

# Thanet District Council

## **Acquisition and Disposal Policy**

**October 2024**



# THANET DISTRICT COUNCIL

<b>Policy</b>	<b>Acquisition and Disposal Policy</b>
<b>Department</b>	Place
<b>Service</b>	Property
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## **1. Policy Statement**

This policy demonstrates how Thanet District Council (the Council) identifies and disposes of surplus property in order to reinvest capital receipts as part of 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.

The Council will dispose of land and/or buildings in accordance with:

- key Council priorities
- statutory provision;
- the policies and procedures recorded in its Constitution; and
- the Council's Disposal Process.

## **2. Scope and Audience**

The scope of this policy is all council activity relating to surplus fixed property assets only. It does not encompass other aspects of the Council's property portfolio management including Right To Buy legislation.

The audience of this policy is:

- the Council's service users being Thanet residents, businesses and visitors
- Council officers (staff)
- Councillors
- our partners and third party providers including Council contractors where applicable.

### 3. Purpose of Policy

The purpose of this document is to make the Council's policies, guidance and procedures transparent and public. It is intended for use by Council officers and to inform stakeholders and members of the public. The policy should be read in conjunction with the Strategic Asset Management Plan, together with all other relevant Council property and other policies.

### 4. Introduction: Background and Context

The identification and disposal of surplus property and the consequential reinvestment of capital receipts, has been and remains a central part of the Council's capital strategy and asset management planning process.

For the purposes of this policy, a disposal of land means land and/or building(s). A disposal is either a freehold disposal by sale or exchange of land in perpetuity, or by the granting of a lease for a period greater than seven years. Leases of seven years or less are not covered by this policy document, as they do not meet the definition of a disposal as categorised by the [Local Government Act 1972 s123](#).

The availability of the Corporate Estate and its consequential funding also has an essential impact on the Council's cash flow and borrowing requirements. In this context it is recognised that all Council property is a corporately owned resource, even though it may be occupied by a specific service.

When property assets become surplus and are no longer required for the day-to-day provision of service, a number of options need to be considered, such as:

- Effective and efficient management for their re-use within the Council or partner organisation or other public body.
- Disposal to help facilitate the capital programme's aims whilst minimising any ongoing maintenance and vacant property holding costs and the consequential revenue implications.
- When a property requires significant capital expenditure, and if that capital expenditure were to be invested it would not translate into the equivalent capital receipt.

This policy and guidance document supports the Council's management of the disposal of Corporate Property Assets from the General Fund and Housing Revenue Account (HRA) that are surplus to its requirements and, therefore, the capital receipts that will be generated to contribute towards funding the council's capital programme.

## 5. Best Value and Section 123 Local Government Act 1972

It is important that each land and/or building disposal is treated on its own merits and nothing in this document will bind the Council to a particular course of action in respect of a disposal. Alternative methods of disposal, not specifically mentioned in this policy, may be used where appropriate, subject to obtaining proper authority (Appendix A).

The Council's actions in disposing of land and/or buildings are subject to statutory provisions: in particular to the overriding duty on the Council under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of land and/or buildings. This duty is subject to certain exceptions that are set out in a government document, referred to in this policy as 'the General Disposal Consent'

Any transfer of assets between General Fund and Housing Revenue Accounts will be in accordance with relevant statutory and financial requirements.

### Community Transfers

If it is considered that an asset is used for social, community and public purposes and the benefits of that service are deemed to outweigh the value of continuing ownership by the Council on behalf of all Council Tax payers, then the Council may consider the transfer of the asset to a community group. Any such transfer should be in accordance with the Council's Community Asset Transfer policy.

If the surplus property has an unexpired registration as an "asset of community value", the Council has to ensure that there is opportunity for a Community Right to Bid prior to any disposal process in accordance with the [Localism Act 2011](#).

## 6. General Principles for Disposals

1. The Council will dispose of land and property assets on the following key principles:
  - The disposal does not prejudice the longer term interests of the Council.
  - The proposed use of the land and property will generally be supported by the Local Planning Authority.
  - The consideration is the best that can reasonably be obtained.
  - The terms of the disposal protect the Council's adjoining and retained land and property.
  - The terms of the disposal recover the Council's reasonable costs of sale where possible.

2. All dealings in the Council's property and land assets shall be conducted in accordance with the Local Government Act 1972 and other relevant legislation.
3. The Council will publish details of the land/property which it has declared surplus to requirements in compliance with the [Local Government Transparency Code 2015](#).
4. Any person who may have an interest in making an offer to purchase has the opportunity to do so in circumstances no less favourable than anybody else.
5. Each asset disposal is to be 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 disposal not specifically mentioned in this policy may be used where appropriate, subject to obtaining the necessary authority.
6. Disposals will be undertaken in accordance with the Constitution for Governance of the Council. Currently, prior approval from the Head of Property for all property held in the General Fund and from the Head of Housing and Planning for HRA assets (or an officer acting under the delegated authority) is required for any disposal of land or property that would not otherwise be classed as a key decision subject to S151 Officer Sign-off. If, however, the disposal would be a key decision, then it would be subject to Cabinet approval.
7. A "key decision" which must be included in the Forward Plan, is a Cabinet or individual cabinet member decision, which is likely to:
  - A. Involve the incurring of one off expenditure, or the making of one off savings by the council, which are anticipated to be £250,000 or more\*<sup>1</sup>. The exceptions to this rule being:
    - Where approval has previously been received to incur that expenditure by the Cabinet.\*\*<sup>2</sup>
  - B. have an annual expenditure of less than £250,000, but has a total contract value over the lifetime of the contract of over £750,000, or
  - C. Where the effect would be on communities living or working in the district, in an area comprising two or more wards. However, decisions that impact on communities living or working in one ward will be treated as "key" if the impact is likely to be very significant.
8. When agreeing to a disposal, the decision maker/s must:

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<sup>1</sup> \* With regard to property leases the £250k value is defined as the letting or taking of a lease with a cumulative rental value in excess of £250k over the first 5 years of the lease.

<sup>2</sup> \*\*Having the budget approved by council does not mean that an individual has permission to proceed with their project

- a. satisfy itself that the land or property in question is surplus; and
    - i. it makes no contribution to the delivery of the council's services, strategic or corporate objectives; OR an alternative site or method of delivery has been identified which would be more cost-effective in delivering the council's services, strategic or corporate objectives;
    - ii. it is not required for strategic or regeneration/redevelopment purposes in the near future:
  - b. have due regard to the presumptions and priorities set out in Corporate Strategy and/or the Strategic Asset Management Plan.
9. The Council will endeavour to realise, within a reasonable timescale, all surplus land and property identified for disposal within its Corporate portfolio subject to the following criteria:
- a. That the disposal supports the [Corporate Plan 2024-28](#), which includes the key priorities of:
    - to keep our district safe and clean
    - to deliver the housing we need
    - to protect our environment
    - to create a thriving place
    - to work efficiently for you.
  - b. The Council will review opportunities to enhance disposal receipts by investigating potential alternative uses and consult with partners to ensure any future enhancement of value is properly shared with the council. This may include proposing sites for a specific use under the Local Plan 'call for sites' process.
  - c. The terms of any transaction are supported by an independent Royal Institute of Chartered Surveyors (RICS) valuation where the property has not been fully exposed to the 'market', which must be less than six months old and where there has been no material change of circumstances since the valuation, based on the advice of a qualified RICS surveyor. Where there is a 'special purchaser' and a sale is undertaken directly with a single party, the council will seek to recover the costs of the independent valuation and its legal, and estate fees as part of the transaction. These costs to be underwritten by the prospective purchaser regardless of whether the matter proceeds to a conclusion.
  - d. Best financial consideration being obtained:
    - i. unless social, environmental or economic benefits acceptable to Cabinet are provided in lieu.



e. The method of disposal will be determined on a case by case basis by the Head of Property and, in some instances in consultation with the Property Working Group.

i. Where a disposal is by way of a lease, the tenant will pay full market rent and be on full repairing and insuring terms. If Cabinet considers that, for example, a community group would benefit from support this will be done by way of a grant not by a reduced rent.

10. When the Council sells or leases a property in its ownership, the Property Department will complete an Equality Impact Assessment (EIA) to ensure any impact or results from such disposal or letting does not unintentionally disadvantage or discriminate against any group or individual as identified in the Equality Act 2010.

The policy identifies the key principles that will underpin our management of all property assets in the ownership of the Council, which are outlined in Appendix A.

The policy will cover all land and buildings held in the General Fund, Housing and Revenue Account which are also subject to the “Right to Buy” legislation that sets out its own parameters.

The Council may consider one of the following options for the disposal or granting of an interest in land:

- **Freehold Transfer** – Disposal of the freehold interest in land means the complete transfer of all rights and responsibilities of continuing to hold that property. Although the transfer may be subject to certain claw back or overage restrictions that seek to secure further payments in the event of excess development profits being secured.
- **Leasehold Transfer** – The grant of a new lease (excluding reversionary), the term of which is to be determined but longer than 7 years, where the Council wishes to retain control of a surplus asset or where the income stream is assessed to be of greater value than the foregone capital receipt that may be achieved through its sale.
- **Grant of Licence** – A licence is the grant of a right by the licensor to the licensee to use the subject land in a certain prescribed manner. A licence differs from a lease in that the freeholder retains paramount control of the land and that a licence may be revoked at short or immediate notice.
- **Grant of Easement** – An easement (also known as a Deed of Grant) provides similar access rights for installing and maintaining infrastructure equipment, but for a one off payment and it provides permanent access. An easement can also be registered at the Land Registry in order to ensure that future owners of the land adhere to it.

## 6.1 Summary of Disposal Methods

The Council will usually use one of four means to dispose of land. Disposal of land and property can be undertaken in a number of ways and it is for the Council to determine the most appropriate sales mechanism for their asset, but potential approaches include:

- **Private Treaty** – a sale of land negotiated with one or a small number of purchasers. The land may or may not have been marketed as available for sale. A binding legal agreement is created on 'exchange of contracts' between the council and the purchaser.
- **Public Auction** – a sale of land by open auction available to anyone. The sale will be advertised in advance. A binding legal agreement is created upon the auctioneer's acceptance of a bid along with a prescribed completion date.
- **Informal Negotiated Tender** – a sale of land after a public advertisement that requests informal offers or bids that meet a given specification or set of objectives. The council may then negotiate further or more detailed terms with one or more individuals submitting the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts between the council and the chosen bidder.
- **Formal Tender** – a sale of land by a process of public advertisement and tenders submitted by a given date in accordance with a strict procedure. A binding legal agreement is created upon the acceptance of a tender by the council.

## 6.2 Disposals to Nominated Purchasers

Disposals to nominated purchasers will be considered by the Council where this meets an identified regeneration, social or community need. All 'off market' disposals to nominated purchasers will be subject to an independent external valuation to determine best consideration.

## 6.3 Disposals to Special Purchasers

The Council may dispose to purchasers to whom a particular asset has special value because of advantages arising from its ownership that would not be available to general purchasers in the open market. Such 'special purchasers' will include adjoining owners and parties with an interest in the property where a disposal will release additional, or marriage value, to be shared with the council. A single tenant who occupies more than 50% of a multi-occupied property may be considered as a special purchaser (otherwise the property will be sold on the open market as an investment).

## 6.4 Disposal Terms

Wherever possible, the Council will endeavour to keep land and property disposals simple and cost effective for both parties. For certain types of disposals, it may be necessary for the council to impose terms which are considered necessary to protect the council's interests. Such terms may include:

- **Development Obligations** – The Council generally will only dispose of strategic development land for identified development proposals. Where appropriate, the Council will impose obligations to commence and complete the proposed development within a reasonable timescale backed up with an option for the council to re-purchase the land.
- **Development Agreements** – Development agreements will be used for the disposal of strategic development sites where the principal aim of the disposal is to facilitate regeneration benefits from a particular scheme.
- **Overage and clawback** – Where appropriate, disposals will include provisions for securing a share of future enhanced values through the use of overage and claw back clauses.

## 6.5 Disposal and Planning permission

As a general principle, where in the opinion of the Head of Property, the site has potential for redevelopment which will enhance its disposal value, outline planning permission for such development will be obtained prior to disposal.

Prior to the marketing of land and property, the Council may seek planning permissions for alternative uses where this will help maximise value and where it is cost effective and expedient to do so.

## 6.6 Release/Variation of Covenants

The Council has the benefit of restrictive covenants placed on previous freehold and leasehold disposals. These covenants usually restrict the use to which land and property can be put, although they could also relate to other forms of restriction.

Any request to release or modify covenants will be considered having regard to the original purpose of the covenant and its current relevance. Where the council is mindful to agree to a release or other modification, it will seek a reasonable commercial return by way of compensation if the release or modification is considered to have a value, or as a minimum, the council's cost will be covered.

## **6.7 Public Open Space and Common Land**

The disposal of land which is, or forms part of an area of Public Open Space or Common Land, is subject to special rules and procedures. Before disposing of such areas, the council is obliged to publish the intention to dispose and consider any representations which are subsequently received. The provisions regarding the disposal of Common Land require consent from the Secretary of State and replacement land to be made available where the area of land to be sold exceeds 200m<sup>2</sup>.

## **6.8 Land Exchanges**

The Council will consider a disposal by way of an exchange of land when it is advantageous to the council and the other parties. The disposal will be on the basis of an equality of exchange and any inequality in land value will be compensated for by a balancing payment or other means of consideration as appropriate.

## **6.9 Easements and Wayleaves etc**

The Council will not grant any new easements, private rights of way or privileges over Council owned land unless this is necessary to protect or promote the long term interests of the council.

Any existing rights will remain until such time as the subject land may be released for development whereupon the land will be sold subject to the existing rights.

Where permitted under the terms of the agreement, the council will undertake a review of any payments due to the Council.

The Council will continue to grant easements and wayleaves to statutory undertakers who have compulsory powers and rights to requisition services.

## **7. General Principles for Acquisitions**

The Council may from time to time acquire an interest in land and property to meet identified operational or strategic needs, such as, but not limited to, investment, housing, transportation, and regeneration. Acquisitions may also be made to generate yield, ensuring alignment with financial objectives. All purchases will adhere to financial and legal guidance, ensuring compliance and securing best value for the council.

The Council will acquire land or property from the open market or privately having regard to normal and prudent commercial practices.

Where the Council proposes to make a compulsory purchase order (CPO) it will attempt to acquire the necessary interests by agreement in the first instance having regard to the methods and procedures for assessing the correct amount of compensation commonly known as the “Compensation Code”.

## **8. General Issues**

### Value Added Tax (VAT)

The Council will elect to waive its exemption (opt to tax) on the disposal of land and property assets where the council wishes to recover previously incurred input tax.

The decision whether to opt to tax or not will be jointly made by the Service Directors responsible for Place and Corporate Governance.

VAT will be payable on the disposal and letting of land used for car parking (including garages) where HMRC guidance states it must be charged and on rents, service charges and other charges where the council has previously ‘opted to tax’.

### Fee Recovery

Where appropriate, the Council will seek to recover from third parties its reasonable legal, surveying and administrative costs incurred in dealing with all matters involving the property portfolio. The fee recovery will be on the basis of the approved schedule of fees listed on the Council’s website : <https://www.thanet.gov.uk/info-pages/fees-and-charges/>

### Commissioning

The Council may, from time to time, commission external consultants in connection with the disposal and acquisition of land and property. The Council will procure consultants in accordance with its contract and financial procedure rules. The Council will ensure that the external consultants will possess the necessary professional and technical qualifications and experience.

### Appropriation of assets

It may be necessary for the Council to appropriate an asset, prior to disposal or following acquisition, in order to support overriding objectives. Relevant legislation would be applied to the specific circumstances and authority sought under the Council’s Constitution.

### Timing

The timing of any disposals shall take into consideration current market conditions and the background of the council's budgetary requirements. Consideration shall also be given as to whether the land or property interest is likely to increase significantly in the future taking into consideration known changes in respect of regional and local planning policy. In this event it may be appropriate to introduce restrictions or uplift/overage/clawback provisions.

### Valuations

Valuations will be undertaken by a third-party independent consultant. At all times the council shall be conscious of any potential conflicts of interest.

Any Valuation Reports shall be in accordance with the current RICS Guidance (presently the [RICS Valuation – Global Standards 2022](#)). The Valuer shall recognise the purpose of the disposal (or acquisition) and shall set out their current opinion of Market Value or Market Rent. The council shall provide all necessary information to help inform the Valuer's decision, in particular with regard to Planning Policy, tenancies and any historic possible contamination issues or Title restrictions. This will help ensure that any assumptions made by the Valuer are limited and have a greater degree of accuracy to the actual valuation.

All valuations shall be undertaken by suitably qualified surveyors with appropriate knowledge and understanding of the asset (or liability). The Valuer shall at all times act with independence, integrity and objectivity.

### Crichel Down

It should be noted where a property has been previously acquired through or under the threat of compulsory purchase means and is now surplus to council requirements, consideration of the Crichel Down rules may apply.

# Appendix A

## Meeting the requirement to obtain 'Best Value'

Under the Local Government Act 1972 (as amended) the Council is obliged to obtain the best consideration that can reasonably be obtained when disposing of land and property. Best consideration is defined as the unrestricted market value taking into account any additional amount which might be obtained from a purchaser with a special interest. Unrestricted market value generally means the best price obtainable where the principal aim is to maximise the value of the receipt. The unrestricted value should take account of whatever uses might be permitted by the Local Planning Authority.

Consideration is not limited to the purchase price; it may also include disposal terms which have an identifiable commercial value to the council but this should be converted to a capital value for the purpose of establishing what the best consideration is. Where the council is disposing of key strategic development land, it will evaluate the regeneration benefits arising from the disposal together with the financial considerations. The Council will also take account of the financial strength of the proposed purchaser and the purchaser's commitment to a proposed scheme.

The Local Government Act 1972 General Disposal Consent (England) 2003 allows the Council to dispose of land and property which it considers will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the area at less than best consideration, providing the undervalue does not exceed £2m.

For proposed transactions where the 'undervalue' will exceed the £2m threshold specific consent from the Secretary of State will be required. Disposals undertaken through the council's Asset Transfer Scheme will generally be at less than best consideration utilising the General Consents and will be subject to the requirements of the Scheme.

In circumstances where the council is mindful to dispose at an undervalue it will have regard to the following:-

- Circular 06/03: Local Government Act 1972 [General Disposal Consent \(England\) 2003](#) and [General Housing Consents 2005](#) published by the Ministry of Housing, Communities and Local Government (MHCLG), formerly the Department of Communities and Local Government (DCLG), particular regard being had to the Technical Appendix which explains the issues outlined earlier in more extensive detail
- European Commission Communication on State Aid elements in sales of land and buildings by public authorities (97/C 209/03) – also known as the 'State Aid Rules'.
- RICS Valuation – Professional Standards 2024 UK VPGA 17 – Local authority disposal for less than best consideration.

In determining whether or not to dispose of land for less than best consideration, the council will 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 undervalue in accordance with the Technical Appendix. Any decision to sell at an undervalue will be made by the Council's Cabinet.

#### Other Relevant Aspects

If the Council intends to enter into a land transaction which forms some form of partnership and/or provision of service, public procurement processes may apply. In this instance, the matter should be referred to the council's Legal Services and clarification obtained.



# Appendix B

## Equality Impact Assessment

**(Form to be completed before the sale or letting of a council property is completed – and placed on Estates’ File)**

*\*Subject to updating in line with corporate templates*

The council must have due regard to its Public Sector Equality Duty when making all decisions at member and officer level. An EIA is the best method by which the council can determine the impact of a proposal on equalities, particularly for major decisions. However, the level of analysis remains proportionate to the relevance of the duty to the service or decision.

**Application:** all freehold sales and lettings of 3 years or more.

### Purpose

- To ensure that all prospective purchasers or lessees are treated fairly and given equal opportunity to participate in the bidding process.
- To ensure no individual or group is intentionally or unintentionally prevented from participating in the bidding process on grounds of ethnicity, race, gender, age, sexual orientation or disability.
- If selling at auction, to make sure reasonable measures are taken to ensure the auction room is accessible to everyone, as far as is reasonably practicable.
- When selecting a bidder or lessee, to consider the impact, if any, the decision could have on the unsuccessful bidder or lessee, to ensure they are not intentionally or unintentionally disadvantaged by the council’s decision.

*Tick as appropriate*

No	Assessment	Yes	No	N/A
1.	Have all individuals or groups been treated on an equal basis without favour during the sale / letting process?			
2.	Was any individual or group prevented from participating in the sale / letting process on account of their ethnicity, race, gender, age, sexual orientation or disability?			
3.	In selecting your purchaser /lessee, are you aware of any impact your decision might have on any unsuccessful bidder or lessee which might result in their being disadvantaged?			
4.	If selling at auction, was the auction room reasonably accessible to all potential bidders, including those with a disability?			

If

answering “No” to Q. 1 and Q 4, or “Yes” to Q. 2 and Q.3 – please complete a separate sheet giving reasons for your answer.

**Signed:** .....

**Date:** .....

**Estate Surveyor Name:** .....