

CABINET

Corporate Property Strategy 11th December 2007

Report of Corporate Director (Regeneration)

PURPOSE OF REPORT			
To consider a revision to the Corporate Property Strategy to allow consideration of sales of property at less than market value.			
Key Decision	<input type="checkbox"/>	Non-Key Decision	<input checked="" type="checkbox"/>
		Referral from Cabinet Member	<input type="checkbox"/>
Date Included in Forward Plan	N/a.		
This report is public.			

RECOMMENDATIONS OF CORPORATE DIRECTOR (Regeneration)

- (1) Cabinet are asked to update the Corporate Property Strategy to provide a framework for allowing consideration of the disposal of assets at less than market value in support of the “well being powers” under the provisions of the ODPM Circular 06/2003, Local Government Act 1972: General Disposal Consent (England) 2003.

1.0 Introduction

- 1.1 The Corporate Property Strategy has provided the guidance for the acquisition, management and disposal of the Council’s assets for a number of years, the current version having been adopted in 2005.
- 1.2 In considering the disposal of property, the Strategy is based upon the principle of disposals being at “best value”, but a Consent is now in place that allow disposals at an “under value”. This report therefore suggests that the Corporate Property Strategy be updated to reflect the current Consent.

2.0 Proposal Details

- 2.1 The legal position with regard to the Council’s disposal of land is that s123(1) of the Local Government Act 1972 provides that subject to the further provisions of the section, the Council may dispose of land held by them in any manner that they wish. S123(2) of that Act stipulates that except with the consent of the Secretary of State, a Council shall not dispose of land under s123, otherwise than by way of a short

tenancy, for a consideration less than the best value that can reasonably be obtained.

2.2 This principle has been used in all recent land disposals, but in discussions with officials of Morecambe Football Club to take forward their proposals, an issue has been raised regarding the potential sale of land at less than market value to enable the overall development to be supported. This report considers the implications for the Corporate Property Strategy of any proposal for development that requires the Council to dispose of land at less than open market value.

2.3 By virtue of the ODPM Circular 06/2003 Local Government Act 1972: General Disposal Consent (England) 2003 the Secretary of State has given consent generally to local authorities for a disposal for a consideration less than the best that can reasonably be obtained in certain circumstances known as the “well-being provisions”. The circumstances are that:

(a) the 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 in its area:

- (i) the promotion or improvement of economic well-being,
- (ii) the promotion or improvement of social well-being,
- (iii) the promotion or improvement of environmental well-being, and

(b) the difference in the unrestricted value of the land to be disposed of, and the consideration for disposal, does not exceed £2,000,000.

2.4 If Cabinet were to determine that the Strategy should be updated to reflect the Consent, a framework should be adopted that would provide guidance for determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not the proposal falls within the terms of the general consent.

2.5 In considering the potential of selling assets at an under value, the Council should consider the following aspects:

The legal basis (as set out above).

The need to ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the under value.

If applicable the authority should have regard to its community strategy when exercising the well being powers.

The Council's policy/corporate objectives.

The Financial aspects (from Council's position).

Feasibility of proposal, i.e. robustness of business case / ongoing viability.

Alternative options for land / property in question.

Tax payers' interests and proportionality (i.e. what would most taxpayers' think of any proposal? How do you justify giving away land or selling at less than market value to a private company? What controls should be in place re future disposal?)

Fairness in dealing with third parties (e.g. how would you justify offering it to the first bidder?)

Any state aid implications.

3.0 Details of Consultation

3.1 There has been no consultation on this report.

4.0 Options and Options Analysis (including risk assessment)

4.1 Option 1 - To update the Corporate Property Strategy to provide a framework for allowing consideration of disposal of assets at less than market value, in support of well being powers, and that officers develop such a framework, having regard in particular to legal and financial considerations, the Council's corporate objectives, fairness and openness, and the interests of local taxpayers.

4.2 Option 2 – do nothing. This would result in retaining the Corporate Property Strategy in its current format and would not reflect the ability of the Council to utilise the provisions of the General Disposal Consent should it be so minded.

5.0 Officer Preferred Option (and comments)

5.1 The preferred option is option 1 in which Cabinet is asked to consider whether it wishes to update the Corporate Property Strategy to provide a framework for allowing consideration of the disposal of assets at less than market value in support of the “well being powers” under the provisions of the ODPM Circular 06/2003 Local Government Act 1972: General Disposal Consent (England) 2003. This would then be developed by Officers, for future consideration by Members.

RELATIONSHIP TO POLICY FRAMEWORK

The Corporate Property Strategy requires that the council review its asset base and only retain those assets required to meet its agreed objectives and priorities, and where assets are not required for this purpose they should be disposed of at best value. However, this no longer reflects the full range of options now available to the Council.

CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

There are no specific impact assessments at this stage, although any future development would need to reflect issues such as diversity and Sustainability.

FINANCIAL IMPLICATIONS

Whilst this report has no direct financial implications arising at this stage, in due course it could have very significant and far-reaching implications.

Should Cabinet agree to amend the Corporate Property Strategy in future, each disposal that sought to utilise the General Disposal Consent would need to be considered on its own merits. There would be the potential to forego the opportunity to receive capital receipts from such disposals, in order to contribute to 'well being'. This could have an adverse impact on the Council's future capital investment plans and on its capacity for further investment.

The future assessment of the relative merits of disposals considered under the Consent would be crucial, as would ensuring that this takes place within the framework of the Council's overall Capital Investment Strategy. The key to success would be careful consideration of the detailed conditions and criteria to be incorporated within any update to the Corporate property strategy, addressing the issues identified in paragraph 2.5.

SECTION 151 OFFICER'S COMMENTS

The s151 Officer has been consulted and her comments incorporated into the report.

LEGAL IMPLICATIONS

As discussed previously in the report. Would need to ensure that any disposal at less than best consideration comes within the Well Being Powers of the Local Government Act 2000. It may be appropriate to seek Counsel's advice in reviewing the Corporate Property Strategy.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and her comments have been incorporated in the report.

BACKGROUND PAPERS

Corporate Property Strategy.

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Ref: N/A