




Disposal and Transfer Policy.



Corporate Property
Strategy 2024-2029



Date
Version 4



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1. Introduction

This policy applies to the disposal of all interests in any non-residential property by Milton Keynes City Council (MKCC). 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.

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.

2. The Best Consideration Duty

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 not covered within this policy and instead are referred to in the Lease and Rent Management Policy.

3. Subsidy Control

The Subsidy Control Act replaces the European State Aid Rules and considers the financial assistance given by a public authority which confers an economic advantage on one or more enterprises.

There are certain exemptions including, but not limited to, where the subsidy only represents minimal financial assistance (below £315,000 over any three-year period).

Any subsidy should be assessed against the principles of the scheme. This is a new and complex area of law, so legal advice must be taken should there be a risk of any subsidy being granted – e.g. in the disposal of property at less than best consideration. Transfers to Town and Parish Councils are exempted in that they are not economic enterprises.

4. The Disposal Process

The Property and Development Team will lead on all property disposals on behalf of MKCC, whether these are in the General Fund or the Housing Revenue Account (HRA).

The team will:

- Work within the guidelines of the Corporate Property Strategy and relevant delegated authority at all times (See Annexes A and B).
- Seek disposal opportunities that will further the corporate aims and objectives of MKCC.
- Ensure the local property market and relevant external influences are monitored for market risk.
- Provide accurate building performance information to feed into the Asset Rationalisation process and identification of surplus properties.
- Hold an accurate and up to date record of surplus properties and expected capital receipts together with the void property costs.
- 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.

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 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 Transfers

The Council recognises that devolution of assets and services to local communities, parish and town councils (given their locality base) makes a significant contribution to enabling local areas to be stronger, more resilient and sustainable. In addition, this provides the opportunity for residents to have greater ownership of local assets and a real say in their future.

We recognise the value of enabling local community partners to assume responsibility for local assets and local services and we want to empower these organisations that may be best placed to take on these assets and deliver services.

The Council's policy in relation to transfers can be found in the document [Working Together: An Approach to Devolution of Assets \(Facilities\) and Services](#).

Amenity Land Sales

It is the Council's policy not to sell amenity land to residents for garden use or parking spaces. 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 of amenity 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 Rationalisation process with clear reasoning provided. In exceptional circumstances, properties may be identified outside of the Asset Rationalisation process where they are underperforming or there is a strategic benefit to be achieved from the disposal.

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 council's 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.

A report will be produced prior to any disposal or asset transfer clearly setting out the reasons, benefits, risks and financial implications. The report 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 report will outline what consultation has been carried out regarding the disposal/transfer and the proposed disposal route.

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. A valuation will be required for all disposals of the whole of the Council's interest in the Land and Buildings to be disposed of irrespective of the consideration to be obtained on disposal.

The Director must ensure that consultation with the Ward member(s) and Parish Town Council(s) have taken place before the disposal of land and buildings in their area, together with consultation with the appropriate Cabinet Portfolio holder, as defined in the Leader's Executive Scheme of Delegation.

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

The authority to dispose of land and property is set out in the Leader’s Executive Scheme of Delegation and in most cases a delegated decision is taken by the relevant cabinet member. Section 19 of the Financial Regulations must be followed to ensure compliance.

5. Annexes

Annex A Disposal of HRA Land and Assets process map

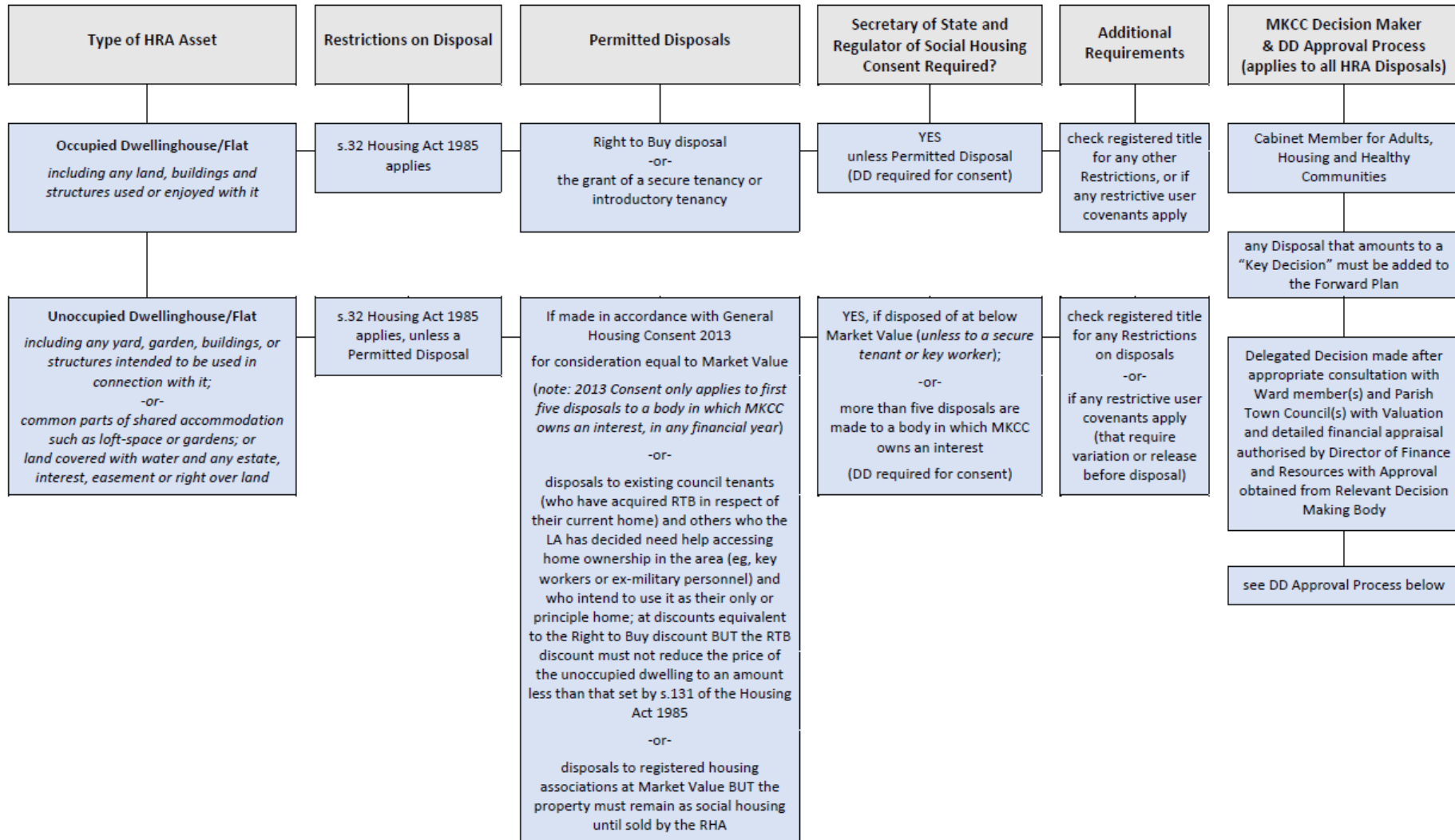
Annex B Disposal of General Fund Assets process map

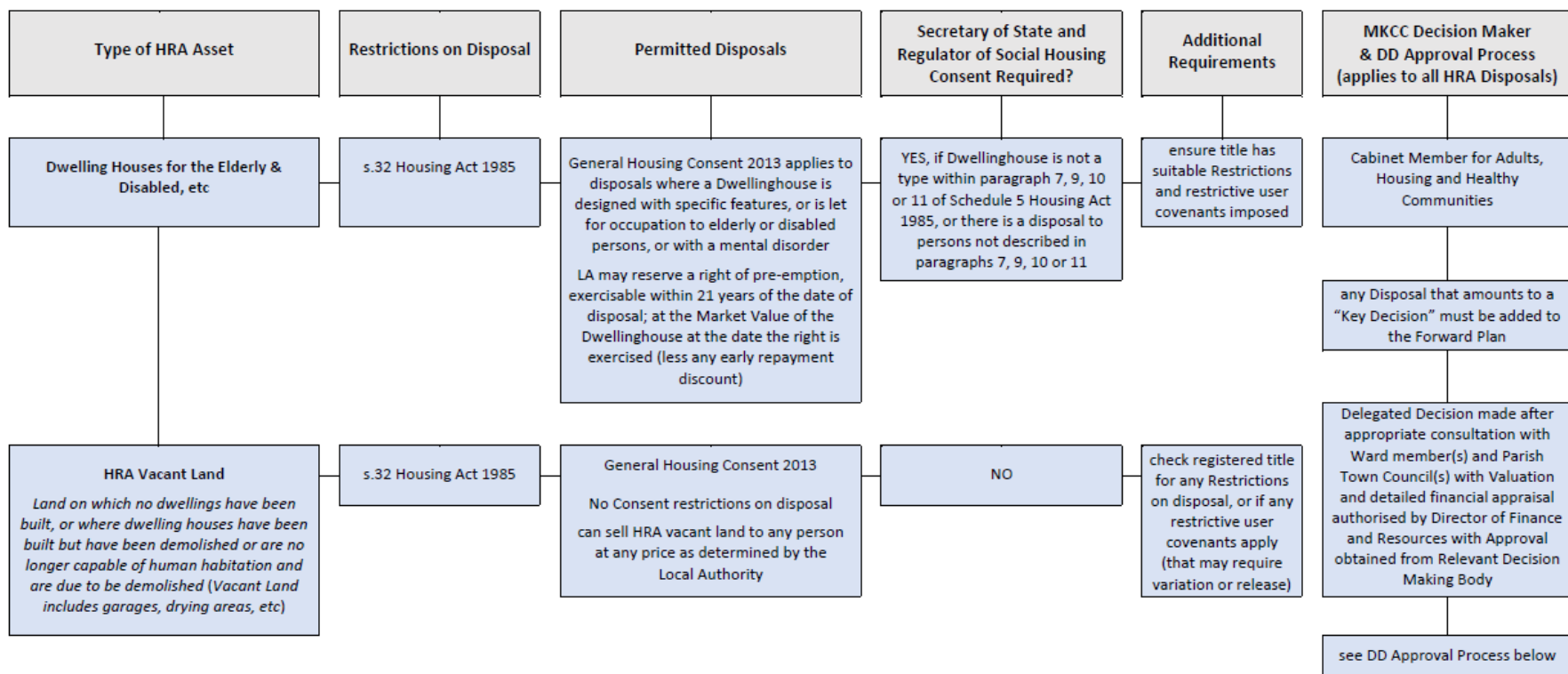
6. Version Control

Version Number	Date issued	Author	Update information
1	27/09/2019	Bee Lewis/ Peter Beer	First published version
2	18/11/2021	Leon Howell	Contact detail and accessibility
3	19/02/2024	Peter Beer	Added new section re Subsidy Control Updated CAT section to new devolution policy Updated process to align with Financial Regulations
4	13 August 2024	Bee Lewis	New template. Policy reviewed in line with Corporate Property Strategy. Annex A and B added

Annex A

MKCC Disposal of HRA Land and Buildings Assets





Delegated Decision Approval Process:

Section 18.7 of the Financial Regulations (Management of Assets) specifies that "Cabinet Approval" is required in accordance with section 19 of the Financial Regulations (Acquisition and Disposal of Land and Buildings); section 19 requires that:

- any proposal for the Disposal of land or buildings (whether freehold or leasehold) needs to be referred to the Director for Finance and Resources and Head of Property and Facilities
- all such transactions must only be completed after appropriate consultation and the completion of a detailed financial appraisal which has been authorised by the Director for Finance and Resources
- Disposal of land must be agreed in accordance with the Leader's Executive Scheme of Delegation
- the Appropriate Director should ensure that an appropriate valuation for each Acquisition and Disposal of land and buildings has been acquired through the Head of Property and Facilities
- the Appropriate Director must ensure that consultation with the Ward member(s) and Parish Town Council(s) have taken place before the disposal of land and buildings in their area, together with consultation with the appropriate Cabinet Portfolio holder

- Approval must be obtained from the Relevant Decision Making Body (full Council or the Cabinet or a Cabinet Member or a relevant Officer where authority has been properly delegated to such Officer) in all of the following circumstances:
 - before any Acquisition and Disposal
 - a disposal at an undervalue
 - before any application is made to the Secretary of State for consent pursuant to Section 123 of the Local Government Act 1972
 - where there is a reserve price to be applied to a Disposal by way of auction
 - the offer proposed for acceptance is not the highest offer available to the Council
- the Appropriate Director must engage early on with finance, legal and the Corporate Procurement Team to ensure that appropriate advice is received on matters pertaining to tax, procurement and Public Subsidy

Furthermore, where any Disposal (whether individual property or part of a project) amounts to a “Key Decision” then this must be added to the “Forward Plan” and a period of 28 days elapsed before the Key Decision is taken (a “Key Decision” is an Executive Decision where the Council will incur expenditure or savings of greater than £500,000, which is not identifiable either in the approved Capital Programme or Revenue Budget, and which: a) is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council’s budget for the service or function to which the decision relates, and/or b) is likely to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the Council)

NOTES: (applying to HRA Land/Buildings under Consent A of the General Housing Consent 2013):

Land: includes buildings (which could include dwelling-houses, houses and flats) and other structures, land covered with water and any estate, interest, easement or right over land;

Vacant Land: means land on which (a) no dwelling-houses have been built, or (b) where dwelling-houses have been built, such dwelling-houses have been demolished or are no longer capable of human habitation and are due to be demolished

Dwelling-House: means a house or flat or part of a building occupied or intended to be occupied as a separate dwelling, including any yard, garden, out-houses and appurtenances belonging to or usually enjoyed with it, held for the purposes of Part II of the Housing Act 1985-2013

Unoccupied: in relation to a dwelling-house means a dwelling-house which is not the subject of a tenancy to occupy granted by the Local Authority

Disposal: includes a Conveyance of the Freehold Interest, assignment of a Lease, the grant of a Lease (of any duration), the grant of an Option to purchase the Freehold or other interest in land, the grant of an Easement in or over land held for the purpose of Part II of the Housing Act 1985-2013, the grant of a Shared-Ownership Lease

Market Value: means the amount for which a property would realise on the date of the valuation on a disposal between a willing buyer and a willing seller in an arm’s-length transaction after proper marketing where the parties had each acted knowledgeably, prudently, and without compulsion and where the market value is assessed not earlier than three months before the buyer applies or agrees to an offer in writing.

Valuation: the General Housing Consent 2013 defines “Market Value” but not how this valuation should be assessed, whereas:

- an Application for Secretary of State Consent under section 133 of the Housing Act 1988 (for certain subsequent disposals pursuant to section 32 or section 43 of the Housing Act 1985), requires a selling-price valuation of no more than three months old, carried out either by a District Valuer or Independent Valuer BUT an Estate Agent’s offer price is not sufficient).
- the General Disposal Consent (England) 2003 disposal of [non-HRA] land for less than the best consideration that can reasonably be obtained (pursuant to the Local Government Act 1972) contains detailed guidance on valuations that are set out in the Technical Appendix; requiring: a Valuation Report prepared and signed by a qualified valuer (a member of the RICS), taking into account the requirements of the RICS Appraisal and Valuation Standards (the “Red Book”) and listing various assumptions and disregards that should apply to a valuation
- **Market Value** should therefore be a “Red Book” valuation by a RICS Registered Valuer assessing the land/property and providing a formal report on the current Market Value

Note: Market Value (being the true underlying value of an asset) is a concept distinct from “Market Price”, being “the price at which one can transact” (ie; what buyers are prepared to pay) such as that which is obtainable at an Auction, where the final sale price will be influenced by various factors, including the number and type of interested bidders. Consideration should be given to a disposal by Auction to ensure that the “Reserve Price” is not less than the assessed Market Value, to avoid selling at an undervalue (which may be unlawful). Although EU State Aid Rules no longer apply, under the replacement “UK Subsidy Control Regime” public bodies cannot confer an economic advantage or distort competition, in case of legal challenge (when disposing of land at less than best consideration, Local Authorities are effectively providing a subsidy to the purchaser)

Arms-length transaction: a transaction between two independent parties, in which both parties are acting in their own self-interest, possess equal bargaining power, are not under pressure or duress from the opposing party. (a sale by Auction can be considered an “arms-length transaction” as it assures a fair “Market Price” between unrelated parties, obtained through competitive bidding, after proper marketing for a reasonable period of time)

Other Permitted Disposals under Consent A of the General Housing Consent 2013 include:

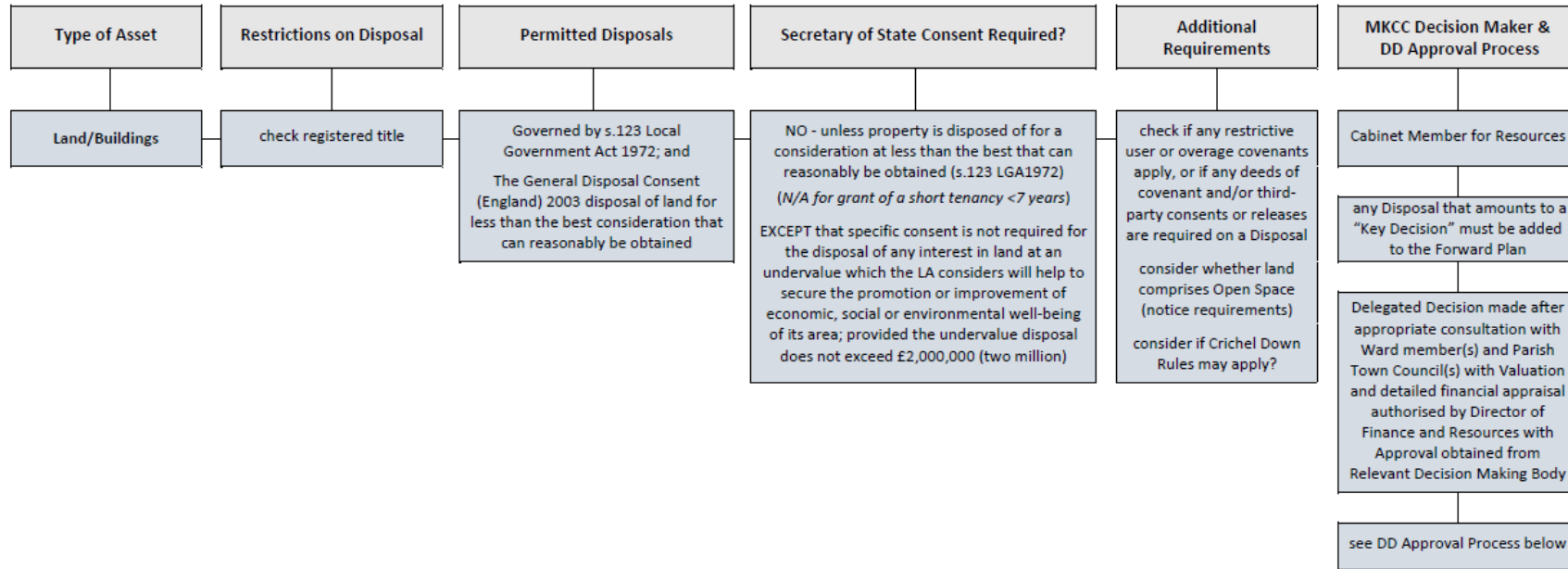
- in the case of dwelling-houses, to extend a long lease or grant a new long lease to a tenant who has held a long lease of the dwelling-house for a period of at least two years, for a premium calculated in accordance with section 9 of the Leasehold Reform Act 1967;
- in the case of flats, extend a long lease or grant a new long lease to a qualifying tenant who has held a long lease of the flat for a period of at least two years, for a premium calculated in accordance with Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993
- dispose of a short tenancy of land (which is not let on a secure or introductory tenancy), where a short tenancy is: (a) the grant of a lease for a term not exceeding seven years; or (b) the assignment of a lease with a term which at the date of the assignment has not more than seven years to run

Note: Disposals of MKCC’s Reversionary Interest in occupied houses and flats (ie; the Freehold interest subject to secure tenancies) are governed by Consent D of the General Housing Consent 2013 – whereby leaseholders should be given first opportunity to purchase the freehold. This overlaps with the lessees’ statutory right to enfranchise under the Leasehold Reform Act 1967

For a disposal that requires consent under Section 173 of the Local Government and Housing Act 1989. The requirement for consent of the “Secretary of State for Environment”, was substituted for “The Regulator of Social Housing” by section 191 of the Housing and Regeneration Act 2008. Following the implementation of the Housing and Planning Act 2016, the Regulator of Social Housing is no longer the ‘appropriate authority’ to grant such a consent, it is now the **Secretary of State for the Department for Levelling Up, Housing & Communities**

Annex B

MKCC Disposal of (NON-HRA) Land and Buildings Assets



Delegated Decision Approval Process:

Section 18.7 of the Financial Regulations (Management of Assets) specifies that "Cabinet Approval" is required in accordance with section 19 of the Financial Regulations (Acquisition and Disposal of Land and Buildings); section 19 requires that:

- any proposal for the Disposal of land or buildings (whether freehold or leasehold) needs to be referred to the Director for Finance and Resources and Head of Property and Facilities
- all such transactions must only be completed after appropriate consultation and the completion of a detailed financial appraisal which has been authorised by the Director for Finance and Resources
- Disposal of land must be agreed in accordance with the Leader's Executive Scheme of Delegation
- the Appropriate Director should ensure that an appropriate valuation for each Acquisition and Disposal of land and buildings has been acquired through the Head of Property and Facilities
- the Appropriate Director must ensure that consultation with the Ward member(s) and Parish Town Council(s) have taken place before the disposal of land and buildings in their area, together with consultation with the appropriate Cabinet Portfolio holder
- Approval must be obtained from the Relevant Decision Making Body (full Council or the Cabinet or a Cabinet Member or a relevant Officer where authority has been properly delegated to such Officer) in all of the following circumstances:
 - before any Acquisition and Disposal
 - a disposal at an undervalue

- before any application is made to the Secretary of State for consent pursuant to Section 123 of the Local Government Act 1972 (*where the General Disposal Consent (England) 2003 does not apply*)
 - where there is a reserve price to be applied to a Disposal by way of auction
 - the offer proposed for acceptance is not the highest offer available to the Council
- the Appropriate Director must engage early on with finance, legal and the Corporate Procurement Team to ensure that appropriate advice is received on matters pertaining to tax, procurement and Public Subsidy

Furthermore, where any Disposal (whether individual property or part of a project) amounts to a “Key Decision” then this must be added to the “Forward Plan” and a period of 28 days elapsed before the Key Decision is taken (*a “Key Decision” is an Executive Decision where the Council will incur expenditure or savings of greater than £500,000, which is not identifiable either in the approved Capital Programme or Revenue Budget, and which: a) is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council’s budget for the service or function to which the decision relates, and/or b) is likely to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the Council*)

NOTES: applying to the disposal of (NON-HRA) Land/Buildings:

Local Government Act 1972 - Section 123 provides that: a **Principal Council may dispose of land held by them in any manner they wish, for a consideration at not less than the best that can reasonably be obtained**

A Local Authority trying to determine “best consideration which is reasonably obtainable” should only consider that consideration which is capable of having a commercial, economic or monetary value. The fact that a disposal may achieve other objectives should not be taken into account, unless an economic value can be attributed to such achievements.

Section 123 of the Local Government Act 1972 does not oblige a Local Authority to follow a particular process to secure the outcome of achieving best consideration. An approach of going to the market with a competitive bidding process is a straightforward way for a Local Authority to show that it has achieved the best consideration reasonably obtainable. Another option would be to obtain an independent valuation of the land and secure a price which is equivalent to the market value shown in that valuation.

Local Government Act 1972 General Disposal Consent (England) 2003 (disposal of land for less than the best consideration that can reasonably be obtained) removes the requirement for Local Authorities to seek specific consent from “the Secretary of State” for the disposal of any interest in land, which the Authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area; and where applicable, Authorities should also have regard to their community strategy derived from the Local Government Act 2000. In all cases, disposal at less than best consideration is subject to the condition that the undervalue does not exceed £2,000,000 (two million pounds).

The General Disposal Consent (England) 2003 contains detailed guidance on valuations; requiring: a Valuation Report prepared and signed by a qualified valuer (a member of the RICS), taking into account the requirements of the RICS Appraisal and Valuation Standards (the “Red Book”) and listing various assumptions and disregards that should apply to a “Red Book Valuation”.

Open Space - when a Local Authority uses the power in section 123(1) of the Local Government Act 1972 to dispose of land, section 123(2A) requires the Local Authority to advertise the intended disposal in a local newspaper in two consecutive weeks and to consider any objections that are made before taking a decision to proceed. A Local Authority should give genuine consideration to all objections and be able to demonstrate that it has considered these objections with an open mind to avoid the possibility of challenge.

Crichel Down Rules - apply to land which has been acquired by a Local Authority under compulsory purchase (or threat of compulsion) and no more than 25 years has elapsed since the date of acquisition. Where a Local Authority wishes to dispose of land to which the Crichel Down Rules apply, former owners will, as a general rule (subject to exceptions) be given a first opportunity to repurchase the land, provided that its character has not materially changed since acquisition (*the character of land may be considered to have “materially changed” where for example, dwellings or offices have been erected on open land, mainly open land has been afforested, or where substantial works to an existing building have effectively altered its character; but the erection of temporary buildings on land is not necessarily a material change*)

It will be for the Local Authority to decide whether any proposed disposal requires specific consent under the Local Government Act 1972, since the Secretary of State has no statutory powers to advise authorities that consent is needed in any particular case.

A Local Authority which intends to dispose of land will also need to assess whether the terms of the disposal will provide a subsidy to the purchaser and, if so, how the disposal will comply with the requirements of the Subsidy Control Act 2022. That Act defines “subsidy” as financial assistance, given from public resources by a public authority which confers a specific economic advantage on an enterprise and which could have an effect on competition or investment in the UK or trade or investment between the UK and other countries. Disposing of Local Authority land on favourable terms is likely to qualify as a subsidy.



Milton Keynes

City Council