



Tameside Metropolitan Borough Council

Corporate Policy: Disposal of Council Owned Land

September 2020

Policy Document Revisions

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CORPORATE POLICY

Disposal of Council Owned Land

1. AIMS OF THIS POLICY

- 1.1 The Council had adopted a Strategic Asset Management Plan (SAMP) to ensure that the Council's property assets contribute pro-actively to the delivery of the organisation's priorities.
- 1.2 The SAMP directs and informs the actions and priorities of the Council's Strategic Property Service (SPS) to ensure that the asset portfolio is consistently aligned with corporate priorities, providing value for money with management of the portfolio in accordance with industry standards, benchmarked against comparable peers and aligned with the Corporate Financial Strategy and Capital Programme. This strategic and integrated approach to management and investment of the corporate portfolio will ensure that the asset base remains fit for purpose.
- 1.3 The SAMP will also inform investment, disinvestment, development and disposal decisions.
- 1.4 This Disposal Policy will provide further guidance and detail the Council's approach to the review and disposal of Land and Property.
- 1.5 Government Policy is that local authorities dispose of surplus and under-used land and property wherever possible. The Council has fairly wide discretion to dispose of its assets (such as land or buildings). When disposing of assets, the Council is subject to statutory provisions, in particular to the overriding duty, under section 123 of the Local Government Act 1972, to obtain the best consideration that can be reasonably obtained for the disposal subject to certain exceptions contained in the General Disposals Consent (England) 2003.

2. ASSET DISPOSAL CONSULTATION PROCESS

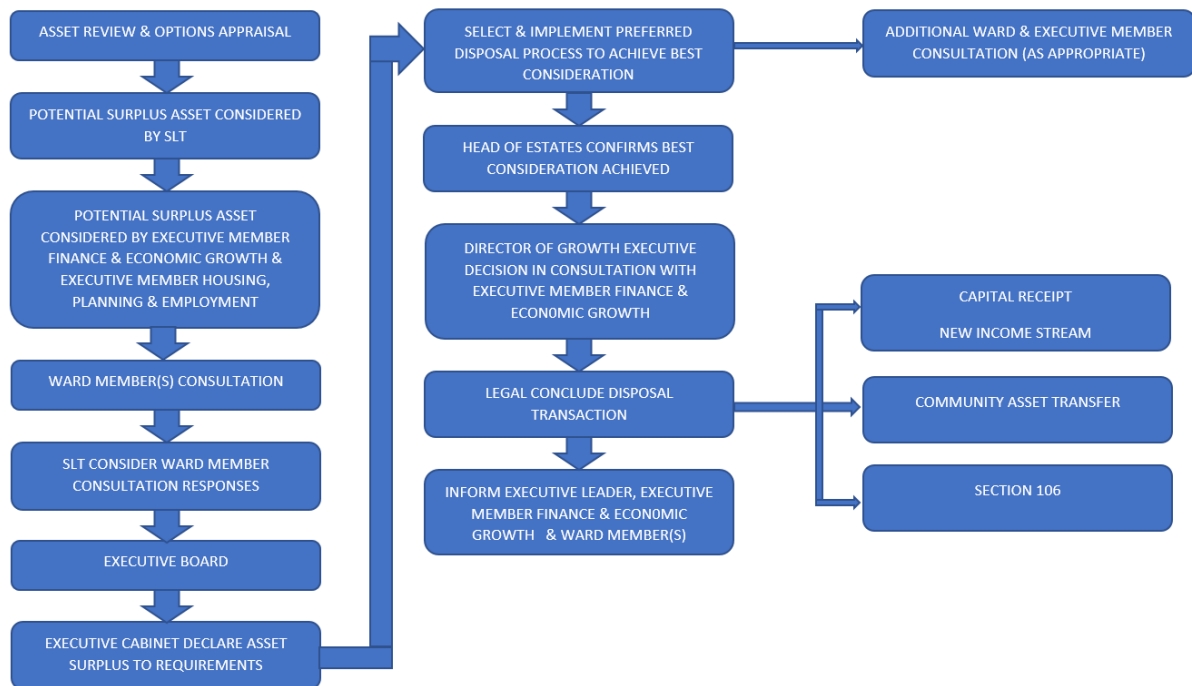


Figure A. Process for declaring an asset surplus to Council Requirements

- 2.1 The Director of Growth selects and implements the preferred disposal process for disposing of any assets that are considered surplus to Council requirements as outlined in Figure A.
- 2.2 Each asset disposal is treated on its own merits and nothing in this Policy will bind the council to a particular course of action in respect of a disposal. Alternative methods of disposals not specifically mentioned in this Policy may be used where appropriate (such as Joint Ventures), subject to obtaining the necessary authority.
- 2.3 This policy sets out the adopted procedure for the disposal of surplus and under-used assets. For ease of reference, Appendix 1 contains a Disposal Checklist which outlines the internal technical process of disposal. Appendix 2 contains definitions and the form that applications must take.
- 2.4 The policy and process adopted ensures that requests to purchase Council owned assets are dealt with in a fair, consistent and transparent manner. Any person who may have an interest in purchasing land will have the opportunity to do so in circumstances no less favourable than anybody else. The policy and process distinguishes between requests for the purchase of small areas of land that may be considered for sale by private treaty and from larger areas with development potential that should be sold on the open market.
- 2.5 Although this Policy will normally be followed, there will be occasions where the procedure may need to be changed, particularly for larger, more complex land sales and/or where the council is aiming to deliver wider benefits such as regeneration programmes.
- 2.6 The purpose of this document is to make the Council's Land Disposal Consultation Process and Disposal Policy transparent and open. It is intended for use by Council Officers, the Council's partners and to inform developers and members of the public.

- 2.7 The Asset Disposal Consultation Process excludes assets in the categories of residential freehold reversionary interests, rent charge interests and long lease interests except for the exclusions outlined in section 13.3.

3. DETERMINATION OF SURPLUS LAND AND PROCESS

3.1 The 'Surplus Test'

Land shall be deemed surplus to the Council's requirements where:

- It makes no contribution to the delivery of the Council's services, strategic or corporate objective,
- An alternative site has been identified that would be more cost effective in delivering the Council's services, strategic or corporate objectives,
- It has no potential for strategic or regeneration/redevelopment purposes in the near future,
- It will not contribute to the provision of a sustainable pattern of development, and
- It will make no contribution to protecting and enhancing the natural, built and historic environment, including making no contribution to helping improve biodiversity.

Under the MHCLG's Local Government Transparency Code 2015 the Council is required to publish details of land it has declared surplus.

3.2 The 'Under Used Test'

Land is considered to be under-used if:

- Part of the site is vacant and is likely to remain vacant for the foreseeable future,
- The income being generated from the site is consistently below that which could be achieved from:
 - Disposing of the site and investing the income,
 - An alternate use,
 - Intensifying the existing use
- Only part of the site is being used for service delivery and this could be delivered from an alternative site, and
- It makes no contribution to protecting and enhancing the natural, built and historic environment, including making no contribution to improving biodiversity.

- 3.3 In the case of open spaces, amenity areas, park buildings and similar sites, the under-used test should also consider the 'community value' of the asset, which would include visual amenity and not be limited solely to income generation or whether the site is vacant.

4. MEANING OF DISPOSAL

- 4.1 Disposal under this Policy means any freehold disposal by sale or exchange of Council owned land (including buildings) and for any by granting a lease of more than seven years. Leases of seven years or less as a short tenancy are exempt from the statutory requirement to obtain best consideration.

- 4.2 For confirmation, disposal is said to take place at the time of completion and not exchange.

5. MEANING OF BEST CONSIDERATION

- 5.1 'Best Consideration' means achieving maximum 'value' from the disposal, not just the maximum price. Disposal at less than market value must contribute to the 'promotion or improvement of the economic, social or environmental wellbeing of the area' as outlined under The General Power of Competence (GPC) which replaces the wellbeing powers in England that were provided under the Local Government Act 2000.
- 5.2 The Council is in the position of a trustee in relation to the land that it holds on behalf of the community and has a statutory duty to sell land at the best price that can reasonably be obtained. The Council will only be able to demonstrate that it achieved the best consideration by obtaining an appropriate valuation of the land. See section 15 below.

6. MEANS OF IDENTIFYING SURPLUS OR UNDER-USED LAND

- 6.1 Surplus land may be considered for disposal through the following methods:
- Following approval of an Asset Strategy in which assets have been identified as no longer meeting the requirements of Council services.
 - Following the identification of development opportunities where Council assets could be divested in order to progress a development.
 - Following the direct approach of an interested party.
 - Where the asset is no occupied by a service or tenant.
 - Where the management of the asset is considered suitable for community ownership.
 - Where an asset presents a liability for the Council.

7. DISPOSAL CRITERIA FOR OPEN SPACE

- 7.1 Open Space includes parks, playing fields and informal open spaces which under Section 336(1) the Town and County Planning Act 1990 (adopted by the LGA) are defined as land laid out as public garden, or used for the purposes of public recreation, or land which is a disused burial ground.
- 7.2 Assets in this category are considered to be valuable community assets, enhancing the quality of environment. There will be a general presumption against declaring these assets as surplus unless there are specific unique circumstances presented, such as for the regeneration of the area.
- 7.3 In these circumstances under statute the Council has to advertise the disposal of land designated as 'public open space' in a local newspaper for two consecutive weeks and the Council has to review any objections as the response may be material to the disposal decision. Public response may be an important factor in any determination by the Secretary of State of an application for specific consent to the disposal.

8 DISPOSAL CRITERIA FOR AMENITY LAND

- 8.1 Amenity land is an asset which is valued locally for its visual importance and contribution. Certain rights, environmental or economic conditions may preclude the sale of amenity land such as:
- The land is subject to rights of way over it.
 - The land is a landscaping feature of the local environment or designated public open space.
 - Sale of the land would incur additional costs for the Council (e.g. re-siting lamp posts) unless the applicant is willing to finance the additional costs and for these costs to be paid in advance.
 - The land has been identified for future regeneration or development by the Council.
 - Following a request to purchase amenity land, a review identifies future regeneration or development opportunities for the Council.
 - There are management or other issues that would cause inconvenience to the Council if the land was to be sold.
- 8.2 Approaches from private individuals to buy Council owned amenity land to benefit their existing residential property will be considered where:
- There is a broader community or residential benefit to the disposal, rationalisation of small land parcels, cessation of misuse, fly tipping.
 - There are management/financial issues e.g. the land is costly to maintain.
- 8.3 Where the Council considers there is development potential and agrees to a disposal, the valuation will reflect this. Where appropriate an overage clause may be applied and/or restrictive covenants placed on any future development.
- 8.4 The Council as landowner may enter into a development agreement. This may involve the granting of a lease for the whole site and there may need to be a tendering exercise that complies with EU regulations.
- 8.5 Amenity land disposals can be by private treaty, but the land may be of interest to parties other than the applicant so in these circumstances the Council will dispose of the land on the open market.

9 DISPOSAL CRITERIA FOR COMMERCIAL PROPERTIES

- 9.1 The Council holds a portfolio of commercial properties which are held solely for the purpose of income generation. There will be a general presumption against the disposal of assets held for income generation unless the disposal supports a capital receipt benefit that is considered greater than its rental yield.

10 DISPOSAL CRITERIA FOR ALLOTMENTS

- 10.1 Where the Council has statutory allotments, disposals can only occur in accordance with Section 8 of the Allotments Act 1925.
- 10.2 Disposals by the Council have to take regard of the Secretary of State's guidance on allotment disposal, namely that the allotment in question is considered surplus to requirements due to the lack of interested tenants.

11 COMMUNITY ASSET TRANSFER

- 11.1 A Community Asset Transfer (CAT) is where the management and/or ownership of public assets are transferred to Community Groups. This is one of the options available to Tameside Metropolitan Borough Council to help maximise community benefits from assets owned by the authority that are now surplus to its requirements. A CAT can give local people and communities the opportunity to take greater control of assets in their local area.
- 11.2 A CAT usually relates to transferring a piece of land, property or other asset to a voluntary or community organisation; which in return commits to providing community benefits. The CAT can be by way of a long-term lease (25 – 99 years) at less than the market value or the freehold transfer of the asset. Short tenancies may be considered (to ascertain the viability of a group); if viability is proven a full business case will be required to support the longer lease or freehold transfer going forward.
- 11.3 Critical to any Community Asset Transfer is a Community organisation's business plan and financial strength coupled to their ability to contribute to the Council's policies and targets.
- 11.4 The Council has a separate Community Asset Transfer policy document which details the process to follow and how to submit an application.

12 DISPOSAL CRITERIA FOR OPERATIONAL PROPERTY

- 12.1 An operational property that the Council no longer has a requirement for will be assessed against the below criteria. This will allow the Council to consider the merits and benefits of each opportunity.
- **Type of Asset** – land or buildings and its current usage.
 - **Utilisation** – its level of usage and how it is occupied.
 - **Energy Performance Certificate** – how much investment is required in order to meet specific energy performance standards.
 - **Condition** – how much capital and revenue resources are required in order to maintain building condition standards.
 - **Occupation Costs** – the cost of operating the asset benchmarked against alternative asset options for the equivalent usage.
 - **Best Use Value** – the use of the asset for community purposes considered against a capital receipt or revenue income.
 - **Good Neighbour** – the impact of the asset and its use to neighbouring commercial or residential parties.
 - **Cost to Vacate** – decommissioning and relocation costs.
 - **Other** – factors appropriate to the unique circumstances of the property.

13 DISPOSAL CRITERIA FOR RESIDENTIAL, RENTCHARGE AND LONG LEASE INTERESTS

- 13.1 The Council holds a number of residential and long lease hold interests; these include but are not limited to:
- **Reversionary Interest** – the Council is the freeholder of a long residential ground lease to which the resident makes an application to acquire. (The

Council does not own the residential dwelling build on the Council freehold land in most cases).

- Tripartite Agreements – a property agreement between three parties, where the Council is one of the parties to the agreement.
- Long Lease Interest – the Council leases an asset for 7 years or longer.
- Rentcharge – An annual sum paid by a tenant to a third party who normally has no other interest in the property.
- Covenants – conditions on how land is used, developed, altered or restricted.

13.2 The Council shall generally undertake a disposal for all properties within these asset categories where there is interest from the existing occupier or owner. There may be circumstances where the Council may be obligated to undertake a disposal under the Leasehold Reform Act 1967 or under the terms of a former development agreement.

13.3 Assets within this category shall generally be disposed of by Private Treaty without marketing with the exception of the following circumstances:

- Where the interest relates to part of a wider development.
- Where the disposal would be to a party who has no current interest in the property.
- Where the disposal affects more than one residential party.
- Where the property interest is detached from the main dwelling.

13.4 In all circumstances the Council reserves the right to assess each enquiry on a case by case basis to ensure that there is no detrimental effect to the Council or to any other party.

14 MARKETING STRATEGY

14.1 The Council will generally determine the appropriate marketing strategy for the disposal of surplus land in order to achieve best value.

15 VALUATIONS

15.1 The Council will comply with the legal requirements for obtaining a valuation of the assets it intends to dispose of.

15.2 For property transactions of a substantial value or that are generally considered to be complex in nature due to their unique circumstances or form a part of a wider scheme, the Council shall commission a detailed independent valuation known as a Red Book Valuation. Red Book valuations are carried out by RICS Registered Valuers and are required to comply with the RICS Valuation Global Standards November 2019. The Council shall commission Red Book Valuations where it is deemed appropriate and in all circumstances where a property transaction is expected to exceed £5,000,000 as a best practice.

15.3 Before disposing of any interest in land for a price which may be less than the best consideration reasonably obtainable, the Council will ensure that a realistic valuation of that interest is obtained, following the advice provided in the Technical Appendix to 'Circular 06/2003 Local Government Act 1972 General Disposal Consent (England) 2003 disposal of land for less than best consideration that can reasonable be obtained'. This will apply even for disposals by means of formal tender, sealed

bids or auction and irrespective of whether the Council considers it necessary to make an application to seek the Secretary of State's specific consent. By following this procedure, the Council will be able to demonstrate that it has adopted a consistent approach to decisions about land disposals by carrying out the same step by step valuation process on each occasion. Supporting documents will provide evidence, should the need arise, that the Council has acted reasonably and with due regard to its fiduciary duty. This can be achieved by following the process set out in Appendix 1.

- 15.4 The return from any disposal is to be maximised unless there are over-riding factors identified in the Corporate Plan or otherwise agreed by the Executive Director of Growth or Executive Member.

16 GENERAL MEANS OF DISPOSAL

- 16.1 The Council will comply with Statute and Government Guidance in order to carry out a disposal and will carry out a valuation appropriate to the circumstances of the disposal.

- 16.2 The Council will select the disposal strategy that best meets its objectives.

- 16.3 Appendix 1 sets out the disposal checklist guidance for the Council to follow in relation to any property disposal.

- 16.4 The Council shall generally undertake disposals via the following methods:
- Private Treaty – Private Treaty enables potential buyers to agree to buy at an asking price or submit an offer to purchase. If several interested parties are introduced to the Council, those parties will be invited to submit offers to ensure that the Council receives the optimum price. This method of disposal is often used for residential and low value transactions.
 - Tender – When the Council disposes of a property by formal or informal tender, the sale will be advertised with a deadline by which prospective purchasers must submit their bid. This method of disposal shall be used in most transactions undertaken.
 - Exchange of Land – Where the Council exchanges a land interest with another party in order for the Council meets its corporate objectives. This method of disposal is often used for Infrastructure Development.
 - Public Auction – the sale of property where any interested party can bid against another until a highest bid is achieved. This method of disposal is in most circumstances is the preferred method once all other methods have either been discounted. In certain circumstances this method of disposal may also be the only likely method to achieve a disposal where there are unique circumstances surrounding an asset.

17 TIMING OF DISPOSALS AND DUE DILIGENCE

- 17.1 The timing of any marketing/disposals will need to be considered against the background of the current market conditions, potential for the site value to increase in the future, whether there is a need to raise capital receipts and current planning policies.

- 17.2 It is important that the Title is reviewed. Once surplus land has been identified the title is reviewed to identify whether there are any title issues, which may impact upon the disposal process.
- 17.3 If the land is subject to restrictive covenants, these may limit or restrict its use or the extent to which development can be carried out on it. Whether these are a concern will depend upon the likely use of the land following disposal, particularly where surplus land is being sold for re-development. A restrictive covenant against a certain type of development may have a significant adverse effect on the land value. Where appropriate the Council may require the use of an overage clause.
- 17.4 If it is needed an application can be made to the Lands Tribunal under section 84 of the Law of Property Act 1925 for the release or modification of restrictive covenants in some circumstances.
- 17.5 In certain circumstances so as to protect the Council's interests the Council may wish to retain an access strip or a strip of land to ensure best consideration is obtained.
- 17.6 It is important to establish the nature of any rights of way or other easements benefitting the land so that if any are missing they can be addressed accordingly. As well as access rights, the property may benefit from rights to run services over adjoining land, rights to light, rights of support or other property specific rights. It is also useful to check whether the land is subject to any rights which might adversely affect the proposed disposal and subsequent development, for example, public or private rights of way or rights of support.
- 17.7 Where the Council is retaining land, the Council may wish to retain rights over the adjoining lands that it is disposing off to facilitate future development and current land use.
- 17.8 The Council shall impose such conditions, covenants or restrictions upon a disposal as it is considered necessary and appropriate to protect its interests and or the amenity of the area.
- 17.9 The Borough Solicitor shall negotiate the most advantageous legal terms and conditions to the Council with the applicant and is authorised to enter into a contract with the applicant on behalf of the Council.

18 SITE INSPECTION RESPONSIBILITIES

- 18.1 Site inspections should be carried out by prospective buyers to establish what specific ground or building conditions exist. For example; drainage, boundary, contamination, structural or asbestos related problems. This shall reduce the likelihood of any complaints received by the Council following the completion of a disposal.

19 FINANCIAL REFERENCES

- 19.1 The Council shall obtain financial references where it is deemed appropriate to mitigate against risk to a transaction in relation to potential delays in completion or abortive costs.

19.2 The Council shall obtain financial references in most circumstances when undertaking a long lease disposal in order to assess the financial risk of the tenant and in order to determine whether to apply a rent deposit or to seek a guarantor to the transaction.

20 GENERAL CONSENT AND LEGAL POWERS SECTION 123

20.1 The Council will comply with Statute and Government Guidance in order to carry out disposals.

20.2 The most important consent is the General Disposals Consent 2003 which underpins the disposal of Council owned land. The General Consent has been issued to provide Local Authority's autonomy to carry out their statutory duties and functions and to fulfil such other objectives as considered necessary.

20.3 The Council though must have regard to Section 123 of the Local Government Act 1972. The Council is required to achieve the 'best consideration reasonably obtainable' when it is disposing of land. Section 123 imposes a duty on the Council to achieve a particular outcome (namely the best price reasonably obtainable): it is not a duty to conduct a particular process (e.g. to have regard to particular factors).

20.4 If the Council seeks to dispose of land or buildings at an under value. It is a requirement to seek the consent of the Secretary of State for Communities and Local Government should the market value exceed £2,000,000.

21 STATE AID

21.1 All land disposals need to comply with the European Commission's State Aid rules. When disposing of land 'at less than best consideration', depending on the nature of the transaction, the Council may be 'subsidising' the purchaser. Where this occurs, the Council must ensure that the nature and amount of subsidy complies with the State Aid rules, particularly if there is no element of competition in the disposal process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit, with interest, being recovered by the Member State (the UK) from the recipient. The Council may be required to obtain specialist legal advice dependent on the complexity of the transaction.

22 PUBLIC PROCUREMENT

22.1 The applicability or otherwise of the public procurement rules will depend on the particular nature of the transaction, how it is structured and its detailed provisions. As a general rule, the risk will be higher the more the Council specifies its requirements for any full development and conversely will be lower the more the Council is willing to take a 'hands off' approach. The Council must therefore give due consideration to the possibility of public procurement rules applying to any particular disposal of land and obtain case-specific legal advice before entering into any agreement.

23 FEES AND OTHER CHARGES

- 23.1 It is expected that all fees will be reasonable and proportionate to the transaction. Each party will usually be responsible for their own respective fees. However there may be occasions when the Council will require the buyer to pay the Council's fees in addition to their own.
- 23.2 Fees will normally include a minimum of surveyors' fees, legal fees, search fees and administration fees. The Council shall periodically review its fee schedule and there is no limitation on the amount of fees charged.

24 LEGAL ADVICE AND SEARCHES

- 24.1 The Council cannot provide a buyer with legal advice. Purchasers should seek independent legal advice and should rely on their own surveys and searches.

25 PLANNING, BUILDING REGULATIONS AND RESTRICTIVE COVENANTS

- 25.1 Planning consent may be required for a change of use or development of the land, or for other matters such as fencing and boundary treatment. It is likely that land not previously used for garden purposes, building extensions or parking etc. will need planning consent for a change of use. The purchaser is responsible for finding out if planning consent is required and should contact Tameside Council's Planning Service.

26 VEHICULAR ACCESS

- 26.1 If the Purchaser is proposing to access the land across the public highway, Tameside Council's Highways Service should be contacted in the first instance.

27 OBLIGATIONS AND RELATED COMPLAINTS

- 27.1 Most land and property transactions are not a statutory process and there is no obligation on the Council to dispose of land unless the Council is contractually bound by an existing agreement. All transactions will be considered on a case by case basis. Should a complaint arise out of this process, then the Council's standard complaints process should be followed.

28 HOW TO MAKE PROPERTY AND LAND ENQUIRIES

- 28.1 All land and property enquires should be made in writing to the Estates Team at estates@tameside.gov.uk or via post to the Estates Service, Ashton Old Library, Old Street, Ashton-Under-Lyne, OL6 7SG.

29 LAND TRANSFER PROCESS AND STAMP DUTY LAND TAX BUYER'S LIABILITY

- 29.1 The Purchaser is liable for Stamp Duty and Land Tax unless another party shall be liable under the terms of the agreement. Parties to a transaction should seek their own financial advice.

30 PROCESSING APPLICATIONS

- 30.1 When processing an application all officers will ensure that they consider and comply with the Disposal Checklist attached at **Appendix 1**.
- 30.2 Land which has been declared surplus to Council requirements shall be progressed for disposal following consultation and procedure as set out within this policy. A list of assets to be progressed for disposal shall be updated according to the Council's requirements and shall be published as **Appendix 3: Disposal Schedule** to this policy document.

APPENDIX 1

DISPOSAL CHECKLIST

(See guidance on following pages)

Question		Response			
		Yes		No	
1.	Is the Property held under the correct powers?		Proceed to 2		Seek legal advice
2.	Does the transaction fall within General Consent exemptions?		Proceed to 4		Proceed to 3
3.	Does the transaction fall within General Consent exclusions?		Proceed to 4		Proceed to 4
4.	Are there any other special considerations?		Proceed to 5		Proceed to 6
5.	Have the provisions of the special considerations been complied with?		Proceed to 6		Comply with provisions and proceed to 6
6.	Does the Council have a valuation?		Proceed to 7		Obtain valuation then proceed to 7
7.	Is the transaction at an undervalue?		Proceed to 8		Proceed to 10
8.	Is the undervalue less than or equal to £2m?		Proceed to 10		Proceed to 9
9.	Has a Specific Disposal Consent been obtained?		Proceed to 10		Obtain Consent then proceed to 10
10.	Is the Council granting assistance, directly or through resources?		Proceed to 11		Proceed to 18
11.	Does the assistance give an advantage to one or more undertakings over others?		Proceed to 12		Proceed to 18
12.	Does the assistance distort or have the potential to distort competition?		Proceed to 13		Proceed to 18
13.	Does the assistance affect trade between Member States?		Proceed to 14		Proceed to 18
14.	Can the transaction be redesigned so that any of the elements in 10 to 13 do not apply?		Seek legal advice		Proceed to 15
15.	Is the assistance less than €200k over 3 years?		Following communication procedure and proceed to 18		Proceed to 16
16.	Does the assistance fit into the GBER exemptions?		Proceed to 18		Proceed to 17

17.	Has approval been obtained?		Proceed to 18	Obtain approval and proceed to 18
18.	Proceed with transaction			

DISPOSAL CHECKLIST GUIDANCE

1. Is the Property held under the correct powers?

It is the responsibility of the authority to satisfy itself that the land is held under powers which permit it to be disposed of under the terms of the 1972 Act and, if not, to take action to appropriate it (for example, under section 122 of the 1972 Act). In this regard, authorities are reminded that the terms of the Consent do not extend to proposals to dispose of land under section 233 of the 1990 Act, for which specific consent is still required. Nor does the Consent apply to the disposal of land held under powers derived from the Housing Act 1985, upon which authorities should seek advice from LAH 5 Division in the Housing Directorate, ODPM, Zone 2/D2, Eland House, Bressenden Place, London, SW1E 5DU.

2. Does the transaction fall within General Consent exemptions?

The grant of a tenancy for a term not exceeding seven years or the assignment of a term which, at the date of assignment, has less than seven years to run is exempt and can be granted at an undervalue.

3. Does the transaction fall within General Consent exclusions?

Consent may not be required in the following circumstances:

- 3.1 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:
 - 3.1.1 The promotion or improvement of economic well-being;
 - 3.1.2 The promotion or improvement of social well-being;
 - 3.1.3 The promotion or improvement of environmental well-being; and
- 3.2 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).

4. Are there any other General Consent special considerations?

It is the responsibility of the authority to undertake any further procedures which may be necessary to enable it to dispose of any particular area of land. For example, sections 123(2A) and 127(3) of the Local Government Act 1972 and section 233(4) of the Town and Country Planning Act 1990 ("the 1990 Act") require a local authority wishing to dispose of open space under those powers to advertise its intentions in a local newspaper for two consecutive weeks and to consider objections. Authorities should carry out these procedures before making any final decisions about disposal as the public response to the notices may be material to any such decision. It could also be an important factor in any determination by the Secretary of State of an application for specific consent.

5. Have the provisions of the special considerations been complied with?

Having considered question 4 the Council must ensure that any special considerations are complied with before finalising any transaction.

6. Does the Council have a valuation?

- 6.1. The Council should obtain a valuation in instances where it believes a transaction might be at an undervalue – it is advised that valuations are obtained in any event. Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained contains requirements which must be satisfied in any valuation.
- 6.2. For the purposes of Section 123 a disposal includes the sale of a freehold, granting a lease, assigning any unexpired term of a lease and the grant of an easement. It may also extend to the grant of an option to purchase a freehold or to take a lease. Section 123 does not apply to the grant of a short term tenancy of less than seven years or an assignment of an existing term with no more than seven years to run.
- 6.3. The District Valuer's opinion is that an independent valuation is required if there is the potential for the land to be disposed of at an undervalue. If a market test has been carried out and the land is not being disposed of at an undervalue then it is for the Authority to decide whether an independent valuation is required as a part of their own internal process.
- 6.4. Public authorities are free to adopt their own policy on valuation, however as a guidance to best practice Homes England carry out a Franking Valuation (valuation review) for any land disposal in excess of £5,000,000.

7. Is the transaction at an undervalue?

If the consideration for a transaction is less than the best value of the land in question, then there is an undervalue.

8. Is the undervalue less than or equal to £2m?

The General Consent permits disposals at an undervalue provided the difference between the best value and the actual consideration is £2m or less. Only if the difference is more than £2m will the matter need to be referred to the Secretary of State.

9. Has a Specific Disposal Consent been obtained?

If the difference between best value and actual consideration is more than £2m then the Council will need to apply to the Secretary of State for approval. Section 11 in particular of the Circular 06/2003 Local Government contains guidance on making such applications.

10. Is the Council granting assistance, directly or through resources?

The interpretation of State resources is broad, including tax exemptions; Lottery funding and the EU Structural Funds over which the state has significant control are all included.

11. Does the assistance give an advantage to one or more undertakings over others?

- 11.1 An "undertaking" is any organisation engaged in economic activity.
- 11.2 This is about activity rather than legal form, so non-profit organisations and charities and public bodies can all be undertakings, depending on the activities they are involved in.
- 11.3 Support to an organisation engaged in a non-economic activity isn't state aid, e.g. support to individuals through the social security system is not state aid.
- 11.4 This can also include operators and 'middlemen' if they benefit from the funding.

- 11.5 “Economic activity” means putting goods or services on a market. It is not necessary to make a profit to be engaged in economic activity: if others in the market offer the same good or service, it is an economic activity.
- 11.6 An “advantage” can take many forms: not just a grant.
- 11.7 Grant, loan or tax break, but also the use of a state asset for free or at less than market price. Essentially, it is something an undertaking could not get in the normal course of business.

12. Does the assistance distort or have the potential to distort competition?

If the assistance strengthens the recipient relative to its competitors, then the answer is likely to be “yes”. The “potential to distort competition” does not have to be substantial or significant: it may include relatively small amounts of financial support and firms with modest market share.

13. Does the assistance affect trade between Member States?

The interpretation of this is broad: it is enough that a product or service is tradable between Member States, even if the recipient does not itself export to other EU markets.

14. Can the transaction be redesigned so that any of the elements in 10 to 13 do not apply?

Complying with the state aid rules can add time to your project and mean that you are limited in the size of award you can make. Can you use other mechanisms to achieve your goal?

15. Is the assistance less than €200k over 3 years?

- 15.1 A useful approved EU mechanism for state aid is the de minimis regulation, based on the Commission’s view that small amounts of aid are unlikely to distort competition.
- 15.2 The De Minimis Regulation allows small amounts of aid – less than €200,000 over 3 fiscal years – to be given to an undertaking for a wide range of purposes.
- 15.3 If you use this mechanism, you do not need to notify or get approval, but records of aid granted must be kept and all the rules of the de minimis regulation must be followed.
- 15.4 The State Aid Manual (Department for Business Innovation & Skills July 2015) gives more detail and standard text for communications.

16. Does the assistance fit into the GBER exemptions?

- 16.1 The General Block Exemption Regulation (“GBER”) is a useful mechanism. It provides a simple way of providing assistance for a range of aid measures considered not to unduly distort competition.
- 16.2 If you use this mechanism, you do not need prior approval, but you must notify the Commission using the online system (SANI) within 20 working days of giving the aid.
- 16.3 It is important to meet the terms and maximum aid amounts set out in the regulation. 16.4 These are different for each of the 26 areas it covers. The most relevant areas are:
- 16.3.1 Aid for Environmental Protection
 - 16.3.2 Aid for Research, Development and Innovation
 - 16.3.3 Aid to Disadvantaged and Disabled Workers

- 16.3.4 Regional Aid
- 16.3.5 Risk Capital Aid
- 16.3.6 SME Aid
- 16.3.7 Training and Employment Aid

17. Has approval been obtained?

Follow regulations for obtaining approval.

18. Proceed with transaction

Proceed with transaction but keep under review.

APPENDIX 2

INTERPRETATION

“Amenity Land”	Land which is valued locally for its visual importance and contribution.
“Applicant”	A party who has directly or indirectly (via an agent) expressed an interest whether formally or informally in purchasing Land.
“Application”	An application by an Applicant for the Disposal of Surplus Land which must include a plan showing the area which is subject to the request and details of the proposed use of the Land together with any other information considered appropriate to enable a fully informed decision to be made by the Council. The request may be rejected if insufficient information has been given and the Applicant may be asked to resubmit their Application with the relevant information.
“Best Consideration”	The Council is a trustee and needs to obtain best consideration.
“Circular 06/2003 Local Government Act 1972”	Circular 06/2003 Local Government Act 1972 general disposal Consent (England) 2003 disposal of land for less than best consideration that can reasonable be obtained.
“Community Asset”	A community centre, hall, village hall, community or sports pavilion.
“Community Asset Transfer”	The transfer of a piece of land or building from public ownership to community ownership.
“Community Organisation”	<ol style="list-style-type: none">a) A party that is independent of the Council and whose governing board or committee includes a majority of community representatives of people living in the Borough; orb) One or more of the Council’s public sector or voluntary sector partners whose objective is to provide a social or community benefit.
“Community Ownership”	A Community Asset owned or managed for the benefit of the community aimed at bringing people from different backgrounds together.

“Corporate Policy Review”	A review and recommendation to allow Decision Makers to make informed business decisions.
“Disposal”	To sell either the Council’s freehold interest in Land; or to grant at a premium a leasehold interest to a buyer with the Council retaining its freehold interest in the land; or to enter into an agreement to give effect to this (including granting an option or right of pre-emption).
“Formal Tender”	Offers that are invited giving a firm closing date. Offers received are to be submitted in sealed envelopes and not opened on receipt but opened together at a published date and time.
“Informal Tender”	A process whereby offers are invited without necessarily giving a firm closing date. As offers are received, they are opened as they are received. Bidders may be invited to increase their bids, possibly having been informed that a higher bid has been received following a closing date for initial bids. The invitation to submit further bids shall be subject to a final bid closing date. Should a higher bid be received after the final bid closing date the Council makes its position clear that in this event any higher offer being received before completion of the sale, the Council may be obliged to consider it.
“Land”	Land owned by the Council, which may or may not have any building or buildings or other structures erected on it.
“Open Space”	As defined under Section 336(1) the Town and County Planning Act 1990 (adopted by the LGA as land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground.
“Private Treaty”	Negotiations that are carried out between the Council (or its agents) and the prospective buyer (or their agents) privately, normally without a limit on the time within which they must complete the negotiations.
“Public Auction”	A process whereby a sale is conducted in public through an appropriate auction house with the sale proceeding to the highest bidder.
“Special purchaser”	A buyer who has a special reason for paying more than the market value, for instance if the land is adjoining their existing property or a buyer who has a special reason for paying more than the market provides the only viable option to a buyer in relation to the project or scheme they are pursuing which requires them to acquire the Land.

“State Aid”	An advantage given by the Council benefiting particular industrial sectors or individual undertakings and which may affect or distort competition.
“Strategic Asset Management Plan (SAMP)”	A Strategic Asset Management Plan (SAMP) is a document that specifies how the organizational objectives are to be converted in to asset management objectives.
“Surplus Land”	See Section 3 of Policy “the Tests”; essentially land which falls into any of the following categories: <ul style="list-style-type: none"> a) Retention of the Land would not meet the Council’s corporate aims and objectives; b) There is no justification for retaining the Land; c) The Land is surplus to the Council’s requirements; or d) Management of the Land is suitable for community ownership.
“Surplus Test”	Test to determine land is surplus to operational requirements of the Council.
“The State Aid Manual”	The State Aid Manual (Department for Business Innovation & Skills July 2015).
“Under Used Test”	Test used for sites, where only part of site is in use, allowing site to be split and Under Used Area identified for disposal.
“Undervalue”	Disposal at less than market value and where such disposal: <ul style="list-style-type: none"> a) Secures the promotion or improvement of the economic, social or environmental well-being of Tameside Metropolitan Borough pursuant to the Council’s “General Power of Competence (GPC)”; and b) Is subject to voluntary conditions which have a direct or indirect monetary value to the Council.
“Valuer”	A suitably qualified surveyor acting on behalf of the Council.