

New Policy for Acquisition and Disposal of Property

Overview and Scrutiny Panel	15 October 2024
Report Author	Andreea Plant (Head of Property)
Portfolio Holder	Cllr Ruth Duckworth
Status	For Decision
Classification:	Unrestricted
Key Decision	Yes
Previously Considered by	N/A
Ward:	All

Purpose of the Report

The purpose of this report is to present the council's new Acquisition and Disposal Policy for adoption. The policy provides a comprehensive framework for the identification and disposal of surplus property assets, ensuring that these disposals support the council's broader financial, operational, and strategic objectives.

Recommendation(s):

Members of the Overview and Scrutiny Panel are asked to:

1. Note and scrutinise the proposed policy and consider any appropriate recommendations to Cabinet in advance of its meeting on 24th October 2024;
2. Note and comment on the proposed recommendations to Cabinet, as follows:
 - i. Approve the implementation of the new Acquisition and Disposal policy.

1. Summary of Reasons

- 1.1 At present, the Council does not hold a formal Acquisition and Disposal Policy. The adoption of this new policy will set out how the council identifies and disposes of surplus property in order to reinvest capital receipts as part of Thanet District Council's ("the council's") capital strategy and asset management planning process. The policy has two main sections: general principles for disposals and general principles for acquisitions. It also addresses key issues affecting disposals and acquisitions.

2. Background

- 2.1 The council's current approach to the management of surplus property assets is being revised to ensure it aligns with modern asset management practices and the council's capital strategy.
- 2.2 The new Disposal Policy seeks to streamline processes, enhance transparency, and ensure that assets no longer needed for service provision are disposed of in a way that benefits the council and complies with legislative requirements.

3. Relevant Issues

- 3.1 Currently, the management of surplus property assets lacks the structure required to ensure optimal outcomes. This has led to inefficiencies and missed opportunities for generating capital receipts. The new Acquisition and Disposal Policy will address these issues by clearly defining processes and responsibilities for property disposals, with the Property Team playing a central role in coordinating these efforts.

4. Alternative Options

- 4.1 One alternative would be to continue with the current ad hoc arrangements for managing surplus assets, but this is not recommended as it fails to provide the structured approach necessary for achieving best value and strategic outcomes.
- 4.2 Another option would involve outsourcing the disposal process entirely, which could increase costs and reduce control over the asset disposal strategy. This is not the preferred option.
- 4.3 Cabinet could decide not to accept the proposed new policy and instead amend aspects of the policy. This is not the preferred option as the policy has been carefully thought out to align with the Council's capital corporate objectives.

5. Consultation

- 5.1 There is no statutory or public law duty to consult in relation to the decision sought in this report. However, the Property Team's Head of Service has engaged with the other Heads of Service and with the Council's Policy Officer and Directors regarding this new policy to seek their observations regarding the introduction of this policy. Any observations within the proposed policy have been considered and implemented where necessary.

6. Corporate Implications

- 6.1 **Finance and Resources**

6.1.1 There are no direct financial implications arising from this report, as the costs associated with property disposals will be managed within existing budgets. The policy is designed to secure value for money by ensuring that disposals are conducted transparently and in accordance with the council's obligation under Section 123 of the Local Government Act 1972 to achieve the best consideration reasonably obtainable.

6.2 Legal and Constitutional

6.2.1 In accordance with the provisions set out in Article 6 of the Council's constitution the Overview and Scrutiny Panel may make reports or recommendations to Cabinet in respect of the discharge of any function. Cabinet must then consider and respond to any recommendations made.

6.2.2 Cabinet is being asked to approve a policy in relation to the disposal and acquisition of property. The policy is consistent with the Council's corporate objectives and is a matter for Cabinet to decide. The policy has been reviewed by the Council's in-house legal team and is consistent with the applicable law in this area which is summarised below:

6.2.2` Section 120 of the Local Government Act 1972 (the Act) permits councils to acquire land whether situated inside or outside their areas for the purpose of any of their functions or for the benefit, improvement or development of their area.

6.2.2 By virtue of section 12 Local Government Act 2003 councils have the power to invest for any purpose relevant to their functions under any enactment or for the purposes of the prudent management of financial affairs. Local authorities also have the power to invest for a commercial purpose under the "general power of competence" in section 1 of the Localism Act 2011. This power enables Local Authorities to do anything an individual may do, subject to a number of limitations. These limitations include fiduciary duties and public law requirements to exercise the power of competence for a proper purpose. There are restrictions preventing a Local Authority from borrowing money to fund investments that are purely for yield.

6.2.3 The power of a council to dispose of land and property is provided for under Section 123(1) of the 1972 Act which provides that 'a principal council may dispose of land held by them in any manner they wish' subject to a number of provisions. Section 123(2) provides that except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained. However, Circular 06/03: Local Government Act 1972 General Disposal Consent (England) 2003 provides for the disposal of land otherwise than by way of a short tenancy by a local authority in England for less than best consideration (and without the consent of the Secretary of State) in the following circumstances:

(a) 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;

(i) The promotion or improvement of economic well-being;

- (ii) The promotion or improvement of social well-being;
- (ii) The promotion or improvement of environmental well-being; and
- (b) The difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2 million pounds.

6.2.4 Section 123 (2A) of the Act provides restrictions on the disposal of land consisting of or forming part of an open space. It provides for the publication of a notice of intention to dispose of the land to be advertised for two consecutive weeks in a newspaper circulating in the area in which the land is situated, and for the consideration of any objections made

6.2.5 There are a number of other complex legal considerations in respect of the acquisition and disposal of land and legal advice should always be sought at the earliest opportunity when either is being contemplated.

6.3 Council Policies and Priorities

6.3.1 This report relates to the following corporate priorities:

- To keep our district safe and clean
- To protect our environment
- To create a thriving place
- To work efficiently for you

6.4 Risk

6.4.1 This policy mitigates risks related to the disposal of property assets by establishing clear responsibilities and processes. It reduces the risk of non-compliance with statutory obligations and ensures that decisions regarding disposals are aligned with long-term strategic objectives. The structured approach laid out in the policy ensures that potential risks such as financial losses or missed opportunities are minimised.

6.5 Climate Change and Biodiversity

6.5.1 The Disposal Policy supports the council's climate emergency response by prioritising the reuse and repurposing of assets to reduce environmental impact and carbon emissions. The policy encourages limiting fossil fuel use, promoting renewable energy, and integrating energy efficiency in property disposals via long leases by introducing sustainability clauses as part of the lease terms.

7. Equality, Equity and Diversity Implications

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality

of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty: -

- To eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.

An Equality Impact Assessment has been undertaken where the test for relevance determined that a full equality impact assessment was not required.

8. Crime and Disorder Implications and Community impact

8.1 Crime and disorder implications have been reviewed, and the report has no implications.

9. Subject History

9.1 This item has not been subject to any previous formal cabinet discussion.

Appendices

Annex 1: Acquisition and Disposal Policy

Background Papers

- *n/a*

Report Author(s) Contact: Andreea Plant (Head of Property)

telephone: 01843577077

email: andreea.plant@thanet.gov.uk

Report Sign Off

Finance: Greg Dungan (Finance Manager)

Legal: Ingrid Brown (Head of Legal and Democracy & Monitoring Officer)