

Policy and Resources Cabinet Committee Report – 4th May 2022

Item: 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.