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Date: 15.07.22

Dear Member

SCRUTINY COMMITTEE - WEDNESDAY, 20 JULY 2022

Pursuant to Section 100B (4) (b) of the Local Government Act 1972 the Chairman has agreed to add this urgent item to the agenda for the Scrutiny Committee next Wednesday 20 July. This report was not available when the agenda was published.

Agenda Item No

B1 URGENT ITEM - Call-in of Decision 22/00053 - Kent County Council Freehold Property Assets Disposal Policy (Pages 1 - 22)

Yours sincerely

Benjamin Watts
General Counsel

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By: Anna Taylor – Scrutiny Research Officer

To: Scrutiny Committee – 20 July 2022

Subject: Call-in of Decision 22/00053 – Kent County Council Freehold Property Assets Disposal Policy

Background

1. The proposed decision was discussed at the **Policy and Resources Cabinet Committee on 4 May 2022** at which the proposed decision to adopt the Freehold Property Assets Disposal Policy was endorsed. The recommendation on the Record of Decision was updated in response to the Committee discussion as set out on the Record of Decision.
2. Following the decision being taken, the call-in request was submitted by Mrs Dean, supported by Mr Brady and Mr Hood, thus meeting the requirements for any call-in to be supported by a minimum of two Members from different political Groups.
3. The reasons of the call-in were duly considered by the Scrutiny Officer and determined to be valid under the call-in arrangements set out in the Constitution. Call-in reasons must align to one or more of the following criteria under s17.73 of the Constitution:

Members can call-in a decision for one or more of the following reasons:

- (a) The decision is not in line with the Council's Policy Framework,
 - (b) The decision is not in accordance with the Council's Budget,
 - (c) The decision was not taken in accordance with the principles of decision making set out in 8.5, and/or
 - (d) The decision was not taken in accordance with the arrangements set out in Section 12.
4. The reasons submitted for this call-in and are as follows:
 5. **17.73 (a) The decision is not in line with the Council's Policy Framework**

*"I refer to "Framing Kent's Future" the County Council's Strategic Policy Statement, "Vision for Kent" the County Councils Community Strategy, and "Civil Society Strategy" referenced in Framing Kent's Future.
In none of these documents can I find any reference to an obligation on the VCS and Parish Councils to provide quantified evidence of the value of their contribution towards working with KCC as a partner across any services. Other considerations are to be taken into account in order to achieve the best outcomes for Kent people, including sustainability, better services, better health, transfer of responsibility to*

communities and individuals, and reshaping of KCC commissioning services from one size fits all to delivering more localised services.

The report to P and R on 4th May contains the following statements.

2.3 Whilst there are options where community value or other policy matters can be considered, the financial position is such that unless there is a cost benefit from a community bid which will have a direct impact on the delivery of KCC statutory services, where the opportunity benefit can be monetarised, the best financial and commercially viable bid will be taken forward.

4.1 Where proposals are able to evidence a reduction in statutory service costs, these will be taken into account as part of the evaluation of any bids, but must be evidenced, deliverable and legally binding.

6. 9 The decision to accept an offer is based on a balanced blend of considerations but will normally be the highest financial offer which has the best chance of completion in a timely way. It may account for other considerations such as social / community return where there is a proven and quantified case that there is an overall benefit to the Council's statutory service delivery and this presents a higher financial return to the Council compared to the best commercial bid.

Conversely in the Council's Policy Framework documents, Framing Kent's Future, Vision for Kent and the associated Civil Society Strategy, a number of statements are made about the need to work collaboratively for a wide variety of reasons with VCS and Parish Councils. I quote a selection below. Nowhere can I find any reference to these policies including an obligation on the VCS to prove its monetary value to the council. Instead, other benefits are taken into account to make a holistic judgement. The Disposal Policy is not clear about how it is comparable with these holistic policies.

Framing Kent's Future. P 10 - Working more closely than ever before with our partners gives us the best chance of delivering better outcomes whilst making the most of our resources collectively - taking the view that what the council needs is wider than our own organisation's services and budgets.

P34 - Community action, often facilitated by active Parish Councils is strong in many rural areas and is an asset that can be harnessed to tackle some of the issues communities face, including meeting the needs of an ageing population, social isolation, transport and access to services and opportunities. In order to support a modern and prosperous rural Kent, we need to ensure that Kent's rural areas have the social, physical and business critical infrastructure in place that communitiesneed to succeed.

P21 – Ensure that as we redesign the way we deliver our services and adapt our physical presence in communities, we make these places accessible and inclusive for local community groups and the voluntary, community and social enterprise sector, offering a space for people to meet or use these assets to deliver activities.

P 53 – We will Work within the system to ensure a strong focus on preventative community services, building a strong relationship with the social sector in Kent and their role in supporting a system with focus on prevention.

Vision for Kent

Ambition 3 To Put Citizens in Control, includes the following two commitments"

2 to encourage a more resilient society, where communities identify local priorities and have more influence and involvement in the shape and delivery of services , which overcomes the need for remote and one size fits all solutions from public agencies

3 To support the Voluntary and Community Sector to become more entrepreneurial, so the sector can expand and deliver more value for public sector investment, while retaining their independence. "

Additionally at pages 8 and 9 the following appear.

" We recognise that there is an appetite from voluntary and community groups parish and town councils and the faith sector to become more involved in public services in a range of ways, up to and including direct delivery. We welcome this ambition and.... will work with others to support greater engagement in delivering services that are both localised and sustainable. "

Page 9 - " We have ambitious plans to encourage the growth of charities and social enterprises that can take on more responsibility for providing services. "

The Civil Society Strategy very recently approved by KCC, is referenced in Framing Kent's Future. It contains the following statements.

" Fair Funding as an enabler to a sustainable social sector.

Why is this important - Our infrastructure offer is one way of supporting the sector, but our own funding practices must equally support not destabilise the sector. If these are right, then it will enable continued diversity in those that deliver services funded by the Council but also help to ensure our grants and contracts are accessible to a wide range of organisations, without creating dependency and threatening the independence of some organisations

6. 17.73 (c) The decision was not taken in accordance with the principles of decision making set out in 8.5,

8.5 (b) There has been no due consultation.

The Property Assets Disposal Policy shows no consultation has been held with any partners in the social sector, VCS or KALC for Parish Councils, concerning the impact of this policy change on their activities. The P and R paper only is listed under "consultation".

Councils Policy Framework: Framing Kent's Future: Equality objectives states

" we need to have honest and ongoing conversations with people in Kent about their needs and expectations for all the services we provide collectively, so we can better prioritise the way we use our resources."

8.5 (d) Duty of Openness.

There is insufficient openness in describing the manner in which Community groups including Parish Councils can prepare the Business Plans required by the Strategy, including in particular the calculation of Social Value and preventative

services, in such a way that a bid could exceed the highest commercial bid on the open market. The Social Value of Green Spaces is particularly problematic.

8.5 (e) Clarity of aims and desired outcomes.

The report in several places refers to the need for KCC to accept the highest market price achievable in a 'timely manner'. Effectively these will be unconditional bids. It also refers to consideration being given to Community bids but places restrictions on the latter which require the preparation of a business case based on Social Value calculations, evidenced, deliverable and legally binding reductions to KCC in service delivery, and proven and quantified need for statutory services. It is unclear whether all, or any of these are required for a commercial bid to succeed. It is unclear what level of monetary value would secure success for an unconditional commercial bid above an unconditional Community Bid which satisfies all other KCC considerations. Would 1p be enough?

With regard to assets where a Community has successfully gained registration of the asset as an Asset of Community Value, it appears that KCC will, immediately after the six month moratorium period, place the asset on the open market. This would have the outcome that any applicant for ACV status would need to be certain, when requesting ACV listing, that by the end of the six months, all the funding for their bid would have been secured. This may not be achievable, eg for a Parish Council, the PWLB application process requires community consultation, and agreement within a Local Authority Budget cycle. These requirements by KCC may frustrate national legislation which was formulated to assist Community Groups in taking over such buildings.

8.5(f) Explanation of the options considered and giving reasons for decisions.

The conclusion of the Record of Decision decision papers here suggests that preference for community bids are 'considered financially unviable'. The Cabinet Member stated at P and R that KCC would no longer be able to agree 'so many' of these bids. No clear explanation has been given about the manner in which a Community Bid could be successfully prepared to meet KCC specifications and beyond a few headings, how it would be evaluated.

No quantified monetary explanation is given, and no 'scoring' grid of bids against criteria is provided after an award so a Community group would have no previous examples on which to base the likelihood of success.

This is important since the preparation of a community bid may carry a significant cost to any community group in consultancy on Business Plans, Social Value, etc in addition to normal building valuation and condition surveys.

Process

7. As per the call-in procedure, Democratic Services must consider all call-in requests against the criteria detailed in the constitution, which are themselves based on the legal requirements under the Local Government Act 2000 to have an appropriate

mechanism to allow Executive decisions to be scrutinised. This call-in has been assessed as valid in that it meets the constitutional requirements for call-in that a justification, that aligns with the headings contained within the constitution, has been provided. In determining its validity no judgement is passed on the reasons put forward by the Members, this is for the Scrutiny Committee to review and determine.

8. The Cabinet Member or his representative and relevant Officers will be attending the Scrutiny Committee meeting to present their response to the call-in.
9. The Scrutiny Committee should consider the reasons set out by the Members calling-in the decision and the response from the Executive given at the meeting, giving due attention to the information made available during questioning and discussion on this item.

Options for the Scrutiny Committee

10. The Scrutiny Committee may:
 - a) make no comments
 - b) express comments but not require reconsideration of the decision
 - c) require implementation of the decision to be postponed pending reconsideration of the matter by the decision-maker in light of the Committee's comments; or
 - d) require implementation of the decision to be postponed pending review or scrutiny of the matter by the full Council.

Appendix

- [Record of Decision – 22/00053](#)
- [Decision Report – 22/00053](#)
- [Decision Report Appendix A – Disposals Process](#)
- [Decision Report Appendix B – KCC Freehold Property Assets Disposal Policy](#)

Background Documents

[Policy and Resources Cabinet Committee, 4 May 2022](#)

Report Author

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KENT COUNTY COUNCIL –RECORD OF DECISION

DECISION TAKEN BY:

Peter Oakford, Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services

DECISION NO:

22/00053

For publication**Key decision: Yes****Subject:** Kent County Council Freehold Property Assets Disposal Policy

Decision: As Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services, I agree to:

1. adopt the Freehold Property Assets Disposal Policy, which reflects the Executives priorities in the delivery of the Council's objectives; and
2. implement the necessary disposal process, which implements the policy within the framework, as set out under the property management protocol in the constitution.

Reason(s) for decision:

A policy is required to support the Disposals Programme over the next 5 years which reflects the executive priorities in the delivery of the Council's objectives. This will ensure that Kent County Council's (KCC's) disposal assets are treated in the interests of KCC's key priorities and reinvestment requirements and will facilitate consistent and transparent decision making in respect of the disposal assets. The policy should overcome challenges that can hinder the efficient disposal of KCC assets and may result in savings in terms of resource deployment and holding costs.

Cabinet Committee recommendations and other consultation:

The proposed decision was discussed at the Policy and Resources Cabinet Committee, 4th May 2022 and the proceedings were as follows:

It was RESOLVED that the decision proposed to be taken by the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services, to: -

- a) adopt the Freehold Property Assets Disposal Policy attached to the report as Appendix B, which reflects the Executives priorities in the delivery of the Council's objectives; and
- b) delegate authority to the Director of Infrastructure, in consultation with the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services, to take such actions as are necessary to implement this decision, including, but not limited to, finalising the terms of and entering into contracts or other legal agreements

be ENDORSED.

The recommendation on the Record of Decision has been updated in response to the Committee discussion with the following updates made to the recommendation:

Part a - remained unchanged

Part b – amended to reference to the Property Management Protocol which removed the requirement to delegate authority.

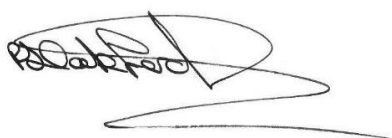
Part c - was removed, as was not required. Page 7

Any alternatives considered and rejected:

Other approaches were considered, such as preference or increased weighting during evaluation to be given to community or other policy objectives and organisations, such as affordable housing. These approaches often lead to a reduced capital receipt to the Council or increased risk. Given the financial position of the Council, these options have not been progressed and are considered financially unviable at this time. Any proceeds from the disposal of assets are to be re-invested into the Council's Medium-Term Financial Plan against the executive priorities, such as School Places and to reduce the need for borrowing and associated revenue costs.

There is a requirement for a policy in this area and the Policy will reflect the executive priorities. The process behind the Policy is based upon KCC's statutory and fiduciary requirements, property disposal management and best practice. It will also account for transparency and an even-handed approach. The policy will be flexible in terms of its implementation though a framework of requirements will be set out to conform to the points above. The policy will consider best financial consideration vs. opportunity cost

Any interest declared when the decision was taken and any dispensation granted by the Proper Officer: None.



.....
signed

30 July 2022

.....
date

From: Rebecca Spore, Director of Infrastructure

To: Peter Oakford – Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services

Subject: 22/00053 Kent County Council Freehold Property Assets Disposal Policy

Key decision Yes

Classification: Unrestricted Report

Past Pathway of report: None

Future Pathway of report: Cabinet Member Decision

Electoral Division: ALL

Summary: Once Kent County Council (KCC's) freehold assets are declared surplus, they are sold or transferred (disposed of) into new ownership. Much of what amounts to a disposal process is governed by KCC's statutory and fiduciary duties, and its constitution. However, elements of the process and how offers are evaluated are subject to a degree of discretion, particularly when powers deriving from statutory instruments are considered. The disposal policy seeks to set out the Executives priorities and how these will be considered as part of any disposal process.

A process has been set out by officers which enables the administration and delivery of the Disposal Policy which is set out in Appendix A.

Recommendation(s): The Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services is asked to consider and endorse or make recommendations on the proposed decision to:

1. adopt the Freehold Property Assets Disposal Policy, which reflects the Executives priorities in the delivery of the Council's objectives; and
2. implement the necessary disposal process, which implements the policy within the framework, as set out under the property management protocol in the constitution.

1. Introduction

- 1.1 Kent County Council (KCC) has an extensive portfolio of property assets, held for a variety of purposes for example, facilitating administration and decision-making requirements, community engagement, public service delivery, development, investment, and policy returns etc. It also holds land for statutory purposes such as highway land.
- 1.2 Land and property is a resource. While it has a beneficial use to KCC, it will be considered an asset for the purpose for which it is deployed. On the other hand, where there is no longer a purpose for which to hold it, the asset may be considered a liability to the estate in terms of its financial requirements and

associated holding risks. It is at this point of holding an asset without purpose that the property may be seen as a means to raise investment capital and/or facilitate others benefit through its redevelopment or reuse outside of the estate.

- 1.3 Essentially this principle encapsulates a Local Authority's basis for the performance of its fiduciary duty to taxpayers and deliver overall value for money from its estate. Subsequently, when Kent County Council identifies that an asset no longer has a beneficial purpose, it is "declared surplus"; it will usually then initiate a process of disposing of this asset.
- 1.4 This report sets out a proposal for a Freehold Property Assets Disposal Policy and explains the process, setting out KCC's broad framework for considering disposal assets, its principles that ensure it meets statutory and fiduciary duties in a transparent way and the drivers for considering how it may take disposal decisions.
- 1.5 This report sets out:
 - The overall context framework for considering a disposal of freehold assets.
 - Overview of Disposal process from appraisal of the surplus asset through to its transfer.
 - Considerations and basis for the decision to dispose of the asset.

2. Proposed Disposal Policy

- 2.1. The disposal process is largely set out by legislative requirements which are set out within the Policy, under section 'Policy Operating Principles', but there are some areas where discretion can be made. The executive has set out its proposed policy as to application of any element of discretion in line with the Council's priorities which is attached in Appendix B.
- 2.2. The sale of freehold assets over a value of £10,000 generates a "capital receipt". These receipts minus the associated disposal costs are used to fund the Council's Capital Programme or can be used to pay down capital debt. The capital programme financial requirement has, over the years, been considerably in excess of the disposal receipts generated through the Disposal Programme resulting in KCC funding the gap via alternative sources, such as prudential borrowing, planning s106 monies etc.
- 2.3. KCC's budget continues to be under pressure, an impact which is also felt by its capital budgets and the implications of any borrowing on the long-term borrowing position of the Council. For every £10 million borrowed the revenue impact is approximately £700k per annum for the next 25 years. As part of the Medium-Term Financial Plan the financial position is such that in order to deliver a balanced budget position as approved by County Council in February 2022, it is necessary to make a number of service and policy changes. Whilst there are options where community value or other policy matters can be considered, the financial position is such that unless there is a cost benefit from a community bid which will have a direct impact on the delivery of KCC statutory services, where the opportunity benefit can be monetarised, the best financial and commercially viable bid will be taken forward. The policy will have a life of 5 years, but will be reviewed after year 1 and 3 to determine any impact on KCC's wider objectives

and statutory requirements and to consider if any amendments are needed to take account of changing circumstances and/or consider improvement opportunities.

- 2.4. There are other options for utilising the Councils Assets for the delivery of additional community and social benefit, such as facilitating affordable housing by making sites available. In this example, KCC has no statutory or planning function to deliver affordable housing, nor does it have a policy that prioritises it. Housing and the provision of affordable housing via planning conditions is a district and unitary council area. Whilst under the policy any proposal submitted would be considered, it would not be taken forward unless the financial benefit was considered to be the best commercial offer.
- 2.5. KCC has no Community Asset Transfer Policy and will exercise an open marketing approach to determine where it will obtain the best outcome for its assets and ensure an even-handed and transparent approach. However, organisations delivering community outcomes are still encouraged to bid and offer on KCC assets, particularly but not limited to those organisations who are qualifying organisations under the Asset of Community Value Regulations.

3. Policy Legislative Framework and Governance

- 3.1. As a local Authority, KCC must comply with statute and regulations, but may also derive powers from certain Government instruments. These set out a broad framework for considering an asset being considered for disposal and to form the basis of KCC's Disposal of Land Assets Policy.
- 3.2. **Local Government Act 1972, s.123 – Disposal of Land by Principal Councils** – This section permits councils to dispose of their assets, but also requires that it obtains best consideration. The section also covers other requirements such as the disposal of open spaces etc.
- 3.3. **Circular 06/03: Local Government Act 1972: General Disposal Consent 2003 – disposal of land for less than the best consideration that can reasonably be obtained.** - This provides Councils with the power to dispose of assets at an undervalue (up to a limit currently £2m). However, there remains a duty to not divest public assets in this way unless they are satisfied that the circumstances warrant such action.
- 3.4. **Critchel Downs Rules** – Where a Council has acquired property under compulsory purchase powers, these rules may (but do not always) apply to a surplus asset intended for disposal. This can be seen in the document 'Guidance on Compulsory purchase process and The Critchel Down Rules' (2019 update), published by the Department for Levelling Up, Housing and Communities.
- 3.5. **Schedule 1 Academies Act 2010** – KCC is an Education Authority and is bound to comply with this act. Where school land is effectively surplus, the Council must follow this process before it commences a disposal process. This can be seen in the document 'Changes to the requirements for disposing of

school land under Schedule 1 to the Academies Act 2010 (formerly Schedule 35A disposals).

3.6. **S.77 School Standards and Framework Act 1998** – Before a disposal of a school playing field, appropriate consent may be required. This is set out in the ‘General Consents: Section 77 School Standards and Frameworks Act 1998’ published by the Department for Education.

3.7. **Assets of Community Value (England) Regulations 2012** – Many of KCC’s assets may fall within the assets of community value definition, whereby in the event an asset is registered as such by a qualifying body, before a disposal is offered on the market, it must follow appropriate processes. The regulations can be seen in ‘The Assets of Community Value (England) Regulations 2012’ available on legislation.gov.uk.

3.8. There may be other matters to consider such as permitted development, planning, use derived from planning legislation and impact of highways legislation too, which may not be listed here as although they may be considered, they may not directly relate to only disposal property for KCC.

3.9. The governance process is set out in the Councils constitution which is followed when a property is taken forward for disposal with a key decision being taken forward as appropriate.

4. Financial Considerations

4.1 The Council has a fiduciary duty to its taxpayers and stakeholders to ensure that its property assets deliver value for money as far as it reasonably can, considering its requirements to deliver statutory services for which it is responsible, additional services that it has decided to deliver, policies that it has committed to deliver on etc. Where assets no longer serve the Council in this way, its duty is to utilise them to raise capital or revenue funds to support these.

4.2 As a local Authority KCC is required to be transparent and even-handed in its dealings and this extends to the disposal of its assets. The disposal of property is usually a competitive transactional process and therefore some of its elements are inevitably confidential to:

- Ensure that the Council’s ability to optimise its disposal position is not undermined.
- Protect any remaining position it may have in respect of a disposed asset.
- Withhold short or long term strategic and tactical disposal positions.

4.3 In most cases, a property disposal will be offered to the open market to ensure that any interested party has the opportunity to acquire it. There will be exceptions to this position (although these would remain solely at KCC’s discretion) where:

- The Council’s return (financial and/or non-financial) will likely be greater through an arrangement with a single party. This may for example be to

another public body, charitable body or a “special purchaser” (like a neighbour).

- Where the disposal has little or de-minimus commercial return and was a follow up to a request generated from outside of the Council.

4.4. The current disposal pipeline has an estimated value of circa £90 million. The forgone opportunity costs should the Council have to borrow the equivalent sum would equate to £6.3 million of year-on-year revenue costs for the next 25 years, which would need to be found elsewhere in the budget through operational savings. Where proposals are able to evidence a reduction in statutory service costs, these will be taken into account as part of the evaluation of any bids, but must be evidenced, deliverable and legally binding.

5. Equality Implications

5.1 Ordinarily disposals carry no significant Equality implications as the property is already vacant and equality impacts on ceasing services at the property have been considered already.

5.2 Where there may be equality implications that will impact positively on people with protected characteristics, they will be raised and brought to the attention of the decisionmaker.

6 Conclusions

6.1 When assets become surplus, KCC must dispose of them where they have no other purpose for which to hold them.

6.2 As a Local Authority, KCC must dispose of its assets in accordance with statute, its fiduciary duty, powers and constitution (including the Property Management Protocol, Procurement Rules, Delegations etc.)

6.3 KCC uses its receipts from disposals to reinvest in its statutory and service priorities. Its capital programme is not fully funded and relies on capital receipts, S106 contribution or prudential borrowing. Where the council uses prudential borrowing, this increases the long-term revenue burden to the council with corresponding revenue savings needed.

6.4 KCC runs a transparent and even-handed disposal process and as a point of first principle, assets will be exposed to the market for disposal, unless there is a case for not doing so (e.g. special purchaser terms).

6.5 Occasionally KCC is required to dispose of assets because of a statutory requirement or may be required to transfer assets to rectify historical issues. These will not be subject to the same evaluation criteria as with other disposals but require transfers to include only the extent of asset necessary and where applicable to recover compensation and/or costs.

6.6 Whether through marketing or a public notice, all disposals will be advertised, and any requirements of statute and the Council’s Constitution satisfied.

6.7 The disposal process will work within any legislative and planning constraints.

6.8 KCC does not run a Community Asset Transfer Application Process, nor does it prioritise its assets against but may consider community and social return.

6.9 The decision to accept an offer is based on a balanced blend of considerations but will normally be the highest financial offer which has the best chance of completion in a timely way. It may account for other considerations such as social / community return where there is a proven and quantified case that there is an overall benefit to the Council's statutory service delivery and this presents a higher financial return to the Council compared to the best commercial bid.

7 Recommendation(s)

Recommendation(s): The Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services is asked to consider and endorse or make recommendations on the proposed decision to:

1. adopt the Freehold Property Assets Disposal Policy, which reflects the Executives priorities in the delivery of the Council's objectives; and
2. implement the necessary disposal process, which implements the policy within the framework, as set out under the property management protocol in the constitution.

8. Background documents

8.1 Appendix A – Disposals Process.

8.2 Appendix B – DRAFT KCC Freehold Property Assets Disposal Policy.

8.3 Appendix C – Proposed Record of Decision.

9 Contact details

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Kent County Council Freehold Property Assets Disposal Policy

Appendix A - Disposals Process

1. Stage 1 - Before Assets are Considered for Disposal

1.1. Before an asset can be declared surplus, KCC must consider the purpose for which it is (or can potentially be) held. The following sets out examples where KCC has a purpose and may therefore not dispose of an asset:

- There is an identified requirement for KCC to deliver a service or services from land or buildings.
- Investment purposes from which to derive an income or develop betterment from capital value.
- The asset is held for a statutory purpose.
- The asset was acquired for the better management and/or mitigation of infrastructure, planning and/or infrastructure facilities.
- The asset is being held for some future purpose including assets acquired under compulsory purchase legislation or privately.

1.2. Where there is no purpose to hold an asset, it will be declared surplus and disposed of, subject to satisfying any requirements set out in statute. The Surplus Declaration Process has 2 main steps to determine this. First, that its surplus to the current use of the asset and secondly to consider where KCC may have a future requirement that the asset may satisfy.

1.3. The decision to declare surplus the current use is one taken by the Service Director in consultation with its Cabinet Member.

1.4. After it is determined that KCC has no future use of the asset following a requirement match process, the property will be declared surplus by the Director of Infrastructure in consultation with the Cabinet Member for Finance, Corporate and Traded Services. Note if the Property is already vacant, the Surplus Declaration process will not require a “current use” surplus declaration.

2. Stage 2 - Disposal Process

Preliminary Appraisal

2.1. All surplus assets are appraised to determine the likely best disposal approach. In this phase, an asset’s legal position will be determined, and its value assessed. Other complimentary information may also be considered including the following:

- A report on title
- A confidential estimate of open market value or formal valuation
- Any matters affecting planning use / development potential
- Matters of cost, risk, and opportunity
- Encumbrances such as seeking of consents and approvals (e.g. Asset of Community Value, playing field etc.)

2.2. The surplus asset is placed onto the disposals programme list. All due diligence is carried out to determine what is likely the best approach to disposal. Due diligence will include legal, planning, any identified areas of consultation (where matters of social/policy/community return may arise), adjoining interests, estimate of open market value, vacant holding costs and risk etc. Options and a recommendation are considered by the Director of Infrastructure, Cabinet Member, Property Board etc. as appropriate, depending on the complexity of options and issues that the disposal may pose. A decision is then made on how to take the disposal of the asset forward.

Exposure to Market / Preferred Applicant Phase

2.3. Each asset will have its own bespoke pathway based upon the outcomes arising from the appraisal stage. This stage will include the following:

- Consultation Requirements
- Procurement of appropriate professional expertise (e.g. planning, legal, valuation and agency) to support the disposal process including any purchaser selection and decision processes.
- A transparent marketing process in most cases, unless there is a case approved by the Director of Infrastructure to sell to a purchaser without exposing the asset to the open market.
- Minimum advertising requirements for a disposal.
- A pre-disposal valuation that determines KCC's open market value expectations

2.4. There are 5 main routes to disposal:

(1) Actions to dispose where KCC has declared the asset surplus and the asset is to be marketed - The asset will be exposed to the market via an agent with market location and /or sector competency for a minimum period that ensures a good level of interest. The method of marketing (i.e. private treaty by negotiation, informal tender, formal tender or auction) will be appropriate to the asset as determined at the appraisal stage and consistent with its disposal strategy.

(2) Actions to dispose where KCC has declared the asset surplus and will sell to a special purchaser - The asset will be offered to an identified special purchaser either immediately following the appraisal process or following the withdrawal of the asset from a marketing process:

- Ensure there is good reason to offer the asset directly to a third party and bypass open marketing.
- Consider any comments received from an appropriate public notice/ advertisement that there is an intention to sell to an individual.
- Justify the terms of any proposed transfer of asset with the appropriate professional advice including valuations.

(3) Actions to dispose where a third party has requested that KCC dispose of its asset to them - An asset which is potentially not being used by KCC but is brought to its attention by a third party who has an intention to acquire it. In order to sell the asset in this way, KCC will:

- Determine whether it should or not declare the asset surplus.

- Ensure there is good reason to offer the asset directly to a third party and bypass open marketing.
- Consider whether the asset should be openly marketed (particularly relevant if the asset could be of interest to more than one applicant e.g. a neighbour).
- Advertise the intention to sell the property if it is to the individual.
- Justify the terms of the transfer with a valuation and any other professional advice and consultations needed.
- Since this is likely to be for the benefit of a sole third party, fee coverage for the whole or part of the process may be sought.

(4) Actions to Dispose for statutory purposes - Assets held by KCC are sometimes subject to statutory transfers to other organisations such as in Local Government Re-organisations, School asset transfers under relevant legislation or where there is a Compulsory Purchase Order. In these cases:

- KCC will only transfer the extent of the asset required and will retain parts of the title that are not required under the statute to be transferred.
- KCC will obtain whatever maximum value is due in these circumstances and seek where relevant disturbance compensation, costs, and any other claimable items.

(5) Actions to Rectify Historic Boundary and Title Matters - KCC holds an extensive freehold estate and from time-to-time historic issues are identified in respect of boundaries or small land parcels. In such instances, the overall case should be assessed on its facts and the rectification proceed as required within the delegation framework of the Constitution.

Assets of Community Value

2.5 KCC assets are nominated from time to time under Assets of Community Value (England) Regulations 2012. KCC retains a list of all nominated assets and where the asset is declared surplus and placed into its Disposals Programme, it will follow the Asset of Community Value Process with the relevant District Authority and respect any timescale requirements before an asset is placed on to the open market.

2.6 In the interests of transparency, qualifying organisations under the legislation will be required to bid/offer for the asset, following any moratorium period, along with all other interested parties and their offer / bid assessed alongside the other parties' offers.

Community Asset Transfer

2.7. KCC has no Community Asset Transfer Policy and prefers to exercise an open marketing approach to determine where it will obtain the best outcome for its assets and ensure an even-handed and transparent approach.

2.8. Organisations delivering Community Outcomes are still encouraged to bid / offer on KCC assets, particularly but not limited to those organisations who are qualifying organisations under the Asset of Community Value Regulations.

2.9. Any organisation who wishes to bid / offer and would like KCC to consider community return as a factor will have to provide supporting information including:

- A business case for the proposal
- An estimate of financial value for the outcomes of community return with supporting evidence / information as to the delivery against KCC statutory service requirements so that it may be verified and compared alongside any other bids / offers.

Evaluation and Decision Phase

2.10. Following on from the process to receive offers / bids or offer to a single applicant, a decision to dispose will need to be considered. The following will be weighed up to evaluate KCC's best position in respect of the disposal:

- Time, cost & risk of continuing to hold the asset.
- Confirmation / demonstration that all statutory requirements have been satisfied.
- The financial consideration being offered.
- The conditions precedent, if any, of the offers being held.
- The estimated time until conditions are satisfied.
- Ability and likelihood of applicant to complete.
- Additional non-monetary returns.
- Assessment against other due diligence as required.
- Where it is to be transferred to a special purchaser, that the transparency conditions have been met.
- Any comments following on from consultation activity.

2.11. These evaluation criteria will follow the principles set out in the Property Assets Disposal Policy as outlined in the report. The weighting of these criteria to a degree will depend upon a number of asset specific factors, stemming from the risk of continuing to hold a property, obtain completion, critical dates affecting the holding strategy, value, Council specific matters like budget balancing and external influencing factors such as planning cycles etc.

Decision to Dispose

2.12. Once the evaluation process is completed, a recommendation will be placed before the Decision Maker in accordance with Constitutional Requirements and delegated limits.

Disposal Transfer

2.13 Once terms are finalised and agreed in accordance with the decision above, the matter will exchange and complete via a legal process. Where offers are conditional, the conditions will have to first be satisfied before completion takes place.

Kent County Council Freehold Property Assets Disposal Policy

Appendix B

KENT COUNTY COUNCIL DISPOSAL POLICY

Policy	Kent County Council Freehold Property Assets Disposal Policy
Description	<p>Kent County Council (KCC) holds building and land assets for the purposes of delivering and supporting service delivery and deriving a financial return (capital and/or revenue) to support KCC's financial position.</p> <p>Where KCC has no further use or redeployment of these assets they are declared surplus. Surplus assets should be disposed of, which means sell or transfer them on to a new owner.</p> <p>Whilst KCC has a main statutory duty to transfer at best consideration (s123 Local Government Act 1972), there are other considerations and a degree of discretion as to the operation of a disposal.</p> <p>Any receipt arising from the disposal of KCC's asset is used to support KCC's capital investment priorities.</p> <p>This policy is devised to ensure that treatment of disposals is consistent, even-handed and aligned to KCC's duties, service requirements and wider objectives.</p>
Requirements of the Policy	<ol style="list-style-type: none"> i. Sets out KCC's position ensuring an even-handed and transparent approach and meeting all its statutory and fiduciary requirements. ii. Prioritise a receipt to support KCC's Capital Programme and Service Investment requirements in line with the executives' priorities. iii. Recognise that opportunity cost may exist within offers that support wider community and social outcomes and consider them where they do not conflict with point ii. iv. Ensure there are clearly defined routes for KCC's disposal types and that statutory disposals (e.g. property required under a CPO or under Education or Academies Acts) may not be subject to the same evaluation criteria identified in the policy but will be treated in accordance with the statutory requirements. v. Able to effectively respond to KCC's Future Assets Strategy.
Impact	<ul style="list-style-type: none"> • Supports and demonstrates KCC's transparency and an even-handed approach to disposals. • Prioritises clearly KCC's requirement to use capital raised through the disposals programme for its re-investment requirements. • In the absence of a community asset transfer process, ensures that community and social outcomes can be considered in terms of "opportunity cost" to the Council if it is clearly demonstrated. • Improves the speed in responding to disposal challenges. • Become a basis for measuring the success of KCC's disposals programme and identify any areas where further improvement is necessary.

EQIA	Disposal of assets do not have any negative impact on any group screened under the EQIA. On transfer, a purchaser may reuse a property that may have positive impacts on groups screened under the EQIA.
Policy Operating Principles	<p>The process up to Evaluation of Disposal</p> <ol style="list-style-type: none"> 1. Disposals will comply with KCC's statutory and fiduciary duties and consider the use of powers it has under various instruments. 2. Management and decisions relating to a disposal asset will be conducted in accordance with KCC's constitution and more specifically (but not limited to) its Property Management Protocol. 3. Assets for disposal must first be declared surplus. Before an asset can be declared surplus, a process that examines whether there is a purpose to continue holding the asset must be completed. 4. All disposal assets will be properly assessed to understand potential and the most appropriate action necessary to meet it. 5. Depending on the asset type, 5 main routes to disposal are identified with slightly differing approaches. These are assets to be: <ul style="list-style-type: none"> • openly marketed • sold to a special purchaser • sold because a third party has requested it and the value is considered De Minimis • transferred/sold under statutory requirements • transferred to rectify matters arising from historical reasons. 6. All routes must satisfy minimum consultation, transparency, advertising and due diligence requirements. <p>Criteria Considered at Evaluation</p> <ol style="list-style-type: none"> 1. Time, cost and risk of continuing to hold the asset. 2. Confirmation / demonstration that all statutory requirements have been satisfied. 3. The financial consideration being offered. 4. The conditions precedent, if any, of the offers being held. 5. The estimated time until conditions being satisfied. 6. Ability and likelihood of applicant to complete. 7. Additional non-monetary returns. 8. Assessment against other due diligence as required. 9. Where it is to be transferred to a special purchaser, that the transparency conditions have been met. 10. Any comments following on from consultation activity. <p>Evaluation Criteria</p> <ol style="list-style-type: none"> 1. Ability to Complete the transaction within accepted timescales – ensuring KCC does not hold surplus assets with their associated costs and risks longer than necessary or have to remarket and sell incurring additional costs. 2. Financial Case – KCC will prioritise best financial consideration - ensuring that resources generated and saved can be redirected to KCC's statutory service and policy priorities as much as possible. 3. Social / Community Value Considerations – will be considered as an “opportunity cost” where there is a proven case that there is an opportunity for KCC to save or reallocate its budget to deliver its statutory services. This is assessed as follows:

	<p>(Highest Acceptable Offer) – (Social Value Offer) = (Benefit Cost)</p> <p><i>Where (Benefit Cost) must be at least equal to a sustainable service saving or budget reallocation plus demonstratable additional Social / Community benefit.</i></p> <p>This is to ensure that investment is prioritised towards KCC's statutory and policy requirements as a first call, but that where Social / Community return can demonstrate added value over and above this, that it will be considered.</p>
Period of Operation	5 years from date of policy implementation, whereupon it will be reviewed and renewed, or sooner where instructed by the Leader or Cabinet Member responsible for KCC's Property Estate.
Review	The policy will also be reviewed at year 1 and 3 to determine any impact on KCC's wider objectives and statutory requirements and to consider whether the policy should be amended to take account of changing circumstances and/or consider improvement opportunities.
Policy Ownership	<p>Peter Oakford, Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services.</p> <p>Rebecca Spore, Director of Infrastructure</p> <p>Contact: Mark Cheverton MRICS Infrastructure Property Policy & Strategy Manager 03000 415940 mark.cheverton@kent.gov.uk</p>

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