

# Swale Borough Council Disposals Policy

## Purpose of the policy

The Council's Property Asset Strategy adopted in November 2023 makes it a priority that the Council only retain land and property where it makes strategic or financial sense to do so. This should be to deliver services in line with corporate priorities, to generate income, to provide a return on investment, to enable regeneration or to provide social value.

Having been informed by public consultation in the autumn of 2024, this policy sets out the framework for the disposal of Council property assets. It reflects the aims of the Property and Asset Strategy and should be read in conjunction with this and the Property Procedure Rules (adopted November 2023) as well as the Council's constitution. These documents provide guidance on the procedures to be followed for the disposal of Council owned property.

The Council has fairly wide discretion to dispose of its assets, including land or buildings. When disposing of assets, the Council is subject to statutory requirements, 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 a disposal.

This duty is subject to certain exceptions that are set out in the General Disposal Consent (England) 2003. Within financial limits, this gives Councils wider powers to dispose of land and property at less than market value where it could be demonstrated that they promoted the economic, social and environmental well-being of the area.

One of the options available to local authorities for disposal of property assets at less than market, is a Community Asset Transfer (CAT). The Council views CATs positively as part of its long-term support for engagement and partnership with Parish and Town Councils, and the voluntary and community sector and therefore an aligned but separate policy is also in place for this form of disposal.

## Definition of Disposal

Under the relevant legislation a disposal includes the grant of a lease of more than 7 years or an assignment of an existing lease which has more than 7 years to run. This policy does **not** apply to all disposals falling within this definition. This policy will apply where the disposal falls within the Community Asset Transfer Policy or where the disposal is the subject of a freehold transfer or a lease of no less than 99 years.

All other property transactions are regarded as lettings.

## Identifying Surplus and Underused Property Assets

The Property Asset Strategy sets out the need for ongoing asset review, which allows the Council to consider, rationalise and streamline (and where appropriate, to supplement) its property portfolio. This process assesses the financial viability of

assets to guide disposal decisions, but also takes account of a wider set of considerations.

The disposal of a property asset will be considered if it is identified as surplus or underused. Disposal may also be considered where it could proactively advance the Council's priorities and objectives.

Identifying whether a property asset is surplus, will be based on meeting one or more of the following criteria:-

- (a) It makes no contribution to the delivery of the Council's services,
- (b) It has no viable potential with regard to the delivery of the Council's Corporate Plan and its wider strategy framework
- (c) An alternative and more cost-effective service delivery site has been identified.

Except where a concession has been made or can be considered under the relevant policies to support a wider Council objective, a property asset will be deemed to be underused if:

- (a) The income it generates is below that which could be achieved from one or more of:
  - (i) An alternative use
  - (ii) Disposing of the site and investing the income
  - (iii) Intensifying the existing use, mindful of the viability of doing so
- (b) A significant part of the site is vacant and is likely to remain so for the foreseeable future
- (c) The cost of retaining the asset outweighs its likely income generation.
- (d) The asset has no potential with regard to the delivery of the Council's Priorities or its contribution to Council priorities is deemed not to represent value for money against the financial opportunity cost.

### **Criteria for Disposal**

The following criteria shall be considered in determining the potential disposal of an asset:

### **Financial Viability**

The financial viability of retaining or disposing of an asset will be assessed. This includes:

- an evaluation of the ongoing maintenance and whole life costs;
- potential income generation;
- the projected market value of the asset and whether this can be enhanced in advance of any disposal and

- whether the benefit of the expected capital receipt would outweigh existing income.

### **Prevailing Market Conditions**

Property market conditions will influence whether it is an appropriate time to dispose of an asset. Minor sales of low value property will not be influenced as greatly but the impact on the achievable financial receipt for higher value properties may be significant. Retention of the property must, however, be weighed against the cost of holding the property.

### **Council Priorities**

The alignment of the asset with the Council's strategic goals will be considered. These goals may include alignment with the Council's Corporate Plan and wider strategy framework; service delivery objectives; community need and the Council's sustainability targets.

### **Community Benefit/Impact**

The potential community benefit of retaining or disposing of an asset will be assessed, through a community impact assessment. The view of the relevant, local parish council and/or ward Members will be sought to inform this community impact assessment (CIA). Consideration of community impact will include the potential for community use of a property asset but also its historic, heritage and aesthetic value, primarily using the Council's adopted local heritage listing criteria.

### **Regeneration**

The potential for the asset to contribute to economic development or wider regeneration in the borough will be considered. This could include the potential for job creation, business development, and the promotion of economic growth. This will be included within the community impact assessment.

### **Legislative Framework and Government Guidance**

This policy will comply with the relevant UK legislation and Government guidance. Considerations will include but not be limited to:

- The Local Government Act 1972: which gives local authorities the general power to dispose of land held by them in any manner they wish.
- The Localism Act 2011: which introduced the "General Power of Competence" providing local authorities with greater freedom to act in the best interests of their local communities.
- The Ministry of Housing, Communities & Local Government's (MHCLG) Non-Statutory Guidance on Disposal of Land by Local Authorities (February 2020): which provides guidance on achieving best consideration for the disposal of assets.
- Subsidy Control Act 2022, which regulates the giving of subsidies out of public resources.
- Part 5 of the Localism Act 2011 entitles community groups to nominate assets in their locality to be placed on the List of Assets of Community Value. The

governance arrangements in respect of this legislation and are in place. In the event of a nomination of a Council owned property asset, this will impact on the potential disposal of the asset.

These considerations and will be recorded in making a decision to dispose, whether that be through officer delegation or through committee approval, in line with the approved Scheme of Delegation.

The process and determination of the method of Property Disposal are set out in the Council adopted Property Procedure Rules (sections 1.10-1.13).