

**Tameside Metropolitan Borough Council**

**Corporate Policy: Residential Freehold Reversions**

**Policy Version**

<p><b>Corporate Policy: Residential Freehold Reversions</b> <b>Supplemental Policy to Corporate Policy: Disposal of Council Owned Land</b> <b>September 2020.</b></p>	<p><b>30 November 2020</b> <b>To be reviewed in November 2023</b></p>
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## **Corporate Policy: Residential Freeholds Contents:**

1. Aims of this Policy
2. Asset Disposal Consultation Process
3. The History of Reversionary/Ground Rents
4. The Residential Reversionary Portfolio
5. Valuation Methodology
6. Fees
7. Proposed timescales
8. Policy Review

Appendix 1: Sample Valuation and Valuation Report

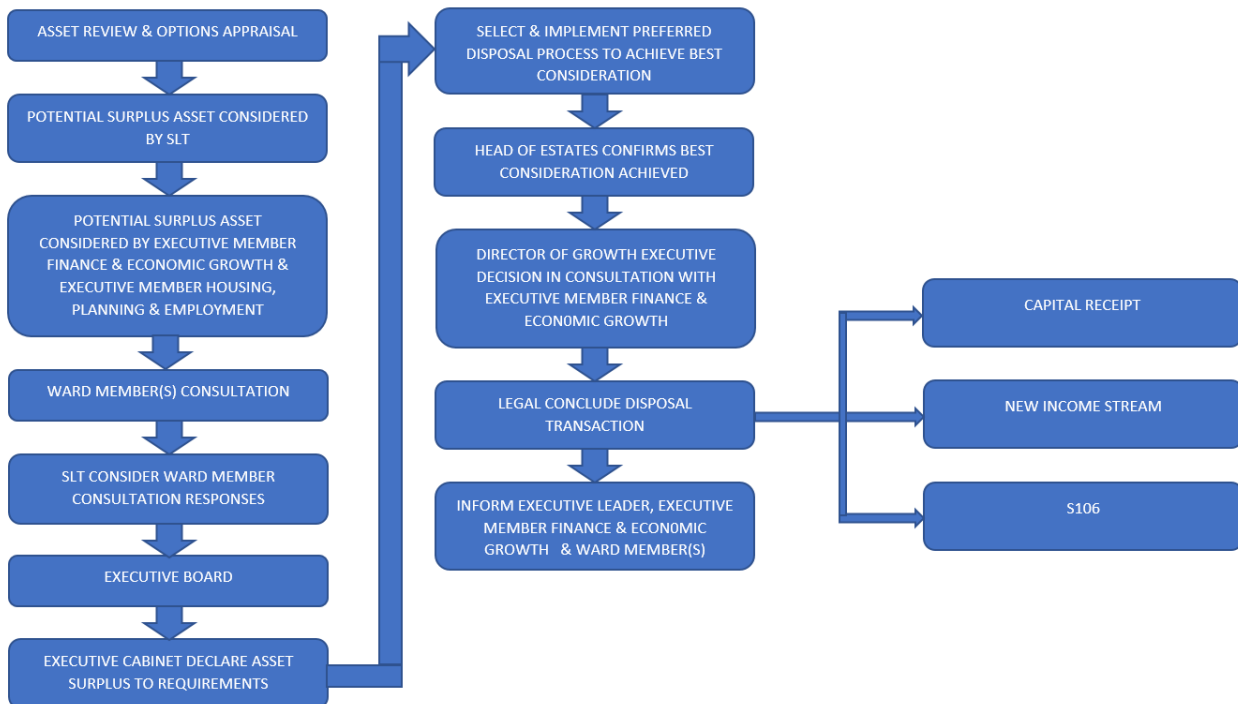
## **CORPORATE POLICY**

### **Residential Freehold Reversions**

#### **1. AIMS OF THIS POLICY**

- 1.1** The Council has 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 the Council's corporate priorities, provides value for money and is aligned with the Council's Corporate Financial Strategy and Capital Programme. This strategic and integrated approach to the management and investment of the corporate portfolio will ensure that the asset base remains fit for purpose.
- 1.3** The SAMP will inform the Council's investment, disinvestment, development and disposal decisions.
- 1.4** A revised Disposal of Council Owned Land Policy was approved in September 2020.
- 1.5** This Residential Freehold Reversions Policy is a Supplementary Policy to the Disposal of Council Owned Land Policy. This Supplementary Policy gives further guidance on residential freehold reversionary assets.
- 1.6** General 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 such 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.
- 1.7** The Council is aware of the general issues and concerns surrounding the reversionary freehold sector and wishes to assist freeholders in acquiring the Council's reversionary interest as appropriate and in accordance with established market and case law best practice.
- 1.8** This supplementary policy achieves the objective set out 1.7.
- 1.9** The Council will accordingly review this policy either in line with its internal review policy or in response to changes in legislation or new best practice guidance being published.

## 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. This supplemental policy needs to be read and operated in conjunction with the Corporate Policy: Disposal of Council Owned Land September 2020 or the latest revised version of that Policy.
- 2.3 The Corporate Policy Disposal of Council Owned Land sets out the adopted procedure for the disposal of surplus and under-used assets.
- 2.4 The Corporate Policy Disposal of Council Owned Land and the Corporate Policy Residential Freeholds contain processes adopted to ensure 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 Corporate Policy Disposal of Council Owned Land 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 and this Corporate Policy Residential Freeholds deals with requests by home owners to buy the freeholds of their homes.
- 2.5 Although this Policy will normally be followed, there will be occasions where the procedure may need to be changed. The purchase of reversionary residential freeholds is an emotive subject and this Policy balances the Fiduciary Duties of the Council with the needs of residential leaseholders.
- 2.6 Subject to compliance with the Policy (if approved) delegation to agree all future disposals of the Council's freehold reversions to individual homeowners to be given to the Director

of Growth in accordance with section 29 Part 3a of the Council's Terms of Reference and Scheme of Delegation, "the approval of the sale or exchange of land or buildings".

- 2.7 The individual reports regarding a transaction will contain exempt information relating to paragraph 7 of Parts 1 of Schedule 12A of the Local Government Act 1972 (as amended) in that it relates to private and confidential information of an individual resident and is therefore not for publication.
- 2.8 Under the two polices there will be defined administrative processes and timeframes that will prevent hardship to Leaseholders and their families.
- 2.9 The Asset Disposal Consultation Process excludes assets in the categories of residential freehold reversionary interests and rentcharge interests except for the exclusions outlined in section 13.3 of the main Policy

### **3. THE HISTORY OF REVERSIONARY/GROUND RENTS**

- 3.1 Reversionary freeholds and ground rents are historic development agreements that enabled housing and other properties to be developed. This form of development agreement was particularly popular in the late 19<sup>th</sup> Century and early 20<sup>th</sup> Century and continues to be used today.
- 3.2 The advantages of this form of development were that it released land for development. This process allowed the freeholder to maintain some control over the form of the development, produce an income flow and maintain their landholdings through the retention of the reversionary freehold interest, which for historic urban landed estates was especially attractive.
- 3.3 At the time when these long leases were originally granted the majority of residential property was either rented or held on long leases in this way. Overtime however market tenure forms have changed reflecting the aspirations of homebuyers and the availability to obtain mortgages and these changes can generate problems to long leaseholders when they try to sell their homes or remortgage.
- 3.4 When the leases were originally granted the terms were often in excess of 99 years, with 99 years, 125 years and 999 years lease terms being typical lease. The Council's Reversionary Freehold portfolio holds a number of these interests.
- 3.5 With the effluxion of time the unexpired length of the leases has become shorter, with the consequence that when leases are less than 60 years, it is difficult to obtain mortgages and hence homeowners have to either seek to extend their lease term or purchase the reversionary freehold to enable a sale or remortgage.
- 3.6 Purchasing the reversionary freehold is the optimal solution for homeowners, as it removes the dominant superior interest simplifying future transactions.
- 3.7 For long leaseholders the purchase of the reversionary interest therefore allows them to resell their property or to refinance their property so as to carry out essential repairs. It also allows vulnerable leaseholders to move into more appropriate accommodation or to fund the costs of care.
- 3.8 As a consequence of these pressures there is an established market for the sale and purchase of reversionary interests. This has resulted in statute and the development of industry standard valuation techniques to value the reversionary interest.

- 3.9** Overtime concerns about this market have led legislation with the Leasehold Reform Act 1967 and successive revisions being the dominant statute governing this field. The Council will accordingly will adopt industry valuation approaches and standards to assess purchase prices to accord with the principles of this Act.
- 3.10** The reversionary interest market and the disposal of reversionary interests to property companies rather than to long leaseholders is a complex topic. Despite legislation there is still some controversy and concerns about homeowners experiences and the financial pressures placed on them.
- 3.11** Long leasehold management companies and investors have been and continue to be the subject of complaints. For vulnerable leaseholders there are concerns about poor service, high charges and enforcement of conditions which are really no longer relevant but which cause hardship and worry.
- 3.12** Accordingly this policy is focussed on the disposal of interests to individual homeowners, rather than the disposal of the Council's reversionary freehold portfolio either in whole or in part on the investment market.

#### **4. THE PRESENT RESIDENTIAL REVERSIONARY INTEREST PORTFOLIO**

- 4.1** The Council has approximately 900 residential ground plots and leaseholds which are typically occupied by a single home. The vast majority of the leases are for the ground only with the resident owning the home constructed on the land. From these 900 ground leases the total annual rent receivable is circa £10,680 and the administration costs of managing these leases far exceeds the income received
- 4.2** The majority of Council's Residential Reversionary Interest portfolio are between the Council as freeholder and the homeowner as occupational lessee. However in a minority of cases there is triparty relationship. In this situation in addition to the Council as freeholder and the homeowner as occupational lease, there is also an intermediary Head Leasehold interest, which is often held by third party. Tripartite leasehold cases are more complicated and are dependent on the identification and co-operation of all the parties.
- 4.3** Of critical importance is the remaining length of the lease. A considerable number of the Council's ground leases now have less than 60 years remaining which prevents home owners from selling their property as lenders typically look for an unexpired minimum lease term of 60 years. This in effect prevents homeowners from selling their property unless they are able to attract a buyer with no borrowing requirements and this is a restricted market. The limitation also prevents some mortgage holders from switching to different lending products which may disadvantage them financially.
- 4.4** Many of leaseholders with less than 60 years remaining on their ground leases will be elderly or vulnerable and these circumstances create potential social and financial hardship and cause anxiety. While residents do have a direct legal remedy under the Leasehold Reform Act 1967 to acquire the freehold ground plot from the Council, this is cumbersome and costly for the resident when the Council can agree to dispose of the asset by private treaty and without challenge. It is also understood that residents are rarely advised of this process by their professional representatives.
- 4.5** Presently the Council has circa 55 recorded residents who have attempted to acquire their ground plot from the Council in the past 3 years, of which a small number have advised that their requirement to move home is urgent and they are facing hardship. Hence sale of the reversionary freehold to the individual homeowner is a major benefit to them and potential purchasers in terms of ability to buy, sell, refinance and improve their homes.

- 4.6** Management of the Residential Reversionary Freehold portfolio presents a complex challenge. While the portfolio is relatively large size it is uneconomical to operate. Sale to individual homeowners is the most beneficial social outcome as once they have obtained the reversionary freehold interest it means they can, buy, sell, refinance their homes or improve their homes more easily.
- 4.7** For the same reasons the Council should only consider sales to individual leaseholders rather than disposing of the Residential Reversionary Freehold portfolio to a third party commercial interest unless such a sale could be on terms which protect the interests of residents.

## **5. VALUATION METHODOLOGY**

- 5.1** The Council is under a duty to achieve 'Best Consideration'. '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'.
- 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
- 5.3** The Council will obtain an appropriate valuation of the land by using qualified Chartered Surveyors and by following adopted best practice and valuation methodologies.
- 5.4** The valuation approach currently adopted by the Council is based on the Upper Tribunal Case of Clarise Properties [2012] UKUT (LC) which recommends 'a three stage approach to valuation'.
- 5.5** The 'three stage approach' looks at the value of the existing lease term, i.e. the income provided to the Council during the lease of the existing lease (i.e. stage 1), the value of any lease extension, which would generate an increased rent, albeit after the initial lease term has expired (i.e. stage 2) and what happens when, the initial lease term has expired and any extension to the lease has also expired and the property reverts back to the landlord (i.e. stage 3).
- 5.6** The standard valuation technique used to calculate the value of the interest will be determined by the prevailing professional practice, statute and case law at the date of valuation.
- 5.7** The Valuation will be carried out by a suitably qualified Chartered Surveyor, appointed by the Head of Estates for the purpose of the valuation. The suitably qualified Chartered Surveyor may be either an employee of the Council or alternatively the Head of Estates may appoint an external firm of Surveyors to carry out the valuation.
- 5.8** While terms will normally be agreed by negotiation in case of a dispute and agreement cannot be reached over the value of the interest to be purchased or the terms, the occupational lessee can refer the matter to the First Tier Tribunal Property Chamber.
- 5.9** The qualified Chartered Surveyor will produce a valuation that will be in a prescribed format. The Valuation will comprise: the Calculation and a separate valuation report detailing the property, the date of valuation, the valuation figure the background to the valuation, the current position, the valuation methodology used, and market comparables. These will be contained in a commercially sensitive annexe. An example of a satisfactory valuation is attached in Appendix 1 of this Policy document.

- 5.10** Where a value has been determined by the First Tier Tribunal of the Property Chamber the decision of the Chamber will be substituted for the documentation described in para 5.8.

## **6. FEES**

- 6.1** The purchaser will pay the Council's fees, which will be reviewed periodically. The Council's current fees are £300.00 for legal fees and £250.00 for surveying fees (plus VAT when applicable).
- 6.2** The purchaser will be liable for their own legal and surveying fees.

## **7. PROPOSED TIMESCALES**

- 7.1** Applications will be received on an "as and when basis". The Council will acknowledge an application within 10 working days of receipt of an application and will produce a valuation within 6 weeks of receiving all the necessary information required and payment of the Council's fees from the leaseholder or their legal representative.
- 7.2** Completion of legal documentation and registration of the title may take a number of months dependent on the purchaser's solicitor and the Land Registry.
- 7.3** All transactions will be dependent on any arrears of rent or fees being settled as part of the agreed terms.

## **8. POLICY REVIEW**

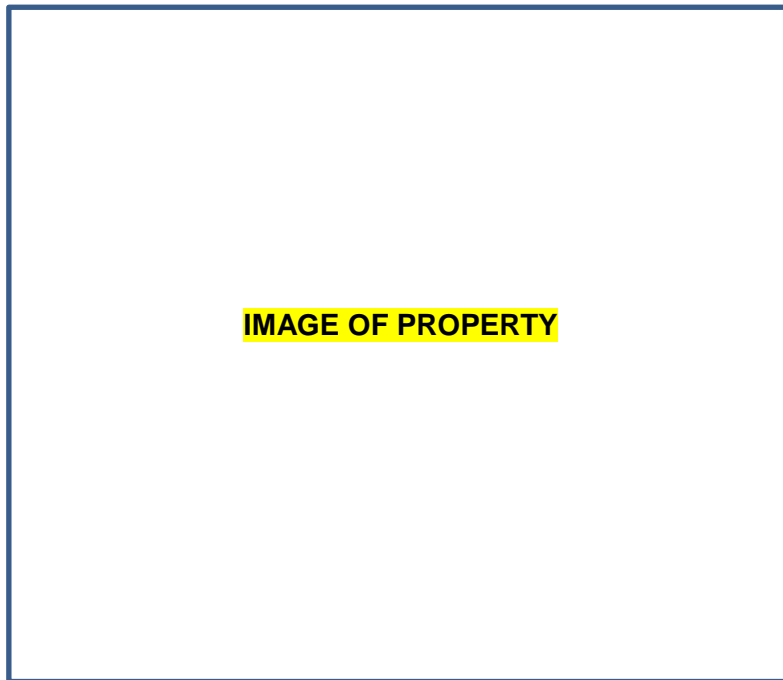
- 8.1** The Council will review the Policy every three years or if there is a change in legislation, case law or valuation methodology in the market.



# APPENDIX 1: SAMPLE VALUATION AND VALUATION REPORT

Term	Stage 1	Years	Percentage			
	Current Ground Rent			12.5		Rent Passing
	x YP	48	5	18.0772	£ 225.97	Number of years remaining in the lease.
<b>1st Reversion</b>	<b>Stage 2</b>					
	Entirety Value			140000		Value of property.
	Site Value		33.33	46662		
	De-capitalise		5		2333.1	
	YP	50	5	18.2559	42592.84	Assumption that a new 50 year term will be provided on expiry of initial lease.
	PV £1 Deferred	48	5	0.096142	£ 4,094.97	
<b>2nd Reversion</b>	<b>Stage 3</b>					
	Standing House Value		80	112000		Value of standing house but deferred for remaining lease term (i.e. 48 years) and term of any lease extension (i.e. 50 years).
	Deferred	98	5	0.008384	£ 939.01	
					£5,259.94	

**VALUATION OF  
[STREET],  
[DISTRICT],  
[POSTCODE].**



**[NAME OF VALUER] [QUALIFICATIONS]**

**[DATE]**

## 1.0 Background

- 1.1 The Council hold the Freehold interest in the above mentioned property which is subject a long-leasehold interest currently held *[NAME OF HEAD LESSEE / OCCUPATIONAL LESSEE IF THERE IS NO HEAD-LEASEHOLD INTEREST]*. *[IF APPLICABLE]* It is understood that this head-leasehold interest is then subject to an occupational leasehold interest held by the owner of *[PROPERTY ADDRESS]*.
- 1.2 The current owner of the subject property *[has agreed terms for the sale of the property although the purchaser has advised that, he is unable to secure suitable finance owing to the limited term of years remaining on the lease. Completion of the house sale is therefore conditional upon the occupational lessee either 'extending' their existing lease (by way of a surrender and renewal) or, more preferably, acquiring the Freehold interest held by the Council, along with the long-leasehold interest held by [OWNER OF HEAD-LEASEHOLD INTEREST IF APPLICABLE]] or [is looking to re-mortgage the dwelling. As part of this process, the mortgage provider has suggested that the remaining term of the lease is insufficient and has therefore requested a lease extension or similar. In order to facilitate the re-mortgage application, a request has therefore been received from the homeowner to acquire the Council's Freehold interest]*.
- 1.3 The request to acquire the Freehold interest held by the Council was originally submitted in *[date of application]*. *[Any further background, has the sale been delayed, any reasoning etc.]*.

## 2.0 Current Position

- 2.1 Situations similar to *[PROPERTY ADDRESS]* is increasingly common nationally, with a number of home owners suffering from an increasingly limited lease term which, is impacting on their ability to sell or re-mortgage existing properties. This has resulted in a number of high profile cases which has determined an increasingly established mechanism for assessing value. The most notable case is that of Clarise Properties Limited [2012] UKUT 4(LC) which recommends a 'three stage approach'.
- 2.2 This three stage approach requires the valuer to look at the value of the;
  - (1) remaining lease term;
  - (2) first reversion and
  - (3) second reversion.

## 3.0 Valuation Methodology

- 3.1 In terms of (1), at the time of the request, there were *[NUMBER OF YEARS REMAINING ON LEASE]* years remaining on the lease term. As such, the Council are entitled to receive the existing ground rent payable under the existing lease (i.e. *[GROUND RENT]*) for the remainder of the lease term (i.e. *[NUMBER OF YEARS REMAINING ON LEASE]*).
- 3.2 The valuation therefore looks at what an investor would pay for this income stream as at the date of the valuation. A multiplier is utilised which is based on the risk associated with securing the income and the level of return that an investor would expect to receive. A reasonable return in this instance has been assumed at *[YIELD]*. This results in the income stream having a value, as at the valuation date, of *[VALUE OF EXISTING REMAINING TERM]*.
- 3.3 With regard to (2), under Section 1 of the Leasehold Reform Act 1967, the long-lessee is entitled to extend the lease for a new 50 year lease term upon expiry of the existing lease. The terms of the lease (most notably in relation to the rent) would however be based on a modern rental.

- 3.4 Using the principles set out in the 'Clarise' case, this assumes that the ground rent at the first reversion would be a third of the house value. In this instance, Market Value of the subject property has been determined at [MARKET VALUE OF PROPERTY] based on the schedule of comparable evidence included in Appendix One and therefore, site value is determined [1/3 OF MARKET VALUE OF PROPERTY]. This capital sum has been 'converted' to a rental figure, using a yield or return of [YIELD]. This assumes that a modern ground rent would be [RENTALISED VALUE OF LAND BASED ON 1/3 LAND VALUE PRINCIPAL AND APPROPRIATE YIELD] per annum for the land.
- 3.5 In terms of the ground rent, when the lease is extended at the first reversion, the Council would then enjoy an increased annual income (of RENTALISED VALUE) for the duration of the extended (50 year) lease term. Using a slightly increased yield of [YIELD] reflecting the slightly higher risk, this income would have a value of [VALUE OF EXTENDED LEASE TERM PRIOR TO DEFERRMENT]. However, as this value would not be realised for a further 50 years (i.e. whilst the existing term expires), it would be necessary to 'defer' this income for a period of 50 years. The present value of £1 deferment therefore equates to a current value of the first reversion of [VALUE OF EXTENDED LEASE TERM FOLLOWING 50 YEAR DEFERRMENT].
- 3.6 In relation to (3), this looks at any value to the landlord once (a) the initial (remaining) [NUMBER OF YEARS REMAINING ON EXISTING LEASE] year lease term has expired and (b) any subsequent 50 year lease term has expired. As the land would revert back to the Council, the valuation would need to reflect what value the Council would be receiving – in this case, this would be the value of the standing house (not including the land upon which the house is 'sat'). This value is deferred (or not received) by the Landlord for [PERIOD OF DEFERRMENT, I.E. LENGTH OF REMAINING LEASE TERM + STATUTORY EXTENSION PERIOD OF 50 YEARS] years and results in a current value of the second reversion of [80% OF MARKET VALUE MULTIPLY BY PRESENT VALUE OF £1 FOR PERIOD OF REMAINING LEASE TERM ADD ANY PERIOD OF STATUTORY EXTENSION].

#### 4.0 Valuation

4.1 As set out above, an appropriate value of the Council's interest on an agreed valuation date of 1 August 2018, would be;

- (1) [VALUE OF FIRST STAGE, I.E. REMAINING LEASE TERM]
- (2) [VALUE OF SECOND STAGE, I.E. VALUE OF STATUTORY EXTENSION PERIOD FOLLOWING APPROPRIATE PERIOD OF DEFERRMENT]
- (3) [VALUE OF THIRD STAGE, I.E. AFTER REMAINING LEASE TERM AND STATUTORY EXTENSION PERIOD HAS EXPIRED FOLLOWING APPROPRIATE PERIOD OF DEFERRMENT].

[VALUE OF THREE STAGES]

[VALUE OF THREE STAGES ROUNDED TO APPROPRIATE FIGURE] in this instance.

#### Appendix One – Market Comparable Evidence

Address	Property	Condition	Price	Date
[ADDRESS OF SOLD PROPERTY]	[BRIEF DESCRIPTION OF PROPERTY, I.E. 3 BED SEMI-DETACHED]	[ANY AVAILABLE INFORMATION ON CONDITION]	[SALE PRICE]	[DATE OF SALE]