

**BURNLEY BOROUGH COUNCIL
FINANCE AND PROPERTY MANAGEMENT
PROPERTY DISPOSALS FRAMEWORK**

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INTRODUCTION

The Council's Asset Management Strategy makes it clear that all land and buildings should be managed as a corporate resource.

Where Council land and property becomes vacant or non operational the Service Unit responsible for its management should in all cases declare it surplus to requirements and pass responsibility for it to Finance and Property for management and possible disposal.

This Disposals Framework sets out some of the main factors to be considered as part of this process.

THE LEGAL FRAMEWORK

There are many statutory provisions, Government guidelines and legal precedents relating to the disposal of property by local authorities all of which need to be considered at an early stage in the disposals process.

Generally speaking, there is a statutory requirement for the Council to obtain the best possible monetary return from any disposal. There may be however circumstances in which the Council may decide to accept a price that is less than market value in return for wider social, economic and/or environmental benefits. In these circumstances, the Secretary of State's consent to the disposal is often required. Over the years various "General Consents" setting out instances where deemed consent applies have been issued (see ODPM Circular 06/2003: The General Disposal Consent).

Statutory Provisions

The main statutory provisions are set out within various Acts of Parliament. Some examples of general legislation, which have a bearing on property disposals, are as follows:-

Section 25 Local Government Act 1988 (as amended): Gives a general consent for the disposal of land to registered housing associations at less than best consideration.

Section 19 Local Government (Miscellaneous Provisions) Act 1976: Permits the letting of property on subsidised or rent free terms in connection with the provision of social or recreational facilities.

Section 123 Local Government Act 1972: States that local authorities shall not dispose of land otherwise than by way of a short tenancy (i.e. less than seven years) for a consideration less than best unless the Secretary of State's consent is obtained. This is subject to specific consents issued from time to time in the form of Government Circulars. Where a local authority wishes to dispose of Public Open

Space, under Section 123, it is required to advertise its intention in a local newspaper for two consecutive weeks and to consider any objections.

Local Government Act 1972: General Disposal Consent 2003: Gives consent to the disposal of any interest in land at less than best consideration where the Local Authority considers it will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area.

In all cases, this is subject to the condition that the undervalue does not exceed £2,000,000 (two million pounds).

In determining whether or not to dispose of land for less than best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the consent, the Authority should 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. All valuations to comply with the guidance within the Technical Appendix (see page 15).

Section 233 Town & Country Planning Act 1990: The Council has the power to dispose of land held for planning purposes to secure the best use or development of the land appearing to them to be needed for the proper planning of the area. The Secretary of State's consent is required to any disposal that is for less than the best price that can reasonably be obtained and is not the grant of a term of 7 years or less.

Section 237 Town and Country Planning Act 1990: This section authorises the over-riding of any private rights affecting the use of the land which is held for planning purposes where development is carried out in accordance with planning permission. The power extends not only to development by the Authority but also to any subsequent purchaser of the land. Third parties whose rights are extinguished as a result will be entitled to compensation, in the first instance from the purchaser, but in default from the Local Planning Authority. Therefore Legal Services must be made aware that the land is held for planning purposes when they are instructed to deal with the sale of the land, so that they can obtain an indemnity for any claims from the buyer.

Sections 32 and 33 Housing Act 1985: The Council has the power to dispose of land held for housing purposes subject to Secretary of State's consent. In many cases, however, this is not necessary due to General Consent given in *The General Consent for the Disposal of Land held for the purposes of Part II of the Housing Act 1985-2012*. General Consent A, the principal consent permits local authorities to dispose of any dwelling at market value. It also allows for the disposal of vacant land, and this includes assets that are not dwellings (e.g. garages, drying areas etc.), at any price determined by the local authority. The consent also includes freedom for local authorities to dispose of unoccupied dwellings to registered housing associations at market value. Paragraph A10 provides that any disposal of a dwelling, which qualifies as social housing, pursuant to this consent must remain as social housing and will do so until it is sold by the registered housing association.

In all other cases, consent will generally be required – if in doubt, consent should be sought. Retrospective consent cannot be granted, but if the Council has acted ultra vires, a complaint could be made to the Local Government Ombudsman.

Planning and Compulsory Purchase Act 2004: Where land or property has been acquired compulsorily under this Act to facilitate a particular development, the after use of the assembled site is restricted to the purpose for which it was acquired. If an alternative use is proposed then the ‘Crichel Down’s Rules’ apply whereby the land and property acquired must be offered for sale to the original owners.

The Localism Act Part 5 Chapter 3 Community Right to Bid: Where land has been listed as an Asset of Community Value there is an initial 6 week moratorium on any sale in order to allow community interest groups to express an interest in making a bid for the same. If interest is expressed then this moratorium is extended to six months.

Case Law

Legal precedents arising from litigation through the Courts will, from time to time, become important and clarify existing statutory requirements. It is important that Officers should be fully up-to-date about legal precedents where these affect property disposals and seek legal advice as necessary.

An important example is the case of R – v – LCC ex Parte Telegraph Service Stations. In this case, tenders were invited for the sale of a derelict building. The Authority decided not to consider an offer received after the tender closing date but was found to be in contravention of Section 123’s requirement to obtain best consideration.

Whilst the latest General Disposal Consent Circular does go some way to relax these restrictions, there nevertheless remains with the Authority a strict fiduciary duty. It will be important to monitor the outcome of any case law on the operation of the consent to sales at an undervalue by local authorities in pursuit of wider regeneration objectives.

Standing Orders

Council Standing Order for Contracts SOC17 stipulates that contracts for the disposal of land or buildings above £50,000 in value should be publicly advertised in at least one local newspaper. Where it is decided that the best possible return will be to a single special purchaser, Committee approval must be obtained to waive this Standing Order (or any other relevant Standing Order if the purchase price is below £50,000) before the transaction can proceed. Standing Orders for Contracts relate to contracts in general and are therefore non-specific to property. However, they must be applied insofar as practicable in each and every case.

Within the Council’s constitution, the Head of Finance and Property Management has delegated authority to approve the following:-

- (a) disposals that are within 10% in value of a previously approved estimate;

- (b) disposals of land up to a maximum value of £10,000 provided the disposal is undertaken in accordance with the approved Disposals Framework
- (c) disposals of land up to a maximum value of £25,000 in consultation with the Executive Member for Resources subject to the valuation of the land proposed for disposal not being undertaken by the Head of Finance and Property Management
- (d) grants of new leases, licences or other arrangements for a period of less than seven years;
- (e) grants of lease/licence renewals,
- (f) grant of consent to assignments/underlettings;
- (g) grants for the waiver of a forfeiture clause in a lease, change of use etc.
- (h) deal with applications in respect of the sale of miscellaneous garden/garage sites, subject to clauses (b) and (c) above;
- (i) to agree terms for the acquisition of vacant properties and their subsequent disposal on the open market, subject to the condition of a Building Licence

Officers should make it clear at an early stage that disposals are normally required to take place on the open market and state whether the disposal needs Executive approval.

FINANCIAL CONSIDERATIONS

Officers should be fully aware of the current Financial Regulations.

In situations where grant has previously been received in connection with an acquisition or for site treatment works, repayment of the grant may be required on disposal, e.g. Derelict Land Grant. Account, therefore, needs to be taken of the repayment conditions and requirements. There is a need for Officers to consult and comply with the requirements of any funding bodies in all instances. (Property Management keeps records where available which lists all the sites where schemes have taken place, together with a file reference to access further details).

Members and Officers should also be aware of the need to access funds to finance “strategic” acquisitions that could release future “added” value. Regard is usually given to such possible purchases on an annual basis when considering the allocation of funds to the Capital Programme.

PREPARATION FOR DISPOSAL

As a matter of policy, there are a number of procedural matters, which Officers should always investigate prior to proceeding with a formal sale or letting proposal. These are outlined as follows:-

Asset Register

Early consideration should be given to the categorisation and classification of the asset in the Council’s Asset Register and a revised valuation undertaken.

Consult Local Planning Authority

The Council has two distinct roles, which have a bearing on the disposal of land and property namely that of landowner and that of Local Planning Authority. This can be confusing for example to members of the public when dealing with the Council. To minimise any potential conflict between the two roles it is important that the comments and views of Planning, in terms of both planning policy and development control are obtained at the outset so that the potential uses of the land or property are identified at the earliest opportunity.

Circulate Operational Service Units and Ward Councillors: Operational Service Units should be circulated to advise of a potential disposal and to invite background comments on the proposal. Where there are conflicting comments from Service Units, attempts will be made to reach a consensus.

Assuming there are no objections from Operational Service Units, Ward Councillors' views will then be sought, along with those of Parish Councils as appropriate. It is considered to be inappropriate to undertake "community consultation", as this is an integral part of the statutory planning process.

Investigation of Title: Examination of the title deeds should reveal the existence of any covenants or gaps in the Council's title to the whole site. Further checks should be made to ensure that all roads have been formally closed and whether there is a need to reserve rights of way etc. In some instance formal appropriation of the land might assist with overriding 3rd party interests which might affect development.

Asset of Community Value: If the property is listed on the Council's Register of Assets of Community Value, then any proposal to dispose must be advertised and Community Interest Groups given the opportunity to express a wish to bid for the same.

Consultation with LCC: Details of any proposed sales should be passed to LCC for consideration as part of the Aligned Asset Management process.

Consent from Funding Bodies: At an early stage, it should be established whether site treatment works or land acquisition costs were funded by an external body and if so consideration should be given to the need to consult or comply with the requirements of such funding bodies, including obtaining formal consent, prior to any disposal taking place. If repayment of grant funding will be required on disposal the extent of the repayment must be ascertained at this stage.

Consider need for Secretary of State's Consent: We need to consider whether a proposed sale may represent an under-value and, if so, Secretary of State's consent may be required. Need to refer to ODPM Circular 06/2003, with specific reference to Technical Appendix and state aid rules.

Where a site is being disposed at below best value for housing development e.g. to a registered social landlord, then section 25 of the Local Government Act 1988 (Local Authority Assistance for privately let housing) 2005 which provides for the disposal of land by a Local Authority to a registered social landlord of land for development as housing accommodation may apply.

Detailed guidance should be sought from Head of People Law and Regulation/Monitoring Officer as to the specific General Consent which applies or whether Secretary of State Consent is needed.

Physical Constraints: A site inspection will reveal whether there are any visible physical problems or constraints affecting the site, e.g. unauthorised encroachment or presence of overhead electricity cables, junction boxes etc. or a building defect. All boundaries should be measured and checked at this stage.

Further office based investigations should reveal the existence of ground condition and site surveys. Potential contamination issues should be investigated, including enquiries via the Contaminated Land Officer. The existence of available services can be verified, if required, via the Statutory Undertakers. Planning can also offer guidance on the presence of listed buildings, Conservation Areas, Tree Preservation Orders and areas identified as at risk of flooding by the Environment Agency.

Special/Nominated Purchaser: It should be established at an early point whether the property is likely to attract the interest of a special purchaser to whom the property may have a value in excess of the open market value.

In some cases, especially in the former Housing Market Renewal Areas, the Council may enter into an overarching development agreement or other arrangement with a particular developer or registered social landlord. This may identify the developer or registered social landlord as a lead developer partner or as the nominated registered social landlord for a specified area, following a full procurement procedure in accordance with the Council's Standing Orders for Contracts and UK and EU legislation. This will enable the Council to deal solely with a development partner over a number of years in accordance with the terms of the agreement without the need to publicly advertise land or property within the specified area for general sale. The purpose of such arrangements is primarily to assist in the regeneration and housing market renewal of such areas rather than to maximise capital receipts from sales. However, the need to comply with the relevant legislation and General Disposals Consents still applies.

Development Potential: An early view should have been formed as to whether the property has any development potential. Any constraints revealed from the above investigations should be attended to before the proposal proceeds further.

When assessing development potential, planning policies should guide decisions about future uses. The option is available of obtaining outline planning permission prior to disposal. In line with Ombudsman recommendations, this is generally recommended to avoid conflict in the Council's role as landowner and Local Planning Authority. This is the case even when the property is allocated for a particular use in the Local Development Framework, although there are obvious exceptions, such as land on an industrial estate. If an Executive report is required, this should include information about any applicable planning policies.

Imposition of Controls: Where the Council is specifically seeking to control or safeguard the future use of a property through the disposal in order to achieve a policy objective over and above control by normal planning enforcement methods,

negotiations should seek, where possible, to secure the inclusion of restrictive covenants within the sale/lease documentation.

Where a degree of control is required to be maintained, e.g. for the protection of surrounding uses, the grant of a leasehold interest rather than the disposal of the freehold will almost certainly be required. This practice may result in difficulties in the funding of a development. Care should be taken that the voluntary imposition of covenants, e.g. a restrictive User Clause, does not detract from the value of the site, as this may require the Secretary of State's consent.

To ensure that a purchaser does not hold the property purely for speculative purposes, a freehold disposal can be preceded by the grant of a Building Licence or lease, which would include building covenants, although again this may cause funding difficulties in certain circumstances. An informed view must be taken in each case.

In certain cases, it may be expedient to consider the merits of partnership or joint venture arrangements that allow for the Council to share in future profits, e.g. via clawback provisions. Such arrangements are generally more suitable to disposals of land where the future market is particularly uncertain or where there is a potential for longer term gains.

Estimate of Open Market Value: In line with the District Auditor's Regularity Memorandum, an estimate of the expected open market value should be included in the report to the Executive prior to disposal. In cases where a report is not required, a signed and dated valuation should be placed on the relevant file.

METHOD OF DISPOSAL

There are four principal methods of disposal, and a fifth method which is sometimes used to facilitate wider regeneration projects, as follows:-

- (A) Private Treaty
- (B) Informal Tender
- (C) Formal Tender
- (D) Public Auction
- (E) Lead Developer Procurement

Each method has advantages and disadvantages. The method chosen will depend on the type of property, market circumstances, policy objectives etc...

Private Treaty

This method of disposal has been used extensively in the past and is one of the simplest ways of dealing with property disposals. The method involves fixing a price for the property, which is normally advertised. Discussions will then normally be pursued with individual interested parties. Alternatively, where a special purchaser is involved, discussions may be held on a one-to-one basis. If more than one party has submitted an identical or similar offer, then it may be appropriate to request that each submit their best offer in a sealed envelope in order to avoid complaints of unfairness and also to demonstrate that the best price has been obtained.

Advantages:

- (a) Useful where the sale/letting value is easy to predict.

Disadvantages:

- (a) It can be difficult to stimulate competition, which may mean the price obtainable is not as high as may be obtained in a competitive bidding situation. The use of a deadline for offers received may be useful.
- (b) It may be necessary to embark on a number of negotiations before an agreement is reached. Time limits may be useful.

Informal Tender

This method has also been used frequently by the Council. The property should be advertised in at least one newspaper and sealed offers invited by a specified closing date (at least 14 days after the date of publication). The envelope should be marked for the attention of Democratic Services "Tender for". Tenders will then be opened at the Town Hall, in accordance with the procedure set out in Standing Orders. The Council must then decide whether to accept the highest offer – check whether Executive approval is required or whether the matter has been delegated. Alternatively, the Council may decide to undertake negotiations with more than one tenderer to try and improve on the offers, if those initially received have not proved satisfactory. It is important to seek financial guarantees in respect of offerors at the outset. In line with Ombudsman guidance, the tender document should state that, if a higher offer is received before exchange of contracts, then the Council may be under an obligation to consider it. In line with Ombudsman guidance, in the event that a successful bidder lowers their bid following its acceptance, all interested parties should be given the opportunity to make a further bid.

Advantages:

- (a) It is easier to stimulate competition but still allows negotiations to take place between the parties;
- (b) It can allow the agreement of the most advantageous terms, even in very complex cases. For example, a selected number of parties can be interviewed about their proposal either prior to or following receipt of tenders. In this way, all the pros and cons can be properly weighed.

Disadvantages:

- (a) Since discussions can continue long after the tender closing date, the process may not produce a speedy conclusion, or any certain conclusion at all.
- (b) Consideration and assessment of detailed proposals can be time consuming.

Formal Tender

In this instance, the formal tender document forms the contract for sale and therefore documentation would need to include a formal Contract for Sale and tenders would

have to be submitted with a deposit. Acceptance of a tender is, therefore, binding and irrevocable. A full appraisal of the transaction must be carried out in readiness for assessment of tenders following receipt. It is important that the Authority indicates in the tender documents that it is not bound to accept the highest or any tender. Again evidence should be required about the availability of finance to complete the transaction.

Advantages:

- (a) The transaction can be completed quickly.
- (b) The vendor does not need to accept an offer if the highest or best offer is unsatisfactory.
- (c) The process is completely open and fair.

Disadvantages:

- (a) The preparation process is time consuming and must be absolutely correct.
- (b) There is little scope for discussion about the proposal or scheme submitted.
- (c) Some parties may be deterred due to the formalities and binding nature of the offer submitted.

This method of disposal is not, therefore, suitable for non-straightforward transactions where detailed terms/conditions remain to be overcome before the bid is finalised. Neither is it appropriate where discussion is required about the merits of various competing schemes.

Public Auction

This method will inevitably involve the use of external Auctioneers, who should be briefed at an early stage and be fully involved in the preparation of conditions of sale and the setting of the reserve price. It would be necessary for the Council to approve the reserve price in advance before the auction proceeds. As the fall of the hammer constitutes a binding sale, it is important from both sides that all contractual details and investigations have been properly completed beforehand.

Advantages:

- (a) The transaction is open and fair.
- (b) The transaction can be completed swiftly.

Disadvantages:

- (a) The success of the auction will depend on the quality and range of bidders present on the day and, to some extent, on the quality of the other lots on offer.
- (b) Timing is important, as the market's interest in auctions tends to fluctuate.
- (c) The bidding is open, therefore the winning bid may be only marginally higher than the previous bid when, in fact, a special bidder may have been willing to pay more.

Lead Developer Procurement

A fifth method of disposal which the Council has used in Housing Market Renewal areas and specific regeneration projects is the procurement of a lead development partner to acquire and develop sites within a specified area over a number of years. This method of disposal is appropriate for longer term regeneration projects. The Council must follow a full procurement procedure in accordance with Standing Orders and UK and EU legislation prior to procuring such a development partner. The Council may formalise the arrangement via an overarching development agreement, which enables the lead developer to acquire and develop sites within a specified area for a number of years without the need to publicly advertise sites for sale

Advantages:

- a) This method allows a master planning approach to be adopted for a large area to enable comprehensive redevelopment to take place. Comprehensive redevelopment and infrastructure can be facilitated by procuring a long term development partner
- b) This method facilitates the Compulsory Purchase of land and property in order to assemble larger sites under Planning legislation, where there is a need to demonstrate the deliverability of a proposed scheme
- c) This method allows for minimum specifications, types of tenure on resale of properties etc for all phases to be agreed at the outset ensuring that certain standards are applied across a wide area

Disadvantages:

- a) An overarching development agreement is a long term commitment. The covenants in the agreement may be such that the Council can neither compel the lead developer to develop nor proceed with an open market transaction in cases where the lead developer does not intend to proceed
- b) Once the long term agreement has been entered into there is a lack of open market competition in respect of individual transactions
- c) The process is relatively inflexible and does not allow for changing circumstances

MARKETING CONSIDERATIONS

Generally speaking, when land or property is disposed of, it should be publicly advertised to ensure that everyone who may be interested is aware of the property's availability and can make an offer if they so wish. This should also achieve the best price. If the disposal price is less than 90% of the estimated price approved by the Executive, then a further report may be required with an explanation, if possible, for the discrepancy.

There may, however, be circumstances where there is a special purchaser who is likely to offer more than the market value. In these circumstances, the disposal can be pursued directly with that party, following the Committee waiving Standing Order

for Contracts 17 which requires disposals over £50,000 to be publicly advertised (or another relevant Standing Order if the disposal is below £50,000).

In all cases, a decision must be taken as to whether a property should be marketed using in-house resources or via external agents/consultants. If external agents are to be used, a range of external agents should be considered and selection should be made on the basis of quality as well as price.

When submitting a report to the Executive, Officers should advise and make recommendations as to the best method of disposal, proposed marketing arrangements etc.

NON-COMMERCIAL DISPOSALS/DISPOSAL AT AN UNDER-VALUE

Local authorities often dispose of property at less than best price or at an under value as a means of achieving policy objectives rather than income generation; for example, factory start-up units to aid job creation, accommodation let to voluntary/charitable bodies or property let for recreational uses.

Whilst such disposals may play a key role in achieving the Council's Strategic Objectives, they clearly need to comply with the Council's legal and financial framework. As such, any subsidies must be properly identified and accounted for.

Procedural requirements for taking advantage of the General Consents available are as set out in the Technical Appendix of the General Disposal Consent 2003 at the end of this Framework and in Guidance Note 5 of the RICS Valuation Professional Standards – Global and UK (8th Edition) March 2012.

Community Asset Transfers

At present the Council has no formal policy in respect of the transfer of assets to community bodies. From an initial review of instances where other public bodies have made such transfers, common factors included in such policies include:-

The starting principle is that all such disposals whether by lease or sale should be at market value. Where this is not to be the case any undervalue should be approved by Members in the light of the following factors.

- a) The Council must consider and decide that the disposal will help secure the promotion or improvement of the economic, social or environmental well-being of its area.
- b) An assessment of the constitution, aims and objectives of the proposed transferee to ensure that they comply with the Council's stated strategic aims and objectives should be undertaken.
- c) They should have robust and deliverable business plans including good governance, robust financial planning and all the necessary policies, procedures expected of a good community organisation.
- d) Transfers by way of long lease rather than outright sales should incorporate such safeguards as are felt necessary to protect the future community use of the building/land should be considered.

In the current difficult economic climate there is likely to be increasing pressure for Community Asset Transfers and other concessionary lettings. It is recommended that the Council should develop a policy as part of its on-going review of the Disposals Framework to reflect best practice in this area.

State Aid Considerations

As Burnley Borough is not located within an Assisted area, it would be potentially unlawful for the Council to provide what would amount to "State Aid" by way of a disposal of land and property at an under-value to a specific purchaser.

Given the complexities of this particular issue, it is not appropriate to prepare a detailed procedure guide; suffice to say that in all cases of potential disposals of Council land and property, its open market value will be assessed by an appropriately qualified Valuer, in compliance with the Technical Appendix to the revised General Disposal Consent 2003 (ODPM Circular 06/2003) attached and the matter be reported to the Executive in the usual way. Specialist advice will be sought on the issue of "State Aid" as required in individual cases.

Detailed guidance should be sought from Head of People Law & Regulation/Monitoring Officer on this issue.

Garden/Garage Site Waiting List

The Council currently operates an informal waiting list for its Garage and Garden sites. Where plots become vacant preference is given to people on the waiting list, unless the plot is so closely associated with a property that its use by anyone other than the resident of that particular property would be problematical. Where garage plots have existing garages in good condition, owners are encouraged in the first instance to investigate their sale to people on the waiting list however, where vacant plots are still available or in the opinion of the surveyor concerned the person with priority on the waiting list is not negotiating for the purchase of the garage structure in good faith then lettings to parties other than those with priority on the list will be considered. Any requests to buy garden or garage plots are considered on their merits however where it is considered that a sale would be not in the best interests of good estate management then such requests may be refused.

TECHNICAL APPENDIX

VALUATIONS FOR THE PURPOSE OF DETERMINING WHETHER PROPOSED LAND DISPOSALS UNDER THE TERMS OF THE LOCAL GOVERNMENT ACT 1972 FALL WITHIN THE PROVISIONS OF THE GENERAL DISPOSAL CONSENT 2003

THE VALUATION REPORT

1. An application to the Secretary of State for a specific consent to dispose of land under the terms of Part 7 of the Local Government Act 1972 for less than the best consideration reasonably obtained must be supported by a report prepared and signed by a qualified Valuer (a member of the RICS), providing the following information:-

VALUATIONS

2. The report should set out the unrestricted and restricted values, together with the value of conditions. Where any of these is nil, this should be expressly stated. The Valuer should also describe the assumptions made. These might include, for example, existing or alternative uses that might be permitted by the Local Planning Authority, the level of demand and the terms of the transaction. The effect on value of the existence of a purchaser with a special interest (a special purchaser) should be described.
3. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State where the difference between the unrestricted value of the land to be disposed of and the consideration accepted is £2,000,000 or less. The purpose of requiring the restricted value and the value of conditions to be reported as well as the unrestricted value is to ensure that the monetary value to the authority of any voluntary conditions can be taken into account when applications for specific consent are considered by the Secretary of State.
4. The Valuer should take into account the requirements of the RICS Appraisal and Valuation Standards (Fifth Edition), ("the Red Book"), including UK Guidance Note 5¹. All values should be assessed in capital, not rental, terms; and where a lease is to be granted, or is assumed by the Valuer to be granted, the Valuer should express the value of the consideration as a capital sum.

Unrestricted Value

5. The unrestricted value is the best price reasonably obtainable for the property and should be expressed in capital terms. It is the market value of the land as currently defined by the RICS Red Book (Practice Statement 3.2)², except that it should take into account any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest (a "special purchaser"). When assessing unrestricted value, the Valuer must ignore the reduction in value caused by any voluntary condition imposed by the authority. In other words, unrestricted value is the amount that would be paid for the property if the voluntary condition were not imposed (or it is the value of the property subject to a lease without the restriction).

¹ *RICS Professional Valuation Standards – Global & UK (8th Edition), UK Guidance Note 5: Local Authority disposals at an undervalue, Mar 2012.*² [see above]

6. In general terms, unrestricted value is intended to be the amount which would be received for the disposal of the property where the principal aim was to maximise the value of the receipt. Apart from the inclusion of bids from a purchaser with a special interest, it is defined in the same way as market value. For example, the Valuer should take account of whatever uses might be permitted by the Local Planning Authority insofar as these would be reflected by the market rather than having regard only to the use or uses intended by the parties to the proposed disposal.
7. The Valuer should assume that the freehold disposal is made, or the lease is granted, on terms that are intended to maximise the consideration. For example, where unrestricted value is based on the hypothetical grant of a lease at a rack rent, or a ground rent with or without a premium, the Valuer should assume that the lease would contain those covenants that a prudent landlord would normally include. The Valuer should also assume that the lease would not include any unusual or onerous covenants that would reduce the consideration, unless these had to be included as a matter of law.
8. In the case of a proposed disposal of a leasehold interest, or where the Valuer has assumed that a lease would be granted, the unrestricted value should be assessed by valuing the authority's interest after the lease has been granted, plus any premium payable for its grant. This will usually be the value of the authority's interest subject to the proposed or assumed lease. In other words, it will be the value of the right to receive the rent and other payments under the lease, plus the value of the reversion when the lease expires.
9. Where an authority has invited tenders and is comparing bids, the unrestricted value is normally the highest bid. But where, on the advice of the authority's professionally qualified Valuer, the authority considers that the highest submitted tender is unrealistically high, or is too low, the unrestricted value may be assessed by the Valuer.

Restricted Value

10. The restricted value is the market value of the property, having regard to the terms of the proposed transaction. It is defined in the same way as unrestricted value except that it should take into account the effect on value of any voluntary condition(s).
11. Where the authority has invited tenders and is comparing bids, the restricted value is normally the amount offered by the authority's preferred transferee. In other cases, it is normally the proposed purchase price.
12. In cases where the proposed consideration is more or less than the restricted value, both figures need to be given.

Voluntary Conditions

13. A voluntary condition is any term or condition of the proposed transaction which the authority chooses to impose. It does not include any term or condition which the authority is obliged to impose (for example, as a matter of statute), or which runs with the land. Nor does it include any term or condition relating to a matter which is a discretionary rather than a statutory duty of the authority.¹⁴ The value of voluntary conditions is the total of the capital values of voluntary conditions imposed by the authority as terms of the disposal or under agreements linked to the disposal that produce a direct or indirect benefit to the authority which can be assessed in

monetary terms. It is not the reduction in value (if any) caused by the imposition of voluntary conditions and any adverse effect these may have on value should not be included in this figure.

15. The proposed disposal, or an agreement linked with it, may give rise to non-property benefits to the authority. For example, these might include operational savings or income generated as a result of the transaction where the authority has an associated statutory duty. The monetary value of these benefits to the authority should be included in the value of voluntary conditions.
16. Where the status in law of a voluntary condition is unclear, the authority may need to seek legal advice as to whether the condition is such that its value to the authority can form part, or all, of the consideration. Conversely, there may be cases where, in law, the condition can form part, or all, of the consideration but it has no quantifiable value to the authority.
17. Where the Valuer is not qualified to assess the value of any benefits (for example, of share options), the report should make clear the extent to which the Valuer accepts liability for the figures. Where the Valuer does not accept full responsibility, the report should make it clear by whom the remainder of the figures have been assessed, and copies of any valuations or advice received from Accountants or other professional advisers should be annexed.
18. All the values given should be in capital, not rental, terms; and the values of individual conditions, as well as the total, should be provided. Where there are no conditions, or their value is nil, this should be stated.

VALUATION OF OPTIONS

19. A discount may occur in connection with the consideration for either the grant of an option or the exercise of an option, or both. Where the consideration is less than the best price that can reasonably be obtained (or where the Valuer considers that, if the option were to be exercised, its terms would require the authority to accept less than the best consideration that can reasonably be obtained), the valuations described in paragraphs 20 and 21 below must be provided in support of an application for disposal consent.

Payment for the grant of an option

20. In explaining the basis for calculating the consideration for the grant of an option, the Valuer's report needs to include the following information, based on the most likely date for the exercise of the option:-
 - (a) the unrestricted value of the option to be granted;
 - (b) the proposed cash consideration for the option to be granted (which may be nominal or nil); and
 - (c) the value to the authority of any terms or conditions which, in the Valuer's opinion, form part of the consideration for the option to be granted.

The grant of an option will then be at an undervalue where the unrestricted value at (a) exceeds the proposed cash consideration at (b) plus the value of any conditions at (c), (i.e. where $a > (b + c)$).

Consideration for the exercise of an option

21. In explaining the basis for calculating the consideration for the interest to be disposed of under an option, the Valuer's report should include the following information, based on the most likely date for the exercise of the option:-
- (d) the unrestricted value of the interest to be disposed of under the option, disregarding the effect of the option;
 - (e) the proposed cash consideration for the interest to be disposed of under the option (which may have been specified in the terms and conditions for the granting of the option); and
 - (f) the value to the authority of any terms or conditions which, in the Valuer's opinion, form part of the consideration for the interest to be disposed of under the option.

The disposal of an interest pursuant to an option will then be at an undervalue where the unrestricted value of the interest at (a) exceeds the proposed cash consideration at (b) plus the value of any conditions at (c) (i.e. where $a > (b + c)$).

DEVELOPMENT LAND

22. In cases where there is no detailed scheme, the Valuer should make reasonable assumptions about the form of the development.

NEGATIVE DEVELOPMENT VALUE

23. Where the value of the completed scheme is less than the development cost (for example, where there is low demand or high costs associated with land reclamation or decontamination), the Valuer should assess the unrestricted value by making reasonable assumptions about such matters as alternative uses that might be permitted by the Local Planning Authority and the level of demand. Where the proposed scheme is the most profitable but still produces a negative development value, the unrestricted value will be nil and therefore a disposal at nil consideration will not be an undervalue. But where land with a negative development value has a positive value for some other use, the disposal would be at an undervalue.

GENERAL EFFECT OF GRANTS ON VALUES

24. The Valuer should consider whether the value of the site is in any way affected by the prospect of grant and take this into account in the valuation. If the valuation is based on assumptions that disregard the effect of grant, then this should be stated in the valuation report. When assessing a value for a use other than that for which a grant has been approved, the Valuer should consider the likelihood of any such use achieving planning consent.