

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

To: Policy and Resources Cabinet Committee – 4 May 2022

Subject: Kent County Council Freehold Property Assets Disposal Policy

Key decision This Policy impacts the treatment of KCC's Disposal Programme. Disposals are likely to arise across Kent and may be of interest in number of electoral divisions. Furthermore, the Disposal Programme involves assets, many of which may be disposed of for sums greater than £1 million.

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 Policy and Resources Cabinet Committee is asked to consider and endorse or make recommendations to the Deputy Leader and Cabinet Member for Finance, Corporate and Traded Services on the proposed decision to:

1. Adopt the Freehold Property Assets Disposal Policy attached to this decision in Appendix B, which reflects the Executives priorities in the delivery of the Council's objectives.
2. Delegate authority to the Director of Infrastructure 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; and
3. Delegate authority to the Director of Infrastructure for ongoing maintenance, management, and review of the Policy.

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. **Critchell 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 Critchell 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)

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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.