



Briefing Note to Members

To: Elected Members

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Subject: Disposal of Land by Local Authorities

1.

Purpose:

To advise members of new legal rules which regulate the disposal of land by Local Authorities at less than market value. "Land" includes buildings and land covered by water.

2.

Background:

Occasionally Councils wish to dispose of land either free of cost or for less than the best price that could be achieved by marketing the ground.

Examples include the sale of ground to community organisations or to facilitate aims such as regeneration. An example was the 2007 decision to transfer Renton Community Education Centre at nil cost into community ownership.

The present position is that Section 74 of the Local Government (Scotland) Act 1973 imposes a duty on Local Authorities not to dispose of land for a consideration less than the best that can be reasonably obtained. The

Council also requires to demonstrate best value in terms of sound management of resources including land, and in its use of review and options appraisal. In the event that a Council wishes to sell land at less than market value then the consent of the Scottish Ministers is required. Prior to granting such consent Scottish Ministers would require Councils to submit full information on values, the reasons why the land is being sold at less than the market value and other information to demonstrate that the proposal represents best value.

Section 74 of the 1973 Act was amended in 2003 by the Local Government in Scotland Act 2003. This allowed the Scottish Ministers to introduce regulations which allowed disposals at less than market value without obtaining Scottish Ministers consent. These regulations, being The Disposal of Land by Local Authorities (Scotland) Regulations 2010 have now been made and will come in to force on 1 June 2010.

3.

Main Issues:

The regulations allow Local Authorities to dispose of land without obtaining the Scottish Ministers consent in three circumstances, being:-

1. Where the best value that can reasonably be obtained for the site is less than £10,000 or
2. The difference between the best price which could reasonably be obtained and the proposed price is less than 25% or
3.
 - (a) The Council has appraised and compared the costs and disbenefits and benefits of the proposals,
 - (b) The Council is satisfied that the disposal for the value proposed is reasonable and
 - (c) The disposal is likely to contribute to either (i) economic development or regeneration (ii) health (iii) social wellbeing or (iv)

environmental wellbeing in respect of the whole or any part of the area or any persons resident or present in the area.

Outwith those exceptions it is still necessary to obtain the consent of the Scottish Ministers.

The new regime requires that a suitably qualified valuer is instructed and the Scottish Government will issue guidance on the required qualifications. It should also be noted that 'disposal' also includes leasing of properties. The Council will need to be aware that when the £10,000 threshold is looked at for leasehold disposals, what is relevant is the valuation of the whole leasehold interest, not just one years rent on longer lease.

Additional key points which need to be noted are:-

- It is essential that a full audit trail, including cost benefit analysis is kept for disposal falling under Category 3. Members will recall the criticism by Audit Scotland in the January 2008 Progress Report of the Council's decision to transfer Renton Community Education Centre. They were particularly critical of the fact that there was no robust review of the implications of the decision.
- Best value – the Council still needs to demonstrate that Best Value has been obtained. Just because the disposal is under £10,000 or under the 75% threshold does not mean that the Council can automatically sell at a discount.
- Are there any common good issues.
- Do development obligations convert the 'disposal' into a public procurement?
- There are still restrictions on sale of types of land or buildings. For example, the consent of Scottish Ministers is still needed to sale of land or buildings on the Housing Revenue Account.

Summary

In light of the foregoing there are effectively four methods of disposing of ground and buildings:-

1. Sale on the open market, which provides clear evidence that the best price has been obtained.
2. Negotiation of terms with a single purchaser, where the purchaser has a special relationship with that land which means that they are the only purchaser or a purchase by them will maximise the value. An example might be the sale to a sitting tenant or where a neighbouring proprietor owns part of the site and the Councils ownership cannot be independently developed.
3. Sale at less than market value where the best price achievable is under £10,000 or where the proposed price is more than 75% of the best price achievable. In these circumstances the Council will need to demonstrate Best Value by evaluating the benefits of the sale against the lowered price.
4. Where the £10,000 or 75% threshold is exceeded, it will be necessary to appraise and compare the costs and disbenefits and benefits of the proposal, for the price to be reasonable and the disposal to contribute to the economic development or regeneration, health, social wellbeing or environmental wellbeing. An audit trail will be particularly important.

For sales at less than market value which do not fall into any of these categories it will still be necessary to obtain Scottish Ministers consent. As usual the Scottish Ministers will require full information on values, the reasons why the land is being sold at less than market value and other information to demonstrate that the proposal represents best value. The only circumstances in which this is likely to be granted would be where the test in (d) is satisfied but the proposal does not fall within the 4 classes of economic development, health etc.

The new regulations are welcome as they finally give Councils the power to dispose of land at less than market value without obtaining the Scottish Ministers consent. However a clear options appraisal and audit trail will be needed for sales at less than market value.

AF/NQR
May 2010