

# Property Disposal & Transfer Policy

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Property and Facilities



milton keynes council



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## Introduction

This strategy applies to the disposal of all interests in any non-residential property by Milton Keynes Council (MKC). It sets out procedures designed to be open, transparent and consistent, to ensure maximum benefit from disposal of the Council's assets. Within this context, the policy will ensure the Council achieves best value, acts within the appropriate legal framework, and performs in a demonstrably fair and open manner.

Property will be considered to be surplus where assets are underperforming or where they no longer best serve the needs of local communities or the Council's corporate aims. It is anticipated that in the normal course of events that this will happen through the Asset Challenge process set out within the Corporate Property Strategy. Whilst this strategy outlines the guiding principles and procedures around disposals, it does not bind the Council to a particular course of action. As such, alternative methods of disposal, not specifically mentioned in this policy, may be used where appropriate, subject to the relevant approval.

### **Best Consideration**

Local Authorities have an overriding duty under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of property, subject to certain exceptions set out in the Local Government Act 1972: General Disposal Consent 2003. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal of land where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2,000,000 (two million pounds) or less.

The Council must still comply with their duty to obtain best consideration for the restricted value and comply with normal and prudent commercial practices including obtaining the view from a professionally qualified and independent Chartered Surveyor.

Although leases which are granted for longer than seven years are technically classed as a disposal, those transactions are covered by the Lease and Rent Management Policy.

## Property & Facilities

The Estates Team within Property and Facilities will lead on all commercial property disposals on behalf of MKC.

The team will:

- Work within the guidelines of the Corporate Property Strategy and relevant delegated authority at all times.
- Seek disposal opportunities that will further the corporate aims and objectives of MKC.
- Ensure the local property market and relevant external influences are monitored for market risk.
- Provide accurate building performance information to feed into the Asset Challenge process and identification of surplus properties outside of Asset Challenge.
- Hold an accurate and up to date record of surplus properties and expected capital receipts.
- Dispose of properties no longer required as efficiently as possible.
- Dispose of the least efficient properties taking into account service needs, community, social, cultural, economic and environmental benefits and risks.

Work strategically with our partners to review opportunities to enhance disposal receipts, learn from our common experience and share best practice

## Types of Disposal

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

### **Freehold Transfer**

Disposal of the freehold interest in property means the complete transfer of all rights and responsibilities of continuing to hold that property. 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 long lease (over 99 years), where the Council wish 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, or where the Council decides to receive a premium for a long leasehold interest and reduced revenue return for strategic purposes.

### **Community Asset Transfer**

Property may also be considered for disposal as part of the Community Asset Transfer (CAT) process. If the Council is approached by a town or parish council or a community organisation to take the freehold transfer or long lease of a building, the CAT process should be followed. Notwithstanding any CAT transfer must have due regard to this policy and the principles therein.

### **Amenity Land Sales**

It is the Council's policy not to sell amenity land to residents for garden use. These areas are worth very little in value and achieve only a small receipt whilst the transaction is very resource and cost intensive. Over time, the Council runs the risk of being left with odd parcels of land that are inefficient to maintain, pushing costs up. Additionally, planning restrictions are strict to prevent change of use to garden land. Many Councils have now adopted a no-sale policy because of the shortage of land for housing as some of these parcels of land may be suitable in the future for infill housing, or if there is the potential to redevelop or regenerate an area.

## Identifying Property for Disposal

Usually property will only be identified as surplus to requirements having first been through the Asset Challenge process with clear reasoning provided. In exceptional circumstances, properties may be identified in advance of Asset Challenge where they are underperforming or there is a strategic importance.

### **Due Diligence**

Due diligence is to be carried out prior to consideration of a disposal/asset transfer, to include the analysis of:

- Existing lease arrangements regarding the property (to include minimum length of the unexpired lease terms, covenant strengths, legal encumbrances, third party rights);
- Asset maintenance liability and building condition true lifecycle costs;
- Future planning, and/or regeneration potential and impacts on enhanced disposal receipts;
- Community, social, cultural, economic and environmental benefits and risks.

Where appropriate, measures will be put in place to protect the councils position. For example, in long leases this may include covenants and user restrictions. On freehold sales this may include overage, clawback and pre-emption rights.

## Disposal Method

The most appropriate disposal/transfer method will be identified, after taking advice from a Chartered Surveyor with relevant expertise, will usually be either by private sale, private auction, informal negotiated tender, formal tender, or exchange of property.

### **Private Sale**

Sale of property negotiated with one or a small number of purchasers. A binding legal agreement is created on 'exchange of contracts' between the Council and the purchaser.

### **Public Auction**

Sale of property by open auction available to anyone. The sale will be advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer.

### **Informal Negotiated Tender**

Sale of property 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 authority and the chosen bidder.

### **Formal Tender**

Sale of property 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.

### **Exchange of Property**

A transaction involving the exchange of Council owned property with another land owner. The land acquired by the Council will meet at least one of its corporate objectives and will be 'equal' in value to the property exchanged or there can be an equality payment made by either party.

## Process

Assets being declared surplus to requirements will normally have been identified as part of the Asset Challenge process, but there may be occasion where the disposal falls outside of this, for instance if it is related to or forms part of a strategic project.

A business case will be produced prior to any disposal or asset transfer clearly setting out the reasons, benefits, risks and financial implications. The business case must summarise tenancy, covenant and other legal factors related to the proposed disposal/transfer as set out within the strategy, and demonstrate that it achieves best consideration for the Council. The business case should outline what consultation has been carried out regarding the disposal/transfer and the proposed disposal route.

Additionally, an Equality and Fairness Impact Assessment may be undertaken for each disposal, or where relevant, group of property disposals to assess community, social, cultural, economic and environmental benefits and risks; this must be attached to the business case.

The Estates Team will enter into detailed disposal discussions on behalf of the relevant Council only when Cabinet has agreed to the disposal or there is agreement through the relevant delegated authority.

All properties which are to be disposed of will be advertised on the Council's website and, in most cases, the disposal will be managed by an independent commercial agent.

### **Crichel Down Rules**

Where a property has been previously acquired through or under the threat of compulsory means and is now surplus to Council requirements, consideration of the Crichel Down Rules will be considered.

The Rules apply in certain circumstances where land that is to be disposed of was previously acquired by or under threat of compulsion. Where the Rules apply, former owners will, as a general rule, be given a first opportunity to re-purchase the land previously in their ownership.



## Authority

Overall authority for agreeing disposals will generally sit with the Cabinet, but officers will first be expected to have consulted the Strategic Property Board. Local Councillors should also be consulted in advance of a disposal.

**Property and Facilities**

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