the Committee; and
- Councillor D Jones – The report from the Challenge Session on Literacy was in the process of being drafted.

## 9. PRE-DECISION SCRUTINY OF UNRESTRICTED CABINET PAPERS

The following pre-decision questions were submitted to the Mayor in Cabinet 8th April, 2015.

### Agenda Item 6.3

Property Procedures Disposals and Lettings

Page 127 Section 3.3 Step 2 – What record is kept regarding any interested parties viewing the premises?

Page 127 Section 3.3 Step 4 – Who has responsibility for the receipt and logging of the application forms?

Page 127 Section 3.4 Step 1 – As this is a policy decision that is a change of practice where is the specific advice on the implications of this policy change?

Page 128 Section 3.5 Step 1 – Who decides if a building continues to be a/or is designated as a community building?

Page 129 Section 3.6 Step 2 – There are a number of steps missing before this Step e.g. advertising of the property; consideration of appropriate use; lease restrictions; any works linked to the building and the overall role that the building is to play in the future regenerations of an area.

Page 129 Section 3.6 Step 3 – What criteria is used to judge if the interview process has been a success?

Page 130 Section 3.7 Step 2 – Where in the process of preparing a new lease is the consideration given to the Council's position e.g. Protection for the Council should there be a need to break the lease agreement?

Page 132 Section 4.0 Step 2 – Regarding the processes relating to the decision how to sell who decides that the sale will be by Auction or Tender?

Page 133 Section 4.0 Step 3 – Regarding Tenure there needs to be clarity on who makes the actual decision to sell?

Page 134 Section 4.0 Step 6:

Points B; E; H; L and M

(b) All viewings to be logged;

(e) & (f) Clarity is needed on the deadlines e.g. is it when an offer is received by the Service Head or the time/date when it is received by the Council;

(h) The logging of the offers received should be logged in a book and not a loose leaf folder;

- (l) The inclusion of information such as the bidders track record is too subjective;
- (m) Line 1 delete the word “Any discussion” and insert “each and every discussion” question and Line 5 delete “the discussion” and insert “each and every discussion”;

Page 136 Section 4.2 - Clarity is required on why a late offer would be accepted.

The responses received are set out in **Appendix 2**

**10. ANY OTHER UNRESTRICTED BUSINESS WHICH THE CHAIR CONSIDERS TO BE URGENT**

Nil items

**11. EXCLUSION OF THE PRESS AND PUBLIC**

The agenda circulated contained no exempt/ confidential business and there was therefore no requirement to exclude the press and public to allow for its consideration.

**12. EXEMPT/ CONFIDENTIAL MINUTES**

Nil items.

**13. EXEMPT/ CONFIDENTIAL REPORTS 'CALLED IN'**

Nil items.

**14. PRE-DECISION SCRUTINY OF EXEMPT/ CONFIDENTIAL) CABINET PAPERS**

Nil items.

**15. ANY OTHER EXEMPT/ CONFIDENTIAL BUSINESS THAT THE CHAIR CONSIDERS URGENT**

Nil Items

The meeting ended at 10.45 p.m.

Chair, Councillor Joshua Peck  
Overview & Scrutiny Committee





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# **Appendix 1**

- **Pre Decision Scrutiny Questions – Civic Centre.**

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**LONDON BOROUGH OF TOWER HAMLETS**  
**Pre-Decision Questions - Overview and Scrutiny Committee – 7 April, 2015**

**APPENDIX 1**

Cabinet Report	Question / Comments
<p><b>Agenda Item 6.1</b></p> <p>New Civic Centre Whitechapel</p>	<p>The Overview &amp; Scrutiny Committee:</p> <ol style="list-style-type: none"> <li>1. Reviewed and questioned officers on proposal and programme for procurement of new Civic Centre at Whitechapel, including on implications for One Stop Shop and Idea Stores provision. In particular, committee questioned assumptions on which officers had decided not to recommend rebuilding on the LEB Building site; and</li> </ol> <p style="color: red;">Response - The existing empty sites were considered, such as Southern Grove, Cheviot and LEB, collectively and separately these sites are not large enough to provide for a new civic centre, more importantly it would also mean the retention of the existing buildings, such as JOH, AJH and JDH, which would mean we have a reduced staff number spread over 6 sites, which does not lead to a maximum or cost effective use of the council assets. Currently there are no proposals to close any Idea Stores or One Stop Shops without reprovision.</p> <p>The future operational structure of the Council including the use of One Stop Shops and Idea Stores is under review by CMT/CLC respectively and the outputs of this work will inform any future asset strategy for the Council.</p> <ol style="list-style-type: none"> <li>2. Expressed concerns about cost, timescales, deliverability, effect on borough, and the notice provided to members, as well as sequence of events which had seen council firstly acquire a building and then seek to build a service delivery model around this.</li> </ol> <p style="color: red;">Response – Cabinet have received at least 2 reports on the proposed Civic Centre, February 2013 and February 2014. It should also be noted that the option to relocate to Whitechapel has been part of the Whitechapel Vision which has been to Cabinet on a number of occasions. Therefore the information has been in the public domain for at least 2 years.</p> <p>The hospital site has not been purchased too soon – following on from a Cabinet paper in February 2014, in addition as set out in paragraphs 3.10 to 3.24, the council has</p>

Cabinet Report	Question / Comments
	<p>considered some 7 potential civic centre options as an exit route from Mulberry, these have been reviewed in the context of costs for delivering as well as likely financial impact over the long term view (some 40 years). This work was completed prior to expressing an interest in the site and informed the purchase of it, as we have modelled space utilisation. Public document consulted on with residents and members in December 2013.</p> <p>3. Wanted assurances that Cllrs participating in the proposed scrutiny and governance arrangements for the Civic Centre have full and unrestricted access to all of the paper work and documentation throughout the process?</p> <p>Response - the necessary documents/paperwork will be made available for the scrutiny processes.</p>

## **Appendix 2**

1. **Appendix 2** - The response to Overview & Scrutiny Comments;
2. **Appendix 2a** - Property Procedures for Disposals and Lettings - Tracked changed version for ease of reference; and
3. **Appendix 2b**- Property Procedures for Disposals and Lettings – Clean final version of the procedures.

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**LONDON BOROUGH OF TOWER HAMLETS**  
**Pre-Decision Questions - Overview and Scrutiny Committee – 7 April, 2015**

Cabinet Report	Question / Comments
<p><b>Agenda Item 6.3</b></p> <p>Property Procedures Disposals and Lettings</p>	<p><b>Questions:</b> O&amp;S Committee asked the following:</p> <p><b>Page 127 Section 3.3 Step 2</b> – What record is kept regarding any interested parties viewing the premises? <b>The officer undertaking the viewings will keep a record of those who attend. This has been made clear in the procedure.</b></p> <p><b>Page 127 Section 3.3 Step 4</b> – Who has responsibility for the receipt and logging of the application forms? <b>The Asset Manager responsible for the marketing of the property will be responsible for the receipt and logging of application forms. This has been made clear in the procedure.</b></p> <p><b>Page 127 Section 3.4 Step 1</b> – As this is a policy decision that is a change of practice where is the specific advice on the implications of this policy change? <b>This is not a new policy; it is what happens in practice now and in the past. Please note this step relates to lettings, not long leasehold/freehold disposals.</b></p> <p><b>Page 128 Section 3.5 Step 1</b> – Who decides if a building continues to be a/or is designated as a community building? <b>The type of property, location and purpose for which it is held (e.g. HRA property) or intended to be held will determine if a building continues to be used as a community building. Where new buildings are absorbed in to the portfolio through S106 obligations and or through negotiated community consultation, these will be used as per the agreement with the developer etc. A revised community letting and charging policy is anticipated to be presented to Cabinet within the next 12 months that will aim to rationalise and crystallise council policy in relation to community buildings. There will also be a portfolio challenge as part of the wider corporate asset strategy. It should be noted that ultimately any change of use would be required by Cabinet or planning if not addressed above.</b></p> <p><b>Page 129 Section 3.6 Step 2</b> – There are a number of steps missing before this Step <b>e.g.</b> Advertising of the property; consideration of appropriate use; lease restrictions; any works linked to the building and the overall role that the building is to play in the future regenerations of an area. <b>Step 3.6 is preceded by step 3.3 or 3.4 (the advertising of the</b></p>

Cabinet Report	Question / Comments
	<p>property either done in-house or using an external agent). The previous steps will also include consideration of appropriate use, future needs etc. – although this is primarily driven by the council’s Asset Strategy. Lease restrictions are also considered as part of step 3.2.</p> <p><b>Page 129 Section 3.6 Step 3</b> – What criteria is used to judge if the interview process has been a success? <b>The interview process is intended to establish that the applicant fully understand the terms, the expectations of the council and an understanding that the lease will be managed. While the council will not seek expert advice on the submitted cashflow or business plan, the interview provides an opportunity to ask any questions that officers may have.</b></p> <p><b>Page 130 Section 3.7 Step 2</b> – Where in the process of preparing a new lease is the consideration given to the Council’s position <b>e.g.</b> Protection for the Council should there be a need to break the lease agreement? <b>We will know if the property is likely to be need in the future (e.g. as part of a wider estate regeneration plan) and adequate provisions will be made in the lease to ensure we retain control as and when needed. Again, this will primarily be driven by the council’s Asset Strategy.</b></p> <p><b>Page 132 Section 4.0 Step 2</b> – Regarding the processes relating to the decision how to sell who decides that the sale will be by Auction or Tender? <b>The Service Head, Corporate Property &amp; Capital Delivery, will decide the most appropriate method of sale, taking into account the size, value and condition of the asset.</b></p> <p><b>Page 133 Section 4.0 Step 3</b> – Regarding Tenure there needs to be clarity on who makes the actual decision to sell? <b>The decision on whether to sell on a leasehold or freehold basis will ultimately be made by Cabinet based on the recommendation of the Service Head, Corporate Property &amp; Capital Delivery.</b></p> <p><b>Page 134 Section 4.0 Step 6:</b></p> <p><b>Points B;E; H; L and M</b></p> <p>(b) All viewings to be logged; <b>This is usually the case and is often seen as good practice.</b>  (e) &amp; (f) Clarity is needed on the deadlines <b>e.g.</b> Is it when an offer is received by the Service Head or the time/date when it is received by the Council; <b>They are date and time stamped</b></p>

Cabinet Report	Question / Comments
	<p>on receipt and this clearly demonstrates whether they were received within the bid deadline.</p> <p>(h) The logging of the offers received should be logged in a book and not a loose leaf folder; <b>A formal logging book is used.</b></p> <p>(l) The inclusion of information such as the bidders track record is too subjective; <b>It is standard practice to consider the bidder’s track record as it provides a commercial understanding of their past performance and indication of likely future performance.</b></p> <p>(m) Line 1 delete the word “Any discussion” and insert “each and every discussion” question and Line 5 delete “the discussion” and insert “each and every discussion”; <b>Done.</b></p> <p><b>Page 136 Section 4.2</b> - Clarity is required on why a late offer would be accepted. <b>The council is required, by law, to consider all bids including, in some circumstances, late bids. In the case of late bids, the council must be satisfied that there has been no collusion. This can be achieved by ensuring that late bids are only accepted if the other bids have not yet been opened. However, it should be noted, as stated in section 4.2, the council is placed in a difficult position if a higher offer is received after another offer has been accepted subject to contract. Failure to consider the late bid may leave the council failing in its obligation to secure best consideration, as required under s.123 of Local Government Act 1972.</b></p>

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## Property Procedures for Disposals and Lettings

### Document Control

Version	Date	Summary of Changes	Author	Signed-off Officer
v1.0	31/05/2014	Baseline Product	Howard Lock	Ann Sutcliffe
v2.0	11/07/2014	Minor change update – 4.1 Step 6 (p) page 17	Howard Lock	Ann Sutcliffe
v3.0	29/08/2014	Minor change update – 4.1 Step 6 (q) page 17	Howard Lock	Ann Sutcliffe
v4.0	03/09/2014	G Wilson minor changes & definitions page 21	Howard Lock	Ann Sutcliffe
v5.0	02/10/2014	A Sutcliffe minor changes throughout	Howard Lock	Ann Sutcliffe
v6.0	30/04/2015	Updates following Cabinet (incorporating O&S comments)	Nadir Ahmed	Ann Sutcliffe

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## 1.0 Introduction

### 1.1 Purpose

The purpose of these procedures is to ensure that a standard approach is understood and adopted by Asset Management officers to the disposal and letting of its property holdings.

The procedures apply to all Asset Management officers responsible for implementing the Council's disposals programme and for letting vacant properties. They describe the steps to be taken to declare a property surplus and, subsequently, to dispose of it by sale or on long lease. They also outline the steps to be undertaken when marketing the Council's commercial and community properties using both internal marketing and external agents.

The key steps are described through workflow diagrams (section 2) which identify milestones to support Asset Management officers in managing the processes.

### 1.2 Scope

The Council and all employees and agents are to comply with the Council's Standing Orders, which comprise:

- a. These Property Procedures
- b. The Scheme of Delegations
- c. Financial Regulations
- d. Code of Practice on Local Authority Accounting.
- e. Formal guidance issued by Finance
- f. UK and EU law

In these procedures:

- "Property" shall mean any land or buildings owned by the Council or in which it has a legal interest.
- "Disposal" shall mean the sale of the freehold or the grant of a lease in excess of 25 years.
- "Letting" shall mean the grant of a lease for up to 25 years.
- These procedures will not describe the process for acquisitions.
- These procedures will not describe the process for instructing external agents.
- These procedures will not describe the process for granting way-leaves and easements.
- Land, buildings and property in the ownership of the Housing Revenue Account are included but Right to Buy sales are excluded.

All property is "owned" corporately by the Council in accordance with the recently adopted "Corporate Landlord Model". Any Service occupying property does so in accordance with an Asset Plan prepared jointly by the occupying Service and Asset Management.

These procedures replace all previous procedures and policies and are in accordance with the Cabinet Report, 11 February 2009, (Agenda Item 10.6).

### 1.3 Roles

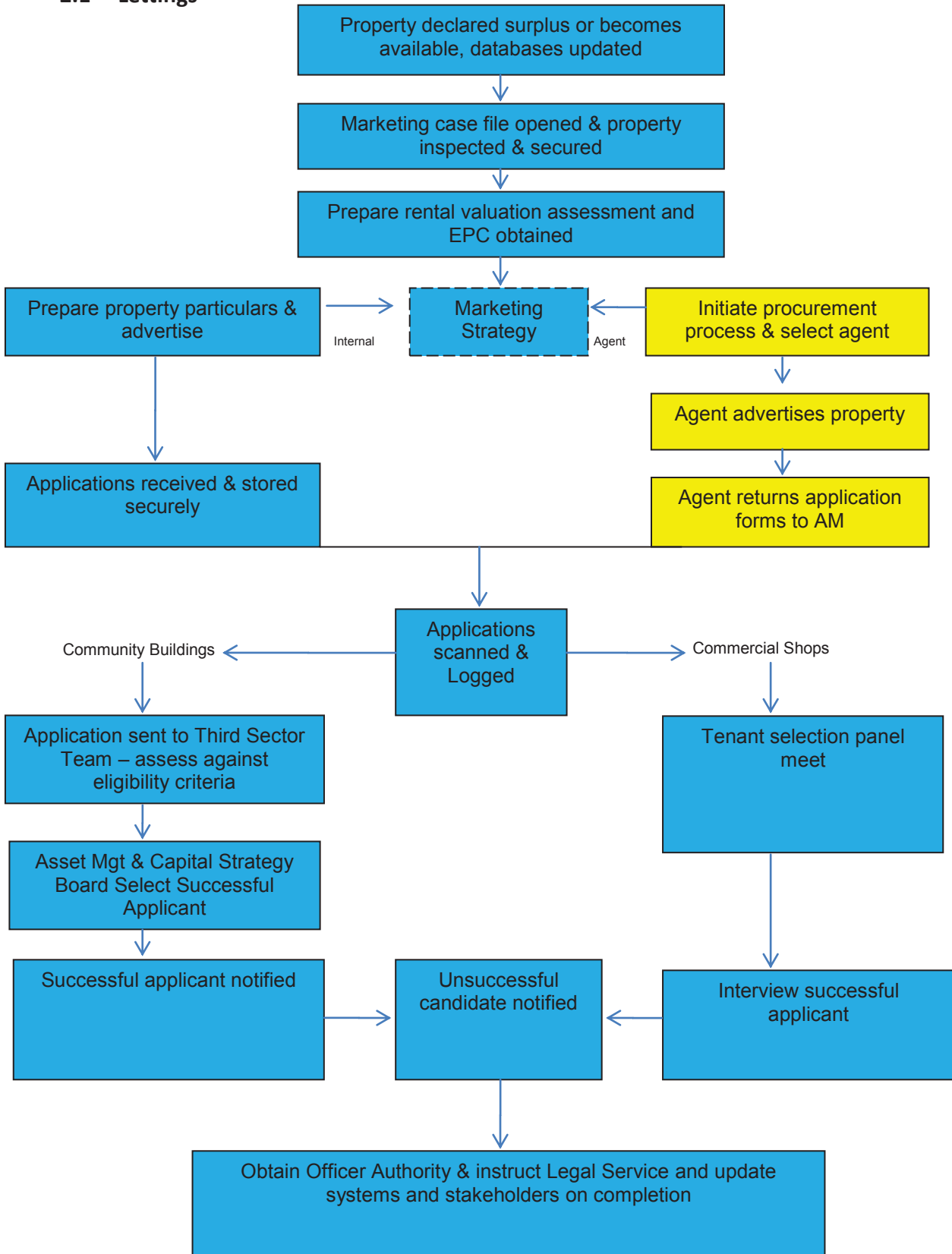
The table below describes the roles and the functions of the officers involved in the letting and disposal process.

<b>Role</b>	<b>Function</b>
Head of Asset Management (HAM)	Responsible for providing overall direction, the HAM has the ultimate responsibility and accountability to ensure that the Council's surplus commercial properties are let or disposed of in a timely manner.
Principal Asset Manager (PAM) And Asset Managers (AM)	Responsible for declaring the property surplus and instructing external agents to market the property. The PAM ensures that the marketing is completed in accordance with these procedures and has overall responsibility for the day to day management of the disposal.
Property Support Officer (PSO)	Responsible for certain tasks associated with marketing the council's commercial and community properties for letting. The PSO will act under the supervision of the PAM or the AM.
Business Support (BS) Team	Responsible for administrative tasks as instructed by the PAM or the AM, and updating the relevant Asset Management service's database.

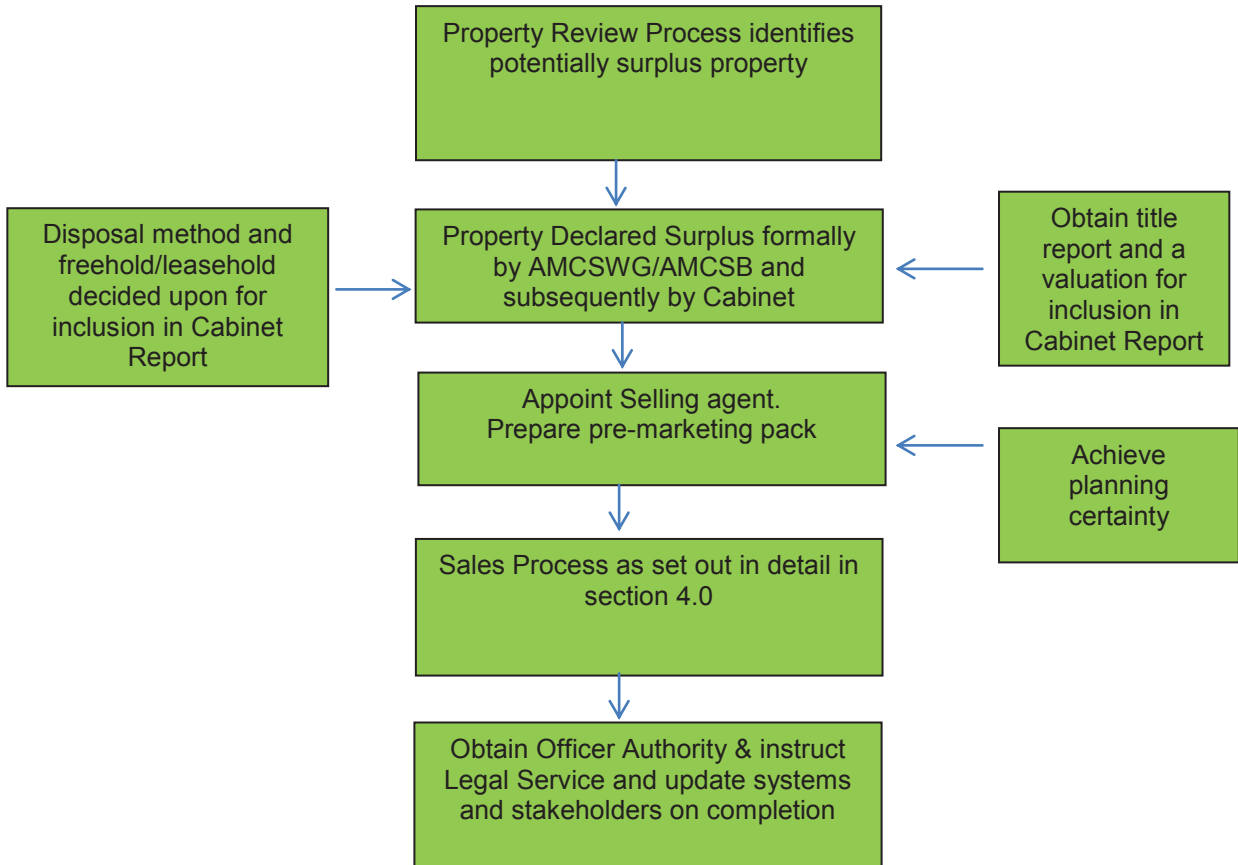


## 2.0 Workflow Diagrams

### 2.1 Lettings



## 2.2 Disposals



## 3.0 Procedures for Lettings

### 3.1 Identification of Surplus Property

#### Step 1

A property will be identified as being surplus to the Council's requirements through a process of ongoing property review in which it has been identified by Asset Management and the occupying Service as being unused, under used or not offering value for money (because, for example, as a result of individual property review, the costs of maintenance may be prohibitive such that it is no longer cost effective to retain them).

Any decision confirming a property as surplus to operational requirements will need to be cleared by the Asset Management and Capital Strategy Working Group (AMCSWG) and by the Asset Management and Capital Strategy Board (AMCSB).

After clearance by AMCSB but prior to a decision by Cabinet, , appropriate Cabinet members and Directors will be consulted on the proposal and their comments, if any, included in the Cabinet report.

#### Step 2

Once a Council-owned commercial or community property becomes available, the PAM will assign the case to an AM officer.

The AM will create a marketing folder in the Asset Management electronic filing structure and notify the BS Team who will add the property to the Asset Management "vacant property schedule" and update the Technology Forge database.

### 3.2 Property Inspection

#### Step 1

The AM will instruct a PSO who will inspect the property to ensure it is secure in order to prevent the risks of:

- Squatters and unauthorised entry
- Fire hazards
- Flooding risks (by turning off the main water pipe)

The inspection should include:

- An Inventory
- A Measurement of floor space
- Meter readings

## Step 2

The inspection findings will be discussed with the AM. The following actions are required to be completed:

- Advise utility companies
- Decide whether electricity is still required
- Arrange any necessary clearance
- Consider any works required to secure a letting
- Advise the Insurance Section that the property is vacant
- Notify the rates department that the property is vacant
- Notify the rental collection department that the property is vacant
- Consider whether a schedule of condition<sub>s</sub> is required

NB: In deciding whether to discontinue a utility service it is relevant to consider the likely period before re-letting, the cost of re-connection and the amount of natural light available to undertake a viewing without electricity.

## Step 3

Before the property is marketed, the AM will carry out an assessment of the rental value for prior approval by the HAM.

## Step 4

The AM will request an Energy Performance Certificate.

### 3.3 Property Marketed by Asset Management

#### Step 1

The AM will allocate the marketing of the property to a PSO to produce the property particulars. The particulars will include the following details:

- Photographs
- The address including postcode
- The location plan of the property
- A brief description of the property and the area
- Rental required
- Length of lease being offered including the standard form of lease
- A floor plan to scale
- Energy Performance Certificate
- Block viewing dates and contact details
- Deadline for applications and name and address of the AM to whom they should be sent.

#### Step 2

The AM will agree the property particulars with the PAM before publication. The minimum publicity should include:

- Council's Web Page

➤ East End Life

Any other form of marketing should be approved by the HAM. The property should be marketed for a six to eight week period. Interested parties are only to view the premises by prior arrangement with Asset Management or on one of the block viewing dates. The officer undertaking the viewings will keep a record of those who attend.

### Step 3

The AM will notify the BS Team of the publication details to ensure that they can answer telephone enquiries from the public in a knowledgeable manner.

### Step 4

The application forms will be received and collated by the AM, dated and stored securely in a hardcopy folder. All electronic applications received by email will be printed and stored accordingly. All bids will be kept in soft copy (electronic) format on a password protected file on the Asset Management drive. The Asset Manager responsible for the marketing of the property will be responsible for the receipt and logging of application forms.

If the form is hand delivered, the PSO who receives the form will note the date and time it was delivered on the envelope and return it to the AM. A standard acknowledgement letter will be issued with the officer's name, original signature and date.

The information from the forms will be logged under the following headings:

- Date received
- Method of delivery (i.e. post, email or hand delivered)
- Applicant(s) name
- Applicant(s) address
- Rent offered
- Lease term required/offered
- Property use proposed

The scanned forms will be saved under the relevant property folder and the original forms will be passed on to the AM.

## 3.4 Property Marketed by External Agent

### Step 1

Where possible it is preferable to market vacant properties locally and without an external agent in order to attract local people and to promote entrepreneurship within the community. This will also save agents' fees. However, on some occasions, a property may be advertised through external agents if there is a potential to generate higher rental income and/or wider coverage is required.

#### Step 2

If it is decided by the HAM that external agents will be used, the AM must satisfy the requirements and conditions of the Council's procurement code in appointing an agent.

#### Step 3

The agent will market the property for a six to eight week period and will conduct all viewings.

#### Step 4

The returned application forms will be received by the AM and stored securely in a hardcopy folder. After the expiry of the application deadline, the PSO will log and scan the application forms.

The information from the forms will be logged as above (Step 4) and saved under the relevant property folder and the original forms will be passed on to the AM.

### 3.5 Selecting a Tenant for a Community Building

#### Step 1

The AM will forward the application forms to the Council's Third Sector Team for assessment against the Gateway Eligibility Criteria.

It will be the responsibility of the Third Sector Team to manage the following process as described and agreed in the Cabinet Report, 04 August 2010, (Agenda Item 7.5):

- Officers from the Third Sector Team (including accountancy support) assess whether applicants have met the Stage 1 Gateway Eligibility Criteria. Successful applicants will be put forward to Stage 2 of the Assessment process
- The Officer Evaluation Panel convenes comprising of Officers from the Third Sector Team.
- The Officer Evaluation Panel assess and evaluate applications using the Stage 2 Assessment Criteria, and will submit a Recommendation Report to the Asset Management and Capital Strategy Board signed off by Finance and Legal Services at Service Head Level.
- The Asset Management and Capital Strategy Board will consider the recommendations and decide upon a successful applicant.
- The Third Sector Team will notify the successful applicant as soon as possible. Feedback will also be offered to the unsuccessful applicants.

#### Step 2

The Third Sector Team will notify the AM of the successful tenant and the AM will instruct Legal Services to commence the legal process.

### 3.6 Selecting a Commercial Tenant

#### Step 1

After the expiry of the application deadline the PSO will log and scan the application forms on a scoring matrix excel format.

#### Step 2

The AM will arrange a panel meeting to select the preferred tenant. The panel will comprise three officers from with Asset Management including the AM.

Applications will be considered and scored on the information provided within the application form.

The following factors will be taken into account when selecting a new tenant:

- Rental value offered
- Suitability of use proposed
- Ability to pay
- Lease term requested/offered
- Business experience
- Business plan
- Cash flow forecast
- Benefit to the parade (if a shop) and community generally

The panel will consider the applications using the Asset Management scoring matrix.

Due to the relatively low rental income for the majority of Council owned shops it is not practical to seek expert advice on the quality of a cash flow or business plan and it is accepted that officers take a 'common sense' approach when assessing these criteria.

It is noted that that there is a general presumption against A3 and A5 uses, however the use will be considered in the context of the viability of the parade and existing level of provision locally.

#### Step 3

As part of the assessment process, the preferred applicant will be invited for an interview to discuss the heads of terms and lease arrangements. If the outcome of the interview is successful, the AM will proceed with the legal process.

If after interview the outcome is not positive, the AM Service will invite the second-placed applicant to an interview.

### 3.7 Instructing Legal Services

#### Step 1

The AM will produce the Heads of Terms and obtain an Officer Authority.

#### Step 2

The AM will instruct Legal Services to prepare the draft new lease and copy the BS Team. The BS Team will populate the 'legal instruction schedule' for monitoring purposes.

#### Step 3

Once the signed lease and deposit agreement is received, Legal Services notify the AM by sending the case closure notification. They will send a copy of the signed counterpart lease to the CAPS Manager to file in CAPS. The data stored on the CAPS will be updated by BS.

#### Step 4

The AM will notify all other stakeholders, including:

- Finance Section
- Insurance Section
- Any other relevant departments or parties

#### Step 5

The BS Team will update the 'empty property schedule' and add the property to the 'occupied shops inspections schedule'.



## 4.0 Procedure for Disposals

### 4.1 Key Steps

#### Step 1 Identification of Surplus Property

A property will be identified as being surplus to the Council's requirements through a process of ongoing property review in which it has been identified by Asset Management and the occupying Service as being unused, under used or not offering value for money (because, for example, as a result of individual property review, the costs of maintenance may be prohibitive such that it is no longer cost effective to retain them).

The HAM will then consult other Service departments and partners to establish whether the property could meet their current or future service needs.

Any decision confirming a property as surplus to operational requirements will need to be cleared by the Asset Management and Capital Strategy Working Group (AMCSWG) and by the Asset Management and Capital Strategy Board (AMCSB).

After clearance by AMCSB but prior to a decision by Cabinet, appropriate Cabinet members and Directors will be consulted on the proposal and their comments, if any, included in the Cabinet report.

The Cabinet report will seek approval to dispose without further referral and will seek delegation for the Service Head, Corporate Property and Capital Delivery to accept an offer and to negotiate further if necessary and to enter into the legal documentation necessary to complete the disposal.

The Cabinet report will recommend whether the sale should be leasehold or freehold and will include an assessment of the value and the impact on value, if any, of the respective methods of sale. It will also advise on the timing of the disposal and when the property should be brought forward.

The Cabinet report will include the comments of the Chief Finance Officer including, for example, capital, revenue or VAT implications and also of the Chief Legal Officer which may include the effect of any covenants, restrictions or other legal implications and the need for any statutory consents.

Property disposals will generally be reported in the open part of the agenda to ensure transparency and openness for the public.

Following approval of Cabinet the AM will create a marketing folder, ask BS to add the property to the Asset Management service's 'empty property schedule' and update the CAPS database accordingly.

#### Step 2 Deciding on the Method of Disposal

The methods of disposal that may be used are (subject to the below):

- (a) Informal tender
- (b) Formal tender
- (c) Auction
- (d) Sale by Negotiation

The Service Head, Corporate Property and Capital Delivery, will determine the most appropriate method of sale. This will be a matter of professional judgement based on the type and location of the property and the prevailing property market and will always be subject to the Council meeting its legal requirements. For example, where a disposal requires outputs such as social housing or community benefit it may be governed by Public Procurement Regulations rather than a straight land sale.

The general presumption is that the method of sale should require the open invitation of competitive bids unless the Service Head, Corporate Property and Capital Delivery, considers that an alternative method of disposal would be appropriate.

Sales by **Formal Tender** and **Auction** (see definitions) are largely regulated by the process that needs to be followed to achieve a legally binding contract and are not described in these procedures.

Sales by **Negotiation** are likely to involve a “special purchaser” (see definitions) and examples are:

- (i) Sale to a sitting tenant.
- (ii) Sale of an access which would enable a purchaser to release development value locked up in other property.
- (iii) Sale to an adjoining owner or sale of a part-interest in a property where amalgamation of interests could enable “marriage value” to be realised.
- (iv) Sale to a public body (e.g. an RSL) at less than market value where other benefits are offered to the Council, provided that such sale is within the General Disposal Consent (England) 2003, or receives Secretary of State Consent and subject to European legislative requirements relating to State Aid.

These examples are given on the basis that the Service Head, Corporate Property and Capital Delivery considers that negotiations with one party would produce a higher figure or, alternatively that non-financial considerations that fall within the Council’s “well-being” powers justify a sale (see definition). In all such cases where the value of the property to be disposed of is over £50,000, a valuation must be provided by external consultants.

The AM will obtain a title report from Legal Services to ascertain any issues that may have an effect on the method of sale.

### Step 3 **Tenure – Deciding on whether to sell the Freehold or Leasehold**

Whether to sell freehold or via long leasehold needs to be considered on a case by case basis. However, the Council has a general preference to dispose of land via long

leasehold.

As part of the report to Cabinet recommending a property being declared surplus, the Service Head, Corporate Property and Capital Delivery, will recommend whether the sale should be leasehold or freehold. This will include an assessment of the value and the impact on value, if any, of the respective methods of sale.

Examples where a freehold sale may be considered appropriate are:

(a) Where the level of capital receipt, over and above a leasehold disposal, exceeds the perceived benefit of a leasehold disposal (i.e. so that a leasehold disposal could not be reasonably justified).

(b) For commercial transactions, where a developer or funder's reasonable requirements require a freehold transfer to facilitate a sale or regeneration.

(c) Where it is necessary to sell a freehold to release additional value from a transaction (e.g. marriage value through bringing sites into single ownership).

This list is not exhaustive and other circumstances could apply. Because of the potential effect on value the Council needs to ensure that each case is considered on its merits.

#### **Step 4 Obtaining Planning Certainty**

Prior to sale, the Service Head, Corporate Property and Capital Delivery will consider what level of certainty of planning is required to maximise value. Greater planning certainty will both crystallise value and increase the Council's chances of achieving a quicker, unconditional sale. Planning certainty can be achieved through obtaining planning permission (outline or full) or alternatively, and to a lesser degree, by preparing a Planning Brief or a Planning Advice Note.

At a site specific level, Planning and Development Briefs provide a valuable vehicle to establish clear principles for the future development of a site, to shape both the form and nature of uses.

A Planning Brief is more appropriate for large sites which may have been the subject of public consultation and its adoption as Council policy by the Cabinet provides a guide to a potential developer, officers and the appropriate Development Committee, of the Council's expectations for the future use of the site.

For smaller sites a Planning Advice Note may be appropriate. Save for transactions under £50,000 in value no property will be valued or marketed without such an Advice Note as a minimum.

All marketing information relating to disposals (except those under statutory powers) will include the relevant Planning Advice Note.

It is acknowledged however that no such documents can fetter the discretion of the development control process in determining a subsequent planning application. Officers will ensure that clear boundaries will be maintained to ensure that the Council exercising its disposal powers as landowner does not fetter its duties as Local Planning Authority.

#### **Step 5 Preparation of Pre-marketing Pack**

The AM will collate an information pack which will differ according to the type of property being sold but generally will include the following:

- Photographs
- The address including postcode
- The location and site plans
- Full responses to pre-contact enquiries
- Energy Performance Certificate
- Condition surveys
- Services and utilities plans
- Asbestos reports
- Planning Advice Note or details of planning permission
- Form of lease or transfer

#### Step 6 The Sales Process for Sale by Informal Tender

When a property is to be sold by informal tender the Council will ensure that the appointed agent widely and openly markets the property. It will also ensure that the highest levels of probity and confidentiality are maintained during the sales process.

The following process will be followed by the AM and the appointed agent to ensure the Council's interests are protected:

- (a) The property must be advertised nationally and locally and a board erected on site.
- (b) The agent will market the property for a six to eight week period, ~~and will~~ conduct all viewings and maintain a log of those viewings.
- (c) All offers are to be submitted in a prescribed pro-forma.
- (d) Offers will be submitted by a fixed time and date.
- (e) Offers must be returned to the Council's Service Head, Corporate Property and Capital Delivery in a plain sealed envelope marked 'OFFER' and identifying the property but not the identity of the bidder. NB Facilities Management and Business Support must not open the bid envelopes and should be instructed accordingly in advance.
- (f) The envelopes are to be date and time stamped on receipt and issued with a receipt number or a sequential number to indicate the order in which offers had been received by the Service Head, Corporate Property and Capital Delivery.
- (g) All offers should be held in a secure place by Asset Management until opening.
- (h) Offers should be opened by the Service Head, Corporate Property and Capital Delivery in the presence of the agent and at least two other officers, including legal representation.

An officer must initial each offer and recorded it in a formal Schedule, in the form of a book, maintained for this purpose by the Corporate Director and the Schedule must be signed and dated by all present when all the offers have been recorded. The Schedule must be kept securely in a locked cabinet in the office of the Service Head, Corporate Property and Capital Delivery.

- (i) Officers will consider and record the following key information:
  - Details of the bidder
  - the financial standing of bidders
  - the level of offer
  - the bidders' track record

- any conditions attached to the offer
  - details of funding
  - the proposed use
  - any other relevant information
- (j) Failure to meet any of the pre-conditions or processes required by the Council may invalidate an offer.
- (k) Officers will rank the offers in accordance of acceptability.
- (l) Following evaluation all offers will be scanned to a secure drive and held by the Service Head, Corporate Property and Capital Delivery who will ensure they are kept securely in a locked cabinet in his/her office. They will also be sent to the agent for full analysis and subsequent detailed reporting to include, amongst other things, a clear recommendation on which bids to progress, whether to enter into a further bid stage and whether to interview.
- (m) ~~Any-Each and every~~ discussions or negotiations with bidders ~~are-is~~ to be formally written up and notes placed on the file. Any negotiations for a land transaction above £250,000 should involve two members of staff, one of whom should be the Service Head, Corporate Property and Capital Delivery or his/her named representative. A file note recording ~~the each and every~~ discussions should be placed on the relevant file.
- (n) Generally, pre-contract enquiries and a standard form of lease/transfer will be made available to bidders as part of the marketing process. Bidders will be required to exchange contracts within a prescribed number of days from the date of being provided with a contract. If exchange does not occur within the prescribed timescale, the offer may be deemed to be withdrawn and the Council may accept an offer from the second ranked bidder
- (o) An overall Register should be kept for all bids received for all asset disposals in addition to the Schedule of bids for a particular disposal.
- (p) Bidders must be informed that bids can, and may, be subject to scrutiny by Overview & Scrutiny Committee and therefore, they will need to identify information that they believe is commercially sensitive and note that after a time period it will no longer be deemed to be commercially sensitive.

#### Step 7 Instructing Legal Services

The PAM will produce the heads of terms and obtain an Officer Authority to instruct Legal Services. The PAM will then instruct Legal Services to prepare the sale documents and copy BS who will populate the 'legal instruction schedule' for monitoring purposes.

Once the sale process has completed Legal Services notify the AM by sending the case closure notification. They will send a copy of the signed transfer to the CAPS Manager to file in CAPS. The data stored on the CAPS will be updated by BS.

The AM will notify all other stakeholders, including:

- Finance Section
- Insurance Section
- The Client department
- Any other relevant departments or parties

BS will update the 'empty property schedule' as necessary.

## 4.2 Other Offers

Any offer which, on the evidence available, is considered to be incomplete, insubstantial or in any other way defective, mischievous or frivolous shall be rejected by the Service Head, [Asset Management Corporate Property & Capital Delivery](#), after consultation with the Director of Law, Probity and Governance.

Late Offers are to be accepted at the discretion of the Service Head, [Asset Management Corporate Property & Capital Delivery](#), after consultation with the Director of Law, Probity and Governance who must ensure that details of the offers already received on time have been secured so that no other officer or person has had access to the offers before they are finally opened. This is to ensure that late bids are only considered provided the bids already received have not been opened. Guidance from The Local Government Ombudsman recognises the difficulties facing Councils if a higher offer is received by the Council after another offer has been accepted subject to contract, particularly in view of the obligation for Councils to achieve best consideration. Such difficulties will be less likely to occur if Councils ensure that exchange of contracts takes place quickly after the decision has been made to whom to sell the property.

Where it is clear that a private “auction” is developing, it is recommended that potential purchasers are given a specific date and time to reconsider and submit their highest and final offer. If the Council wishes to impose any conditions upon acceptance, i.e. completion date, this should be made clear. It is also recommended that potential purchasers are informed that the successful bidder would be given a specific period in which to exchange contracts.

## 4.3 Transactions at less than Market Value

Approval must be obtained from, or on behalf of the Cabinet to disposals or lettings which are proposed to be less than the unrestricted value as defined by the General Disposal Consent (England) 2003 and/or where State Aid issues may arise. The Service Head, [Corporate Property & Capital Delivery, Asset Management](#) shall seek the agreement of Cabinet by submitting a report to accept a disposal at an under-value. The report shall make the level of under-value explicit and will need to set out the well-being benefits to be derived and provide a statement that the well-being “value” matches or exceeds the value foregone.

The Council only has powers derived from the Housing Act 1985 to dispose of land to Registered Social Landlords at less than market value or under the terms of the Local Government Act 1972: General Disposal Consent (England) 2003. Other than these generally consented powers, the Council has to seek the consent of the Secretary of State to sell its assets at less than best consideration.

The Council must be able to demonstrate that it has acted reasonably in agreeing a sale at less than market value; that there was an appropriate decision making process and that regard has been had to the Council’s statutory and fiduciary duties (see definitions). Decisions must be robust and defensible and the monetary or benefit assessment of impacts will require detailed individual assessment in every case.

The Service Head, [Corporate Property & Capital Delivery, Asset Management](#) will establish and keep under review a timetable for each disposal and will advise the AM&CSB. The Service Head, [Corporate Property & Capital Delivery, Asset Management](#) shall provide a detailed report on an agreed basis to the Chief Finance Officer on the progress of disposals for financial planning purposes.

## 5.0 Authority

Disposal of surplus property will be dealt with through Cabinet. Any report to Cabinet will provide a recommendation from the Service Head, [Asset Management Corporate Property & Capital Delivery](#), about the proposed method of sale and whether the sale should be freehold or long leasehold.

Cabinet will be asked to delegate all matters relating to the sale to officers without referring offers back to Cabinet for final approval.

In all dealings with property matters it is essential that the highest levels of probity and confidentiality are maintained to ensure that best consideration is achieved under the Council's statutory duty.

Members have a both a fiduciary duty and statutory duty under S.123 of the Local Government Act 1972 to the residents of the Borough to obtain best consideration.

## 6.0 Definitions

### **“Auction”**

An auction quickly concludes completion and identifies the successful bidder who will sign a binding contract at the sale and exchange a 10% deposit. It is particularly suitable for properties for which there is likely to be keen competition from a wide market of potential cash purchasers, or for properties of an unusual nature but for which there is likely to be a ready market. However, it is often inappropriate for properties where the majority of purchasers will prefer to submit offers subject to contract and to minimise the risk of abortive costs, such as development land, housing sites, etc.

### **“Fiduciary duty”**

Fiduciary duty has been described as a duty to act in “a fairly business-like manner with reasonable skill and caution”. The relevant principles established from case law can be summarised as follows:

- (a) Local Authorities are under a special duty in the exercise of all their powers to consider the financial consequences for the Rates and Council Tax payers. This duty is proportionate and equivalent to the fiduciary duty owed by a person in the position of trustee.
- (b) In considering the financial consequences of a decision, an Authority is required to conduct a balancing exercise between the interests of those who will benefit from the proposed measure and the cost to Rates and Council Tax payers.
- (c) Failure to have proper regard to their fiduciary duty renders a Local Authority decision liable to challenge on the grounds of illegality.
- (d) The fact that an Authority may have an electoral mandate for their decision is irrelevant to the question of whether the act is ultra vires.



### **“Formal Tender”**

This method of disposal creates contractual certainty as, at the final stage, if an offer is accepted it constitutes a legally binding contract. As with an informal tender, the sale will be advertised with a deadline by which prospective purchasers must submit their bid. Each tender document from the bidders must include the full legal contract for sale and a bankers draft as a deposit on the contract. As soon as the “best bid” is selected, the bankers draft is accepted and contracts are automatically exchanged. The successful bidder is then committed to the contract and will have to complete the sale on the appointed date. This form of sale is generally rarely used due to its complexity.

### **“Informal tender”**

This is a flexible method of securing offers of interest in property since it does not bind either party until completion of negotiations. Property is openly marketed and all offers have to be submitted by a fixed closing date. It does not preclude the purchaser or vendor from seeking to renegotiate more advantageous terms even when the sale is at a fairly advanced stage to take account of any changes in circumstances.

Any risks inherent in this can be partly overcome by stipulating time limits for exchanging contracts. This method allows the Council to view a number of competing proposals on a site where the Council has no fixed policy as to exactly what is required or wanted and where consideration can be given to a number of options without contractual obligations to the parties involved.

### **“Market Value”**

The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.

### **“Special purchaser”**

A purchaser to whom a particular asset has special value because of advantages arising from its ownership that would not be available to general purchasers in the market.

### **“Well-being powers”**

The Council will need to meet its obligations in relation to the disposal of assets under Local Government Act 1972 and the General Disposal Consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained (“the Consent”).

Under the Consent a Local Authority has discretion to sell at an “undervalue” of up to £2,000,000. Undervalue is defined as “the difference between the unrestricted value of the interest to be disposed of and the consideration accepted”.

Where an under-value of less than £2,000,000 exists an Authority can dispose at less than market value in pursuance of 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)”.

These are often referred to as the Council’s “well-being powers”.

Where an Authority intends to dispose of land where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (“the undervalue”) is more than £2,000,000 (two million pounds) the requirement is for Authorities to seek specific consent from the Deputy Prime Minister and First Secretary of State (“the Secretary of State”).

In determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the Authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue.

It will be for the local authority to decide whether any proposed disposal requires specific consent under the 1972 Act, since the Secretary of State has no statutory powers to advise authorities that consent is needed in any particular case. Once an application for a specific consent is submitted, the Secretary of State is obliged to make a decision on the proposed disposal on its merits. However, if he is of the opinion that his consent is not required (ie the sale is not at an undervalue), or if he believes that the case falls within the terms of the Consent, his statutory function to give specific consent will not arise. Where an authority is uncertain about the need to seek consent, it may wish to seek its own legal advice on the matter. An authority may find it useful to keep its appointed auditor informed of any legal advice it receives and the proposed action it wishes to take. An auditor has a duty to consider whether the authority is acting lawfully.

Applications for specific consent should be sent to the Secretary of State via the Director of Planning at the Government Office for the relevant Region. The Secretary of State will require the following information:

- i)** a written description of the site and buildings, its physical characteristics, location and surroundings together with a plan which should be accurate enough to allow it to be used to identify the land in the Secretary of State's decision in cases where consent is given;
- ii)** a written description of the authority's tenure and a summary of the details of any leases, encumbrances, such as easements etc, to which it is subject. Details should be given of the purpose(s) for which the authority holds the land. Normally land is held for the purposes of the power under which it was acquired, or taken on lease, unless it has since been formally appropriated to another purpose;
- iii)** a written description of the existing use(s), current planning consents and alternative planning uses(s) that are likely to be permitted;
- iv)** a summary of the proposed transaction, noting the reasons for disposing at an undervalue, the key terms and any restrictions to be imposed by the authority; and
- v)** a detailed Valuation Report covering the matters listed in the Technical Appendix, and signed by a qualified valuer (a member of the RICS). The Department would normally expect the valuation to have been undertaken no earlier than six months before the submission.

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## Property Procedures for Disposals and Lettings

### Document Control

Version	Date	Summary of Changes	Author	Signed-off Officer
v1.0	31/05/2014	Baseline Product	Howard Lock	Ann Sutcliffe
v2.0	11/07/2014	Minor change update – 4.1 Step 6 (p) page 17	Howard Lock	Ann Sutcliffe
v3.0	29/08/2014	Minor change update – 4.1 Step 6 (q) page 17	Howard Lock	Ann Sutcliffe
v4.0	03/09/2014	G Wilson minor changes & definitions page 21	Howard Lock	Ann Sutcliffe
v5.0	02/10/2014	A Sutcliffe minor changes throughout	Howard Lock	Ann Sutcliffe
v6.0	30/04/2015	Updates following Cabinet (incorporating O&S comments)	Nadir Ahmed	Ann Sutcliffe

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**2.0 Workflow Diagrams**

**3.0 Procedures for Lettings**

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## 1.0 Introduction

### 1.1 Purpose

The purpose of these procedures is to ensure that a standard approach is understood and adopted by Asset Management officers to the disposal and letting of its property holdings.

The procedures apply to all Asset Management officers responsible for implementing the Council's disposals programme and for letting vacant properties. They describe the steps to be taken to declare a property surplus and, subsequently, to dispose of it by sale or on long lease. They also outline the steps to be undertaken when marketing the Council's commercial and community properties using both internal marketing and external agents.

The key steps are described through workflow diagrams (section 2) which identify milestones to support Asset Management officers in managing the processes.

### 1.2 Scope

The Council and all employees and agents are to comply with the Council's Standing Orders, which comprise:

- a. These Property Procedures
- b. The Scheme of Delegations
- c. Financial Regulations
- d. Code of Practice on Local Authority Accounting.
- e. Formal guidance issued by Finance
- f. UK and EU law

In these procedures:

- "Property" shall mean any land or buildings owned by the Council or in which it has a legal interest.
- "Disposal" shall mean the sale of the freehold or the grant of a lease in excess of 25 years.
- "Letting" shall mean the grant of a lease for up to 25 years.
- These procedures will not describe the process for acquisitions.
- These procedures will not describe the process for instructing external agents.
- These procedures will not describe the process for granting way-leaves and easements.
- Land, buildings and property in the ownership of the Housing Revenue Account are included but Right to Buy sales are excluded.

All property is "owned" corporately by the Council in accordance with the recently adopted "Corporate Landlord Model". Any Service occupying property does so in accordance with an Asset Plan prepared jointly by the occupying Service and Asset Management.

These procedures replace all previous procedures and policies and are in accordance with the Cabinet Report, 11 February 2009, (Agenda Item 10.6).

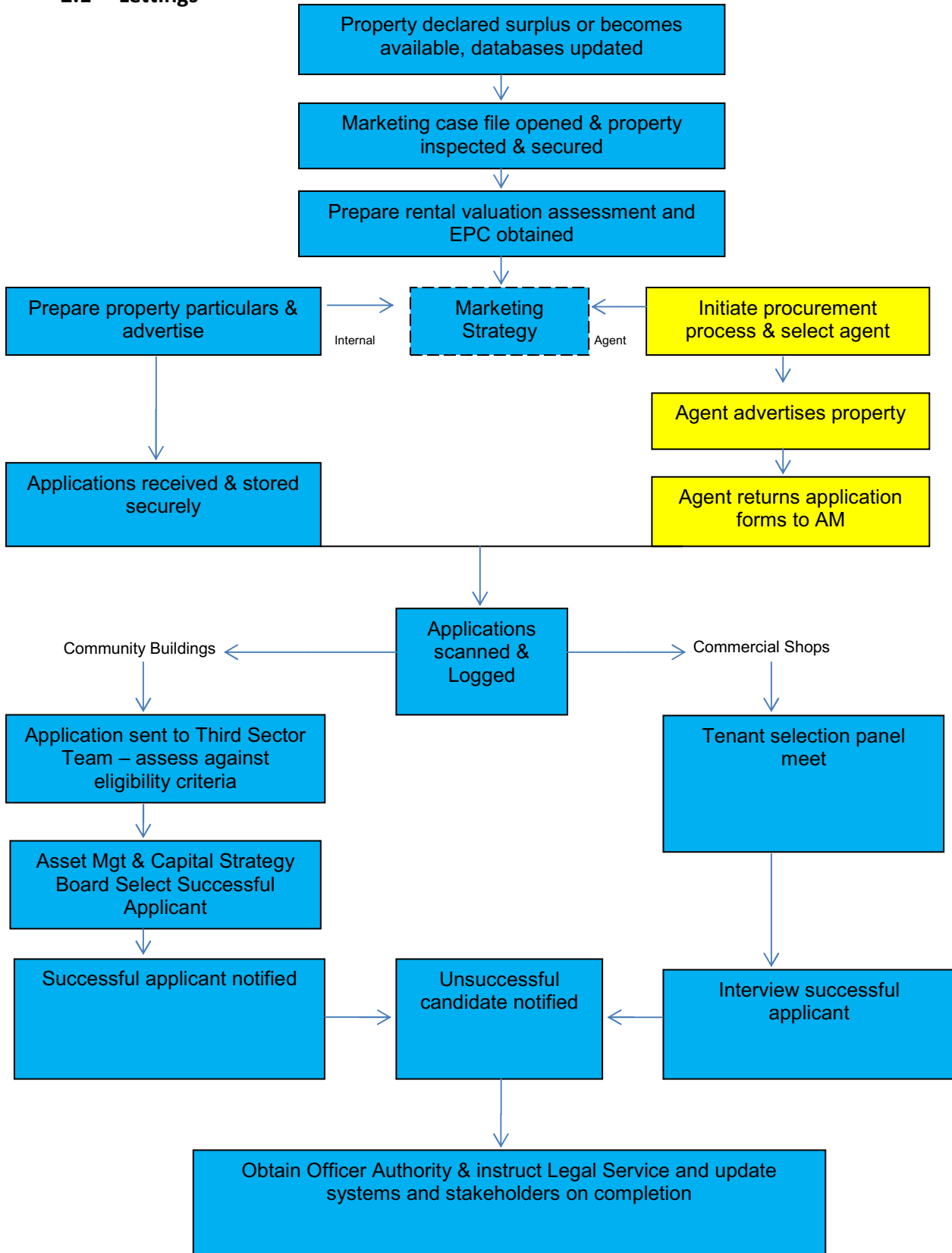
### 1.3 Roles

The table below describes the roles and the functions of the officers involved in the letting and disposal process.

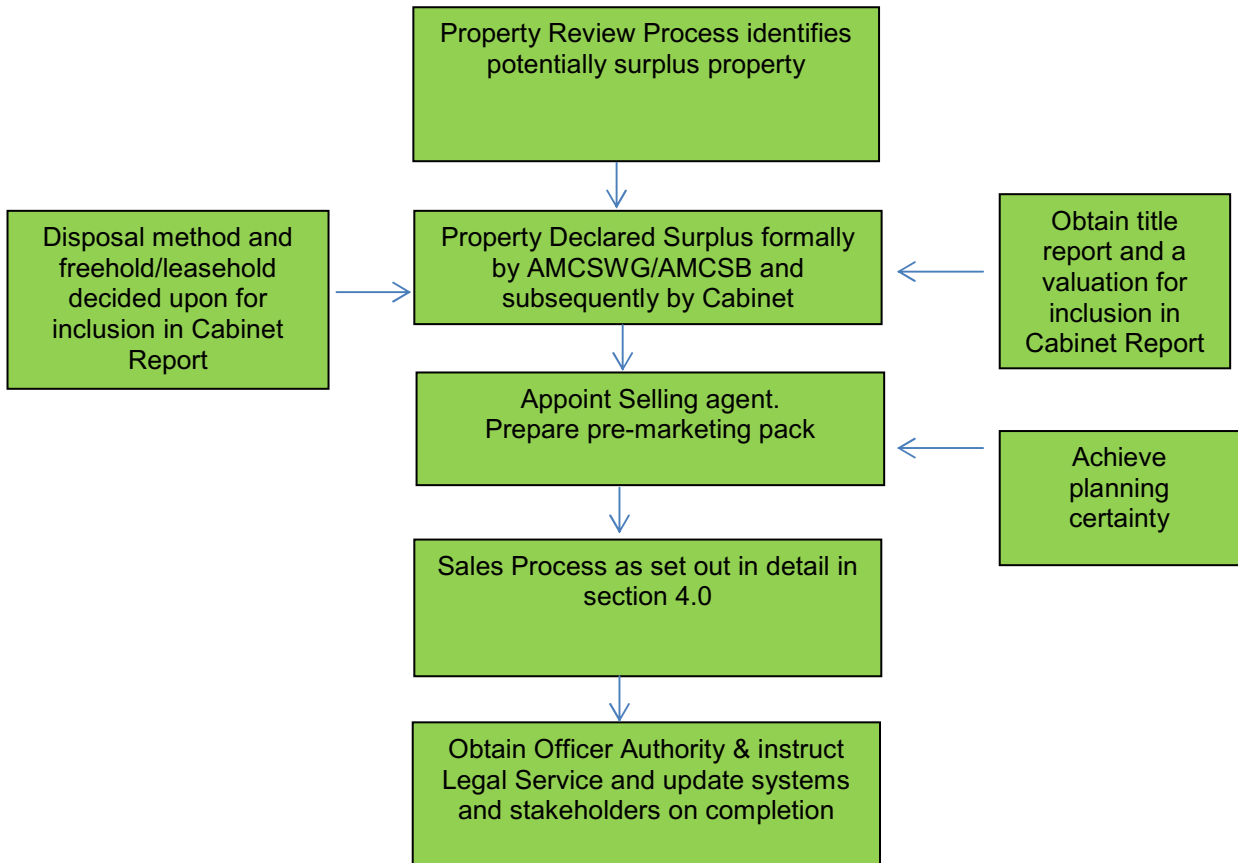
<b>Role</b>	<b>Function</b>
Head of Asset Management (HAM)	Responsible for providing overall direction, the HAM has the ultimate responsibility and accountability to ensure that the Council's surplus commercial properties are let or disposed of in a timely manner.
Principal Asset Manager (PAM) And Asset Managers (AM)	Responsible for declaring the property surplus and instructing external agents to market the property. The PAM ensures that the marketing is completed in accordance with these procedures and has overall responsibility for the day to day management of the disposal.
Property Support Officer (PSO)	Responsible for certain tasks associated with marketing the council's commercial and community properties for letting. The PSO will act under the supervision of the PAM or the AM.
Business Support (BS) Team	Responsible for administrative tasks as instructed by the PAM or the AM, and updating the relevant Asset Management service's database.

## 2.0 Workflow Diagrams

### 2.1 Lettings



## 2.2 Disposals





## 3.0 Procedures for Lettings

### 3.1 Identification of Surplus Property

#### Step 1

A property will be identified as being surplus to the Council's requirements through a process of ongoing property review in which it has been identified by Asset Management and the occupying Service as being unused, under used or not offering value for money (because, for example, as a result of individual property review, the costs of maintenance may be prohibitive such that it is no longer cost effective to retain them).

Any decision confirming a property as surplus to operational requirements will need to be cleared by the Asset Management and Capital Strategy Working Group (AMCSWG) and by the Asset Management and Capital Strategy Board (AMCSB).

After clearance by AMCSB but prior to a decision by Cabinet, , appropriate Cabinet members and Directors will be consulted on the proposal and their comments, if any, included in the Cabinet report.

#### Step 2

Once a Council-owned commercial or community property becomes available, the PAM will assign the case to an AM officer.

The AM will create a marketing folder in the Asset Management electronic filing structure and notify the BS Team who will add the property to the Asset Management "vacant property schedule" and update the Technology Forge database.

### 3.2 Property Inspection

#### Step 1

The AM will instruct a PSO who will inspect the property to ensure it is secure in order to prevent the risks of:

- Squatters and unauthorised entry
- Fire hazards
- Flooding risks (by turning off the main water pipe)

The inspection should include:

- An Inventory
- A Measurement of floor space
- Meter readings

## Step 2

The inspection findings will be discussed with the AM. The following actions are required to be completed:

- Advise utility companies
- Decide whether electricity is still required
- Arrange any necessary clearance
- Consider any works required to secure a letting
- Advise the Insurance Section that the property is vacant
- Notify the rates department that the property is vacant
- Notify the rental collection department that the property is vacant
- Consider whether a schedule of conditions is required

NB: In deciding whether to discontinue a utility service it is relevant to consider the likely period before re-letting, the cost of re-connection and the amount of natural light available to undertake a viewing without electricity.

## Step 3

Before the property is marketed, the AM will carry out an assessment of the rental value for prior approval by the HAM.

## Step 4

The AM will request an Energy Performance Certificate.

### 3.3 Property Marketed by Asset Management

#### Step 1

The AM will allocate the marketing of the property to a PSO to produce the property particulars. The particulars will include the following details:

- Photographs
- The address including postcode
- The location plan of the property
- A brief description of the property and the area
- Rental required
- Length of lease being offered including the standard form of lease
- A floor plan to scale
- Energy Performance Certificate
- Block viewing dates and contact details
- Deadline for applications and name and address of the AM to whom they should be sent.

#### Step 2

The AM will agree the property particulars with the PAM before publication. The minimum publicity should include:

- Council's Web Page

➤ East End Life

Any other form of marketing should be approved by the HAM. The property should be marketed for a six to eight week period. Interested parties are only to view the premises by prior arrangement with Asset Management or on one of the block viewing dates. The officer undertaking the viewings will keep a record of those who attend.

Step 3

The AM will notify the BS Team of the publication details to ensure that they can answer telephone enquiries from the public in a knowledgeable manner.

Step 4

The application forms will be received and collated by the AM, dated and stored securely in a hardcopy folder. All electronic applications received by email will be printed and stored accordingly. All bids will be kept in soft copy (electronic) format on a password protected file on the Asset Management drive. The Asset Manager responsible for the marketing of the property will be responsible for the receipt and logging of application forms.

If the form is hand delivered, the PSO who receives the form will note the date and time it was delivered on the envelope and return it to the AM. A standard acknowledgement letter will be issued with the officer's name, original signature and date.

The information from the forms will be logged under the following headings:

- Date received
- Method of delivery (i.e. post, email or hand delivered)
- Applicant(s) name
- Applicant(s) address
- Rent offered
- Lease term required/offered
- Property use proposed

The scanned forms will be saved under the relevant property folder and the original forms will be passed on to the AM.

### 3.4 Property Marketed by External Agent

Step 1

Where possible it is preferable to market vacant properties locally and without an external agent in order to attract local people and to promote entrepreneurship within the community. This will also save agents' fees. However, on some occasions, a property may be advertised through external agents if there is a potential to generate higher rental income and/or wider coverage is required.

#### Step 2

If it is decided by the HAM that external agents will be used, the AM must satisfy the requirements and conditions of the Council's procurement code in appointing an agent.

#### Step 3

The agent will market the property for a six to eight week period and will conduct all viewings.

#### Step 4

The returned application forms will be received by the AM and stored securely in a hardcopy folder. After the expiry of the application deadline, the PSO will log and scan the application forms.

The information from the forms will be logged as above (Step 4) and saved under the relevant property folder and the original forms will be passed on to the AM.

### 3.5 Selecting a Tenant for a Community Building

#### Step 1

The AM will forward the application forms to the Council's Third Sector Team for assessment against the Gateway Eligibility Criteria.

It will be the responsibility of the Third Sector Team to manage the following process as described and agreed in the Cabinet Report, 04 August 2010, (Agenda Item 7.5):

- Officers from the Third Sector Team (including accountancy support) assess whether applicants have met the Stage 1 Gateway Eligibility Criteria. Successful applicants will be put forward to Stage 2 of the Assessment process
- The Officer Evaluation Panel convenes comprising of Officers from the Third Sector Team.
- The Officer Evaluation Panel assess and evaluate applications using the Stage 2 Assessment Criteria, and will submit a Recommendation Report to the Asset Management and Capital Strategy Board signed off by Finance and Legal Services at Service Head Level.
- The Asset Management and Capital Strategy Board will consider the recommendations and decide upon a successful applicant.
- The Third Sector Team will notify the successful applicant as soon as possible. Feedback will also be offered to the unsuccessful applicants.

## Step 2

The Third Sector Team will notify the AM of the successful tenant and the AM will instruct Legal Services to commence the legal process.

### 3.6 Selecting a Commercial Tenant

#### Step 1

After the expiry of the application deadline the PSO will log and scan the application forms on a scoring matrix excel format.

#### Step 2

The AM will arrange a panel meeting to select the preferred tenant. The panel will comprise three officers from with Asset Management including the AM.

Applications will be considered and scored on the information provided within the application form.

The following factors will be taken into account when selecting a new tenant:

- Rental value offered
- Suitability of use proposed
- Ability to pay
- Lease term requested/offered
- Business experience
- Business plan
- Cash flow forecast
- Benefit to the parade (if a shop) and community generally

The panel will consider the applications using the Asset Management scoring matrix.

Due to the relatively low rental income for the majority of Council owned shops it is not practical to seek expert advice on the quality of a cash flow or business plan and it is accepted that officers take a 'common sense' approach when assessing these criteria.

It is noted that that there is a general presumption against A3 and A5 uses, however the use will be considered in the context of the viability of the parade and existing level of provision locally.

#### Step 3

As part of the assessment process, the preferred applicant will be invited for an interview to discuss the heads of terms and lease arrangements. If the outcome of the interview is successful, the AM will proceed with the legal process.

If after interview the outcome is not positive, the AM Service will invite the second-placed applicant to an interview.

### 3.7 Instructing Legal Services

#### Step 1

The AM will produce the Heads of Terms and obtain an Officer Authority.

#### Step 2

The AM will instruct Legal Services to prepare the draft new lease and copy the BS Team. The BS Team will populate the 'legal instruction schedule' for monitoring purposes.

#### Step 3

Once the signed lease and deposit agreement is received, Legal Services notify the AM by sending the case closure notification. They will send a copy of the signed counterpart lease to the CAPS Manager to file in CAPS. The data stored on the CAPS will be updated by BS.

#### Step 4

The AM will notify all other stakeholders, including:

- Finance Section
- Insurance Section
- Any other relevant departments or parties

#### Step 5

The BS Team will update the 'empty property schedule' and add the property to the 'occupied shops inspections schedule'.

## 4.0 Procedure for Disposals

### 4.1 Key Steps

#### Step 1 Identification of Surplus Property

A property will be identified as being surplus to the Council's requirements through a process of ongoing property review in which it has been identified by Asset Management and the occupying Service as being unused, under used or not offering value for money (because, for example, as a result of individual property review, the costs of maintenance may be prohibitive such that it is no longer cost effective to retain them).

The HAM will then consult other Service departments and partners to establish whether the property could meet their current or future service needs.

Any decision confirming a property as surplus to operational requirements will need to be cleared by the Asset Management and Capital Strategy Working Group (AMCSWG) and by the Asset Management and Capital Strategy Board (AMCSB).

After clearance by AMCSB but prior to a decision by Cabinet, appropriate Cabinet members and Directors will be consulted on the proposal and their comments, if any, included in the Cabinet report.

The Cabinet report will seek approval to dispose without further referral and will seek delegation for the Service Head, Corporate Property and Capital Delivery to accept an offer and to negotiate further if necessary and to enter into the legal documentation necessary to complete the disposal.

The Cabinet report will recommend whether the sale should be leasehold or freehold and will include an assessment of the value and the impact on value, if any, of the respective methods of sale. It will also advise on the timing of the disposal and when the property should be brought forward.

The Cabinet report will include the comments of the Chief Finance Officer including, for example, capital, revenue or VAT implications and also of the Chief Legal Officer which may include the effect of any covenants, restrictions or other legal implications and the need for any statutory consents.

Property disposals will generally be reported in the open part of the agenda to ensure transparency and openness for the public.

Following approval of Cabinet the AM will create a marketing folder, ask BS to add the property to the Asset Management service's 'empty property schedule' and update the CAPS database accordingly.

#### Step 2 Deciding on the Method of Disposal

The methods of disposal that may be used are (subject to the below):

- (a) Informal tender
- (b) Formal tender
- (c) Auction
- (d) Sale by Negotiation

The Service Head, Corporate Property and Capital Delivery, will determine the most appropriate method of sale. This will be a matter of professional judgement based on the type and location of the property and the prevailing property market and will always be subject to the Council meeting its legal requirements. For example, where a disposal requires outputs such as social housing or community benefit it may be governed by Public Procurement Regulations rather than a straight land sale.

The general presumption is that the method of sale should require the open invitation of competitive bids unless the Service Head, Corporate Property and Capital Delivery, considers that an alternative method of disposal would be appropriate.

Sales by **Formal Tender** and **Auction** (see definitions) are largely regulated by the process that needs to be followed to achieve a legally binding contract and are not described in these procedures.

Sales by **Negotiation** are likely to involve a “special purchaser” (see definitions) and examples are:

- (i) Sale to a sitting tenant.
- (ii) Sale of an access which would enable a purchaser to release development value locked up in other property.
- (iii) Sale to an adjoining owner or sale of a part-interest in a property where amalgamation of interests could enable “marriage value” to be realised.
- (iv) Sale to a public body (e.g. an RSL) at less than market value where other benefits are offered to the Council, provided that such sale is within the General Disposal Consent (England) 2003, or receives Secretary of State Consent and subject to European legislative requirements relating to State Aid.

These examples are given on the basis that the Service Head, Corporate Property and Capital Delivery considers that negotiations with one party would produce a higher figure or, alternatively that non-financial considerations that fall within the Council’s “well-being” powers justify a sale (see definition). In all such cases where the value of the property to be disposed of is over £50,000, a valuation must be provided by external consultants.

The AM will obtain a title report from Legal Services to ascertain any issues that may have an effect on the method of sale.

### Step 3 **Tenure – Deciding on whether to sell the Freehold or Leasehold**

Whether to sell freehold or via long leasehold needs to be considered on a case by case basis. However, the Council has a general preference to dispose of land via long



leasehold.

As part of the report to Cabinet recommending a property being declared surplus, the Service Head, Corporate Property and Capital Delivery, will recommend whether the sale should be leasehold or freehold. This will include an assessment of the value and the impact on value, if any, of the respective methods of sale.

Examples where a freehold sale may be considered appropriate are:

(a) Where the level of capital receipt, over and above a leasehold disposal, exceeds the perceived benefit of a leasehold disposal (i.e. so that a leasehold disposal could not be reasonably justified).

(b) For commercial transactions, where a developer or funder's reasonable requirements require a freehold transfer to facilitate a sale or regeneration.

(c) Where it is necessary to sell a freehold to release additional value from a transaction (e.g. marriage value through bringing sites into single ownership).

This list is not exhaustive and other circumstances could apply. Because of the potential effect on value the Council needs to ensure that each case is considered on its merits.

#### **Step 4 Obtaining Planning Certainty**

Prior to sale, the Service Head, Corporate Property and Capital Delivery will consider what level of certainty of planning is required to maximise value. Greater planning certainty will both crystallise value and increase the Council's chances of achieving a quicker, unconditional sale. Planning certainty can be achieved through obtaining planning permission (outline or full) or alternatively, and to a lesser degree, by preparing a Planning Brief or a Planning Advice Note.

At a site specific level, Planning and Development Briefs provide a valuable vehicle to establish clear principles for the future development of a site, to shape both the form and nature of uses.

A Planning Brief is more appropriate for large sites which may have been the subject of public consultation and its adoption as Council policy by the Cabinet provides a guide to a potential developer, officers and the appropriate Development Committee, of the Council's expectations for the future use of the site.

For smaller sites a Planning Advice Note may be appropriate. Save for transactions under £50,000 in value no property will be valued or marketed without such an Advice Note as a minimum.

All marketing information relating to disposals (except those under statutory powers) will include the relevant Planning Advice Note.

It is acknowledged however that no such documents can fetter the discretion of the development control process in determining a subsequent planning application. Officers will ensure that clear boundaries will be maintained to ensure that the Council exercising its disposal powers as landowner does not fetter its duties as Local Planning Authority.

#### **Step 5 Preparation of Pre-marketing Pack**

The AM will collate an information pack which will differ according to the type of property being sold but generally will include the following:

- Photographs
- The address including postcode
- The location and site plans
- Full responses to pre-contact enquiries
- Energy Performance Certificate
- Condition surveys
- Services and utilities plans
- Asbestos reports
- Planning Advice Note or details of planning permission
- Form of lease or transfer

#### **Step 6 The Sales Process for Sale by Informal Tender**

When a property is to be sold by informal tender the Council will ensure that the appointed agent widely and openly markets the property. It will also ensure that the highest levels of probity and confidentiality are maintained during the sales process.

The following process will be followed by the AM and the appointed agent to ensure the Council's interests are protected:

- (a) The property must be advertised nationally and locally and a board erected on site.
- (b) The agent will market the property for a six to eight week period, conduct all viewings and maintain a log of those viewings.
- (c) All offers are to be submitted in a prescribed pro-forma.
- (d) Offers will be submitted by a fixed time and date.
- (e) Offers must be returned to the Council's Service Head, Corporate Property and Capital Delivery in a plain sealed envelope marked 'OFFER' and identifying the property but not the identity of the bidder. NB Facilities Management and Business Support must not open the bid envelopes and should be instructed accordingly in advance.
- (f) The envelopes are to be date and time stamped on receipt and issued with a receipt number or a sequential number to indicate the order in which offers had been received by the Service Head, Corporate Property and Capital Delivery.
- (g) All offers should be held in a secure place by Asset Management until opening.
- (h) Offers should be opened by the Service Head, Corporate Property and Capital Delivery in the presence of the agent and at least two other officers, including legal representation.

An officer must initial each offer and recorded it in a formal Schedule, in the form of a book, maintained for this purpose by the Corporate Director and the Schedule must be signed and dated by all present when all the offers have been recorded. The Schedule must be kept securely in a locked cabinet in the office of the Service Head, Corporate Property and Capital Delivery.

- (i) Officers will consider and record the following key information:
  - Details of the bidder
  - the financial standing of bidders
  - the level of offer
  - the bidders' track record

- any conditions attached to the offer
  - details of funding
  - the proposed use
  - any other relevant information
- (j) Failure to meet any of the pre-conditions or processes required by the Council may invalidate an offer.
- (k) Officers will rank the offers in accordance of acceptability.
- (l) Following evaluation all offers will be scanned to a secure drive and held by the Service Head, Corporate Property and Capital Delivery who will ensure they are kept securely in a locked cabinet in his/her office. They will also be sent to the agent for full analysis and subsequent detailed reporting to include, amongst other things, a clear recommendation on which bids to progress, whether to enter into a further bid stage and whether to interview.
- (m) Each and every discussion or negotiation with bidders is to be formally written up and notes placed on the file. Any negotiations for a land transaction above £250,000 should involve two members of staff, one of whom should be the Service Head, Corporate Property and Capital Delivery or his/her named representative. A file note recording each and every discussion should be placed on the relevant file.
- (n) Generally, pre-contract enquiries and a standard form of lease/transfer will be made available to bidders as part of the marketing process. Bidders will be required to exchange contracts within a prescribed number of days from the date of being provided with a contract. If exchange does not occur within the prescribed timescale, the offer may be deemed to be withdrawn and the Council may accept an offer from the second ranked bidder
- (o) An overall Register should be kept for all bids received for all asset disposals in addition to the Schedule of bids for a particular disposal.
- (p) Bidders must be informed that bids can, and may, be subject to scrutiny by Overview & Scrutiny Committee and therefore, they will need to identify information that they believe is commercially sensitive and note that after a time period it will no longer be deemed to be commercially sensitive.

#### **Step 7 Instructing Legal Services**

The PAM will produce the heads of terms and obtain an Officer Authority to instruct Legal Services. The PAM will then instruct Legal Services to prepare the sale documents and copy BS who will populate the 'legal instruction schedule' for monitoring purposes.

Once the sale process has completed Legal Services notify the AM by sending the case closure notification. They will send a copy of the signed transfer to the CAPS Manager to file in CAPS. The data stored on the CAPS will be updated by BS.

The AM will notify all other stakeholders, including:

- Finance Section
- Insurance Section
- The Client department
- Any other relevant departments or parties

BS will update the 'empty property schedule' as necessary.

## 4.2 Other Offers

Any offer which, on the evidence available, is considered to be incomplete, insubstantial or in any other way defective, mischievous or frivolous shall be rejected by the Service Head, Corporate Property & Capital Delivery, after consultation with the Director of Law, Probity and Governance.

Late Offers are to be accepted at the discretion of the Service Head, Corporate Property & Capital Delivery, after consultation with the Director of Law, Probity and Governance who must ensure that details of the offers already received on time have been secured so that no other officer or person has had access to the offers before they are finally opened. This is to ensure that late bids are only considered provided the bids already received have not been opened. Guidance from The Local Government Ombudsman recognises the difficulties facing Councils if a higher offer is received by the Council after another offer has been accepted subject to contract, particularly in view of the obligation for Councils to achieve best consideration. Such difficulties will be less likely to occur if Councils ensure that exchange of contracts takes place quickly after the decision has been made to whom to sell the property.

Where it is clear that a private “auction” is developing, it is recommended that potential purchasers are given a specific date and time to reconsider and submit their highest and final offer. If the Council wishes to impose any conditions upon acceptance, i.e. completion date, this should be made clear. It is also recommended that potential purchasers are informed that the successful bidder would be given a specific period in which to exchange contracts.

## 4.3 Transactions at less than Market Value

Approval must be obtained from, or on behalf of the Cabinet to disposals or lettings which are proposed to be less than the unrestricted value as defined by the General Disposal Consent (England) 2003 and/or where State Aid issues may arise. The Service Head, Corporate Property & Capital Delivery, shall seek the agreement of Cabinet by submitting a report to accept a disposal at an under-value. The report shall make the level of under-value explicit and will need to set out the well-being benefits to be derived and provide a statement that the well-being “value” matches or exceeds the value foregone.

The Council only has powers derived from the Housing Act 1985 to dispose of land to Registered Social Landlords at less than market value or under the terms of the Local Government Act 1972: General Disposal Consent (England) 2003. Other than these generally consented powers, the Council has to seek the consent of the Secretary of State to sell its assets at less than best consideration.

The Council must be able to demonstrate that it has acted reasonably in agreeing a sale at less than market value; that there was an appropriate decision making process and that regard has been had to the Council’s statutory and fiduciary duties (see definitions). Decisions must be robust and defensible and the monetary or benefit assessment of impacts will require detailed individual assessment in every case.

The Service Head, Corporate Property & Capital Delivery, will establish and keep under review a timetable for each disposal and will advise the AM&CSB. The Service Head, Corporate Property & Capital Delivery, shall provide a detailed report on an agreed basis to the Chief Finance Officer on the progress of disposals for financial planning purposes.

## 5.0 Authority

Disposal of surplus property will be dealt with through Cabinet. Any report to Cabinet will provide a recommendation from the Service Head, Corporate Property & Capital Delivery, about the proposed method of sale and whether the sale should be freehold or long leasehold.

Cabinet will be asked to delegate all matters relating to the sale to officers without referring offers back to Cabinet for final approval.

In all dealings with property matters it is essential that the highest levels of probity and confidentiality are maintained to ensure that best consideration is achieved under the Council's statutory duty.

Members have a both a fiduciary duty and statutory duty under S.123 of the Local Government Act 1972 to the residents of the Borough to obtain best consideration.

## 6.0 Definitions

### **"Auction"**

An auction quickly concludes completion and identifies the successful bidder who will sign a binding contract at the sale and exchange a 10% deposit. It is particularly suitable for properties for which there is likely to be keen competition from a wide market of potential cash purchasers, or for properties of an unusual nature but for which there is likely to be a ready market. However, it is often inappropriate for properties where the majority of purchasers will prefer to submit offers subject to contract and to minimise the risk of abortive costs, such as development land, housing sites, etc.

### **"Fiduciary duty"**

Fiduciary duty has been described as a duty to act in "a fairly business-like manner with reasonable skill and caution". The relevant principles established from case law can be summarised as follows:

- (a) Local Authorities are under a special duty in the exercise of all their powers to consider the financial consequences for the Rates and Council Tax payers. This duty is proportionate and equivalent to the fiduciary duty owed by a person in the position of trustee.
- (b) In considering the financial consequences of a decision, an Authority is required to conduct a balancing exercise between the interests of those who will benefit from the proposed measure and the cost to Rates and Council Tax payers.
- (c) Failure to have proper regard to their fiduciary duty renders a Local Authority decision liable to challenge on the grounds of illegality.
- (d) The fact that an Authority may have an electoral mandate for their decision is irrelevant to the question of whether the act is ultra vires.

### **“Formal Tender”**

This method of disposal creates contractual certainty as, at the final stage, if an offer is accepted it constitutes a legally binding contract. As with an informal tender, the sale will be advertised with a deadline by which prospective purchasers must submit their bid. Each tender document from the bidders must include the full legal contract for sale and a bankers draft as a deposit on the contract. As soon as the “best bid” is selected, the bankers draft is accepted and contracts are automatically exchanged. The successful bidder is then committed to the contract and will have to complete the sale on the appointed date. This form of sale is generally rarely used due to its complexity.

### **“Informal tender”**

This is a flexible method of securing offers of interest in property since it does not bind either party until completion of negotiations. Property is openly marketed and all offers have to be submitted by a fixed closing date. It does not preclude the purchaser or vendor from seeking to renegotiate more advantageous terms even when the sale is at a fairly advanced stage to take account of any changes in circumstances.

Any risks inherent in this can be partly overcome by stipulating time limits for exchanging contracts. This method allows the Council to view a number of competing proposals on a site where the Council has no fixed policy as to exactly what is required or wanted and where consideration can be given to a number of options without contractual obligations to the parties involved.

### **“Market Value”**

The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.

### **“Special purchaser”**

A purchaser to whom a particular asset has special value because of advantages arising from its ownership that would not be available to general purchasers in the market.

### **“Well-being powers”**

The Council will need to meet its obligations in relation to the disposal of assets under Local Government Act 1972 and the General Disposal Consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained (“the Consent”).

Under the Consent a Local Authority has discretion to sell at an “undervalue” of up to £2,000,000. Undervalue is defined as “the difference between the unrestricted value of the interest to be disposed of and the consideration accepted”.

Where an under-value of less than £2,000,000 exists an Authority can dispose at less than market value in pursuance of 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)".

These are often referred to as the Council's "well-being powers".

Where an Authority intends to dispose of land where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is more than £2,000,000 (two million pounds) the requirement is for Authorities to seek specific consent from the Deputy Prime Minister and First Secretary of State ("the Secretary of State").

In determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the Authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue.

It will be for the local authority to decide whether any proposed disposal requires specific consent under the 1972 Act, since the Secretary of State has no statutory powers to advise authorities that consent is needed in any particular case. Once an application for a specific consent is submitted, the Secretary of State is obliged to make a decision on the proposed disposal on its merits. However, if he is of the opinion that his consent is not required (ie the sale is not at an undervalue), or if he believes that the case falls within the terms of the Consent, his statutory function to give specific consent will not arise. Where an authority is uncertain about the need to seek consent, it may wish to seek its own legal advice on the matter. An authority may find it useful to keep its appointed auditor informed of any legal advice it receives and the proposed action it wishes to take. An auditor has a duty to consider whether the authority is acting lawfully.

Applications for specific consent should be sent to the Secretary of State via the Director of Planning at the Government Office for the relevant Region. The Secretary of State will require the following information:

- i)** a written description of the site and buildings, its physical characteristics, location and surroundings together with a plan which should be accurate enough to allow it to be used to identify the land in the Secretary of State's decision in cases where consent is given;
- ii)** a written description of the authority's tenure and a summary of the details of any leases, encumbrances, such as easements etc, to which it is subject. Details should be given of the purpose(s) for which the authority holds the land. Normally land is held for the purposes of the power under which it was acquired, or taken on lease, unless it has since been formally appropriated to another purpose;
- iii)** a written description of the existing use(s), current planning consents and alternative planning uses(s) that are likely to be permitted;
- iv)** a summary of the proposed transaction, noting the reasons for disposing at an undervalue, the key terms and any restrictions to be imposed by the authority; and
- v)** a detailed Valuation Report covering the matters listed in the Technical Appendix, and signed by a qualified valuer (a member of the RICS). The Department would normally expect the valuation to have been undertaken no earlier than six months before the submission.

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# Agenda Item 7.1

<b>Committee:</b> Overview and Scrutiny	<b>Date:</b> 12 May 2015	<b>Classification:</b> Unrestricted	<b>Report No:</b> 7.1	<b>Agenda Item:</b> 7.1
<b>Report of:</b> Interim Monitoring Officer  <b>Originating officer(s)</b> David Galpin, Service Head - Legal Services		<b>Title:</b> Covert investigation under the Regulation of Investigatory Powers Act 2000  <b>Wards Affected:</b> All		

## **REASONS FOR URGENCY**

The report was not published five clear days in advance of the meeting. Before the item can be considered at this meeting, the Chair of the Committee would need to be satisfied that it is necessary to consider information about the Council's use of covert investigation without that consideration being delayed to a later meeting. As the use of covert investigation is sensitive, and given that the last meeting of the Standards Committee was cancelled, the Committee may take the view that it is important that there should not be an extended period without member oversight.

### **1. SUMMARY**

- 1.1. The codes of practice issued by the Home Office in relation to Part 2 of the Regulation of Investigatory Powers Act 2000 ("RIPA") recommend that elected members have oversight of the Council's use of these provisions.
- 1.2. The Council's practice is for reports to be provided to the Standards Advisory Committee and then to the Overview and Scrutiny Committee. This report was prepared for the Standards Advisory Committee meeting of 14 April 2015, which was cancelled.

### **2. DECISIONS REQUIRED**

Overview and Committee is recommended to:-

- 2.1. Consider and comment upon the information provided in the report.

### **3. BACKGROUND**

#### **3.1. Covert investigation and RIPA**

- 3.2. The Council has broad statutory functions and takes targeted enforcement action in relation to those functions, having regard to the Tower Hamlets Community

Plan, the Council's Local Development Framework, any external targets or requirements imposed under relevant legislation and the Council's enforcement policy. There may be circumstances in the discharge of its statutory functions in which it is necessary for the Council to conduct directed surveillance or use a covert human intelligence source for the purpose of preventing crime or disorder.

- 3.3. RIPA was enacted to provide a framework within which a public authority may use covert investigation for the purpose of preventing or detecting crime or of preventing disorder. It is designed to ensure that public authorities do not contravene the obligation in section 6(1) of the Human Rights Act 1998 not to act in a way which is incompatible with an individual's rights under the European Convention on Human Rights ("ECHR"). It is particularly concerned to prevent contravention of the qualified right in Article 8 of the ECHR to respect for private and family life, home and correspondence.

#### **3.4. The Council's use of RIPA**

- 3.5. The Interim Monitoring Officer is the senior responsible officer for ensuring the Council complies with RIPA. The Service Head - Legal Services ("HLS") is his deputy.
- 3.6. The Council has policies on the use of directed surveillance or covert human intelligence sources. The current versions of these policies were approved by Cabinet on 3 October 2012, as appendices to the Council's enforcement policy. The Council also has in place guidance manuals to assist officers in the authorisation process. The policies and guidance are designed to help the Council comply with RIPA and the Codes of Practice issued by the Home Office in relation to directed surveillance and the use of covert human intelligence sources.
- 3.7. The Council's priorities for using RIPA, as specified in its policies are -
- Anti-social behaviour
  - Fly-tipping
  - Unlawful street vending of DVDs and tobacco
  - Underage sales of knives, tobacco, alcohol and fireworks
  - Fraud, including misuse of disabled parking badges and claims for housing benefit
  - Illegal money-lending and related offending
  - Breach of licences
  - Touting.
- 3.8. These priorities may be reviewed when the Council's enforcement policy is brought forward for revision in 2015.

- 3.9. The Council may only use covert investigation for the purposes of serious offences. This means an offence of the following kind –
- An offence punishable by a maximum term of at least 6 months of imprisonment.
  - An offence under section 146 of the Licensing Act 2003 (sale of alcohol to children).
  - An offence under section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children).
  - An offence under section 147A of the Licensing Act 2003 (persistently selling alcohol to children).
  - An offence under section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc. to persons under eighteen).
- 3.10. The Council must also have approval from a court, in addition to an internal authorisation granted by its authorising officer, before carrying out covert surveillance.
- 3.11. In accordance with the Council's policies and manuals, a central record is maintained in Legal Services of all authorisations and approvals granted to carry out either directed surveillance or to use covert human intelligence sources (authorisations under Part 2 of RIPA). The Council provides an annual return to the Office of Surveillance Commissioners (“OSC”), based on the central record.
- 3.12. In order to ensure that applications for RIPA authorisation are of an appropriate standard, the Council's policies and manuals provide that all applications for authorisation to conduct directed surveillance or to use covert human intelligence sources should be considered by a gatekeeper before being passed on to the authorising officer. The Council has a single gatekeeper (the Head of Community Safety Enforcement & Markets within the Community Safety Service). In the absence of the Head of Community Safety Enforcement & Markets, the HLS may act as gatekeeper. The gatekeeper must work with applicant officers to ensure an appropriate standard of applications, including that applications use the current template, correctly identify known targets and properly address issues of necessity, proportionality and collateral intrusion.
- 3.13. The Council has a single authorising officer (Service Head - Community Safety), who has responsibility for considering applications to use directed surveillance or covert human intelligence sources. The policies provide that the Head of Internal Audit may stand in for the Service Head - Community Safety where the Monitoring Officer or HLS consider it necessary.
- 3.14. The Council's policies and manuals require officers who apply for RIPA authorisations to expeditiously forward copies of authorisations, reviews and cancellations to Legal Services for the central record. The HLS (or deputy) attends at CLC's internal deployment meetings to ensure the central record is

being kept up to date. Representatives of each service area in CLC attend these meetings. The Council's authorising officer and gatekeeper attend. The meetings provide an opportunity to check the status of applications and authorisations under RIPA and a forum at which officers may present any operations plans where covert investigation may be required and seek a steer from those at the meeting.

### **3.15. The Council's RIPA applications**

### **3.16. Quarter 3 of 2014/2015**

3.17. A single authorisation was granted in the third quarter of 2014/2015, details of which are set out in the appendix. The internal authorisation was given by the Head of Internal Audit on 10 November 2014. This was confirmed by a District Judge at the Thames Magistrates' Court on 11 November 2014. The surveillance was conducted from 14 November 2014 to 2 December 2014. The authorisation was formally cancelled on 18 December 2014, as surveillance had concluded after sufficient evidence was obtained.

3.18. If possible, further information will be provided regarding the outcome of the investigation in the annual RIPA report.

### **3.19. Quarter 4 of 2014/2015**

3.20. No authorisation was granted in the fourth quarter of 2014/2015.

## **4. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

4.1 This is a report of the Council's use of the Regulation of Investigatory Powers Act 2000 ("RIPA") to the Standards Committee. There are no financial implications arising from the recommendations in this report.

## **5. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)**

5.1. Legal implications are addressed in the body of the report.

## **6. ONE TOWER HAMLETS CONSIDERATIONS**

6.1. Enforcement action that complies with the five principles expressed in the Council's enforcement policy should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.

6.2. The enforcement policy should enhance Council efforts to align its enforcement action with its overall objectives disclosed in the Community Plan and other key documents. The enforcement policy makes clear the need to target enforcement action towards perceived problems. At the same time, the enforcement policy

should discourage enforcement action that is inconsistent with the Council's objectives.

- 6.3. Enforcement action may lead to indirect discrimination in limited circumstances, but this will be justified where the action is necessary and proportionate. Necessity and proportionality are key considerations in respect of every application for authorisation under RIPA.

## **7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 7.1. The enforcement policy seeks to target the Council's enforcement action in accordance with the Community Plan. The Community Plan contains the Council's sustainable community strategy for promoting or improving the economic, social and environmental well-being of Tower Hamlets and contributing to the achievement of sustainable development in the United Kingdom. To the extent that the enforcement policy aligns enforcement action with the Community Plan it will tend to promote sustainable action for a greener environment.

## **8. RISK MANAGEMENT IMPLICATIONS**

- 8.1. Enforcement action carries with it a variety of inherent risks, including the potential for allegations of over- or under-enforcement, discrimination, adverse costs orders and damage to the Council's reputation. It is considered that proper adherence to RIPA, the codes of practice, the Council's policies and guidance will ensure that risks are properly managed. Oversight by the Standards Committee should also provide a useful check that risks are being appropriately managed.

## **9. EFFICIENCY STATEMENT**

- 9.1. The report does not propose any direct expenditure. Rather, it is concerned with regularising decision-making in areas in which the Council is already active. The enforcement policy seeks to ensure that enforcement action is targeted to the Council's policy objectives. This is more likely to lead to efficient enforcement action than a less-controlled enforcement effort. It is also proposed that members will have an oversight role through the Standards Committee. This will provide an opportunity to judge whether the Council's enforcement action is being conducted efficiently.

10. **APPENDICES**

APPENDIX 1 - SUMMARY OF QUARTER 3 RIPA AUTHORISATIONS

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

Brief description of “back ground papers”	Name and telephone number of holder and address where open to inspection.
<b>None</b>	<b>N/A</b>

## APPENDIX 1 - SUMMARY OF QUARTER 3 RIPA AUTHORISATIONS

CS0001	Summary information
Service area:	Community Safety
Date URN granted:	
Application on correct form?	Yes
Date of gatekeeper clearance:	7 October 2014
Date of authorisation:	10 November 2014
Date of Court approval	11 November 2014
Expiry date and time:	11 December 2014
Scheduled review date(s):	None
Dates of reviews:	None
Cancellation:	18 December 2014 (NB surveillance ceased 2 December 2014)
Total time open:	36 days
Type of covert investigation:	Directed surveillance (via body cameras)
Subject matter of investigation:	Bribery allegations
Necessity:	Serious allegations were made of failures to adhere to the Council's employee code of conduct, financial regulations and possible criminal offences involving traders offering inducements not to enforce or carry out financial checks and acceptance by staff of those inducements. Overt investigation would not gather the required evidence due to the clandestine nature of such activities, if the allegations are correct.
Proportionality:	The authorising officer took into account: (1) allegations of bribery are serious; (2) the allegations are fundamental to discharge of the Council's functions; (3) high standards are expected of Council staff; (4) overt investigation would be insufficient; and (5) any collateral intrusion would be low due to the surveillance taking place in public places.
Collateral intrusion:	Visual images and audio would necessarily be recorded of other persons as the investigations would take place in public places. In order to minimise intrusion cameras would only be turned on when it appears that a breach may be occurring. A working copy would be made of relevant footage, although un-edited footage would be securely kept for evidentiary

	purposes.
Outcome:	The Council is taking appropriate internal action under its relevant HR procedures. Relevant surveillance material has been provided to the Metropolitan Police, who are investigating.