



**NORTHAMPTON
BOROUGH COUNCIL**

Name of Committee

CABINET

**Directorate: Governance and
Resources**

Corporate Director: Ian Thompson

Date: 5 March 2007

Report Title

**Disposal of Council Land and Property at market value –
Policy criteria for exceptions**

Key Decision

YES

1. Recommendations

- 1.1 Cabinet to note the presumption that all disposals of Borough owned land and property, whether freehold or by the grant of lease, will be at market value (other than sales under "right to buy").
- 1.2 Cabinet to agree that in exceptional cases that meet the criteria set out in this report at Appendix 2, Cabinet may give consideration to the disposal of land and property for non-commercial uses only at less than market value. It is further recognised that, albeit rarely, sometimes disposals at undervalues of very low amounts, even to private parties, can support specific Council strategies (e.g. as illustrated at 8B of this report). Consequently, for the purposes of this proposed policy, "less than market value" shall be defined as being either a maximum of £5,000 below actual market value in respect of a freehold disposal, or a maximum of a £5,000 cumulative rental reduction from open market rental over the whole term of years in respect of a leasehold disposal. In such latter cases, any such disposal would nevertheless still have to be approved by the portfolio holder acting in accordance with the Constitution of the Council.
- 1.3 Cabinet to agree that in cases which satisfy the criteria set out in Appendix 2, there is no obligation to dispose for less than market value, but that such cases may be given consideration, subject to affordability.

- 1.4 That any exceptional disposal of land or property at less than market value will ordinarily be assumed to be by way of grant of a leasehold interest, to ensure that the Council can properly control the future permitted use of the land or property.
- 1.5 A freehold disposal at less than market value may only be considered where for specific reasons made clear in a report to Cabinet, the grant of a leasehold interest will not allow the proposed disposal/scheme to proceed or will be inappropriate. In these circumstances, Cabinet must be wholly satisfied before agreeing to any freehold disposal that legal mechanisms will ensure that proposed restrictions on future use will be sufficiently robust and enforceable.

2. Summary

- 2.1 Councils have a general duty to achieve best value for disposal of their property assets. This can however be modified under specific circumstances to permit sale at less than market value.
- 2.2 Northampton Borough Council has in the past in special cases occasionally sold or leased property at less than market value. The Council is now coming under increasing pressure to act in this way more frequently. A clear policy is required to support consistent decision-making in this important area.

3. Report Background

- 3.1 Appendix 1 sets out the legal framework for the sale or lease of Council properties and specifically for capital receipts.
- 3.2 Appendix 2 sets out the proposed NBC criteria for disposal at less than market value, for non-commercial uses. An abbreviated flowchart is also included. In outline, the proposed disposal must deliver council priorities, be of benefit to a significant section of the community, lever in external funds and have a sustainable future without further funding from NBC.
- 3.3 It is proposed that schemes that fail to meet all of the criteria stated will be presumed not to qualify for disposal at less than market value. It remains possible that Cabinet may nevertheless exercise their discretion to approve a disposal that does not meet all of the criteria. Cabinet would be expected to explain clearly why they had come to this decision.
- 3.4 Conversely, whilst a proposed disposal may satisfy all of the criteria, Cabinet may nevertheless still decide to withhold approval to the proposed disposal at less than market value.

- 3.5 Previously the only policy guidance on permissible reasons for sale at a discount was that houses requiring over £20,000 of repairs should be offered to a Registered Social Landlord (RSL) at nil Price. The proposed policy supersedes this.

4. Options and Evaluation of Options

The options would be:

- 4.1 Never to dispose of property at below market value. This option would have the advantage of simplicity and clarity, but would deprive Northampton of some beneficial developments.
- 4.2 To continue to dispose of land and property occasionally at less than market value, but without a policy framework, taking each case completely on its own merits. This is the present position, and it is unsatisfactory in that it does not support transparent and consistent decision-making. This lack of a policy framework may potentially leave Members' decisions open to challenge.
- 4.3 To approve and work within the proposed policy framework that will guide Members and Officers towards consistent decisions on disposals, for non-commercial purposes whilst allowing a measure of discretion against the framework.

5. Resource Implications (including Financial Implications)

- 5.1 Council Priorities. The disposal of property at less than market value deprives the Council of an income or potential capital receipt which could have been used to support Council priorities. However if that disposal meets the criteria set out in this report, it will itself be supporting Council priorities and have been tested for best value.
- 5.2 English Partnerships' Clawback. In some specific cases, there will be additional technical implications: for example, former Northampton Development Corporation land transferred to NBC in 1985 and subsequently disposed to other parties is affected by a tapered "clawback" to English Partnerships (EP) of the market value at disposal, for fifty years reducing at 2% pa, so in 2007 the clawback is 56%. This typically affects parkland and community facilities.

The Council would not be able to afford to pay the clawback in cases where it receives no or little receipt. However in some special cases, English Partnerships will, subject to certain approvals, agree to re-invest the clawback where the capital receipt is being used to support a scheme of community benefit. English Partnerships have been consulted on the proposed report, and say that where a disposal at less than market value meets the criteria in this report, then it is likely (but not guaranteed) to also satisfy EP's criteria for re-investment. Each such case must however be checked with English Partnerships prior to bringing to Cabinet for approval.

- 5.3 **Housing Pooling.** In the case of land and property within the Housing Revenue Account (typically surplus houses, garage court sites, small development sites on municipal housing estates), part of the receipt is subject to "pooling" which is a form of central government clawback. 75% of the receipt from house/flat sales and 50% of the receipt from other types of disposals must be paid to the Government unless NBC can demonstrate (in certain cases only) that it is using the receipt to deliver "affordable housing" and/or "regeneration".

The calculation of non Right to Buy pooling is based on the value of the property not the size of the receipt, so like the EP Clawback described above, it would be possible for the Council to not only give up the right to some or all of a capital receipt but also have to pay over to central government resources it did not receive. To prevent this happening, the pooling criteria have been built into the NBC proposed policy criteria.

- 5.4 Where a lease is granted at less than market value, the notional loss of income will need to be recorded as a note to the annual accounts.

6. Risk and Opportunity Issues

- 6.1 The agreement and use of a consistent policy on disposal at less than market value for non-commercial purposes reduces the risk that the Council will have such a disposal decision criticised or legally challenged.
- 6.2 The agreement and use of a consistent policy on disposal at less than market value for non-commercial purposes should permit the Council to take up occasional special opportunities to deliver benefits to the community.
- 6.3 The agreement and use of a consistent policy on disposal at less than market value should reduce the possibility that the Council will inadvertently agree a disposal at below market value that makes the Council liable to pay clawback to English Partnerships or pooling to central government without the benefit of any receipt from which to pay it.

7. Consultees (Internal and External)

Internal	Legal Regeneration and Growth Housing
External	English Partnerships

8. Compliance Issues

A: How Proposals Deliver Priority Outcomes

Recovery Plan
N/A
Corporate Plan
Priorities for 2006/2007: 3. Invest in the regeneration of the town, providing economic regeneration and growth. 5. Manage the Council's finances effectively.

B: Other Implications

Other Strategies
Transfer of small areas of land at an undervalue can be used to support the Northampton Community Safety Strategy, for example at Thorplands where gating off of alleyways and transfer of gated areas to adjacent owner occupiers will reduce crime and disorder.

Finance Comments
<i>None</i>

Legal Comments
<i>Included in report</i>

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9. Background Papers

Title	Description	Source
Procedure for Disposal of Council (Housing) Property	Paper (2001) on procedure for option appraisal and disposal of occasional void HRA houses	Housing files

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Legal background to local authority property disposals

1. In general all local authorities have the power to dispose of land for the best price that can reasonably be obtained; but they need the consent of the Secretary of State to dispose of it for less than that best price (Section 123, Local Government Act 1972). Local Authorities are also under a general fiduciary duty to local taxpayers, which means that they should not transfer assets for less than their value without good reason.
2. A General Consent to dispose of land at less than best price was issued by the Secretary of State under section 123 of the 1972 Act in Circular 6/03. This consent enables local authorities to dispose of land at an undervalue where they consider this will contribute to the promotion or improvement of the economic, social or environmental wellbeing of their area. The discount from full value must not exceed £2m per transaction.
3. Disposal at an undervalue of over £2m requires specific consent from the Secretary of State. Such disposals are very rare: in the three years ending June 2006, there were only six such disposals approved nationwide. (They included a site for a sixth-form college, a City Academy, two residential development sites, a science park site and one covenant release.)
4. Different rules apply to housing land. Here any disposal, even at full value, needs the consent of the Secretary of State under section 32 of the Housing Act 1985. However a number of general consents (the General Housing Consents 2005) have been issued covering a variety of situations, some of which allow for disposal at undervalue. Some of the General Housing Consents also take account of section 25 of the Local Government Act 1988. This requires the consent of the Secretary of State before local authorities can give assistance towards privately let housing. Transferring land (whether housing land or not) at an undervalue counts as such assistance and requires consent under this section. The two consents which are most relevant to this report (and which include consent under section 25) are that in summary:
 - Land may be transferred freehold or on long lease to Registered Social Landlords (RSLs) for housing development at an undervalue, providing various conditions are met and no more than £10 million of total undervalue is given by the authority in one year.
 - A local authority may transfer freehold or by long lease a dilapidated vacant house to an RSL at an undervalue, but only if it meets specific criteria concerning the value of the work required.
5. Note that the consents are enabling – they do not oblige a council to sell at undervalue in the specified circumstances, only allow it to do so if it wishes.
6. European Union State Aid rules: Public subsidy of more than 100,000 Euros (about £70,000) to any one Enterprise in a rolling 3 year period will trigger the State Aid rules. Disposing of land at an undervalue can amount to a subsidy for this purpose and consideration of the possible application of the State Aid rules will need to be given as cases arise.

Criteria to guide the approval of disposals by Northampton Borough Council of property for non-commercial use, at less than market value* (excluding Right to Buy sales)

NOTE - This policy is intended to apply purely to proposed disposals to a registered charity, registered social landlord, or other properly constituted not-for-profit organisation. Even if disposals meet all criteria, each transaction must be approved by Cabinet in order to proceed, and Cabinet may choose not to approve.

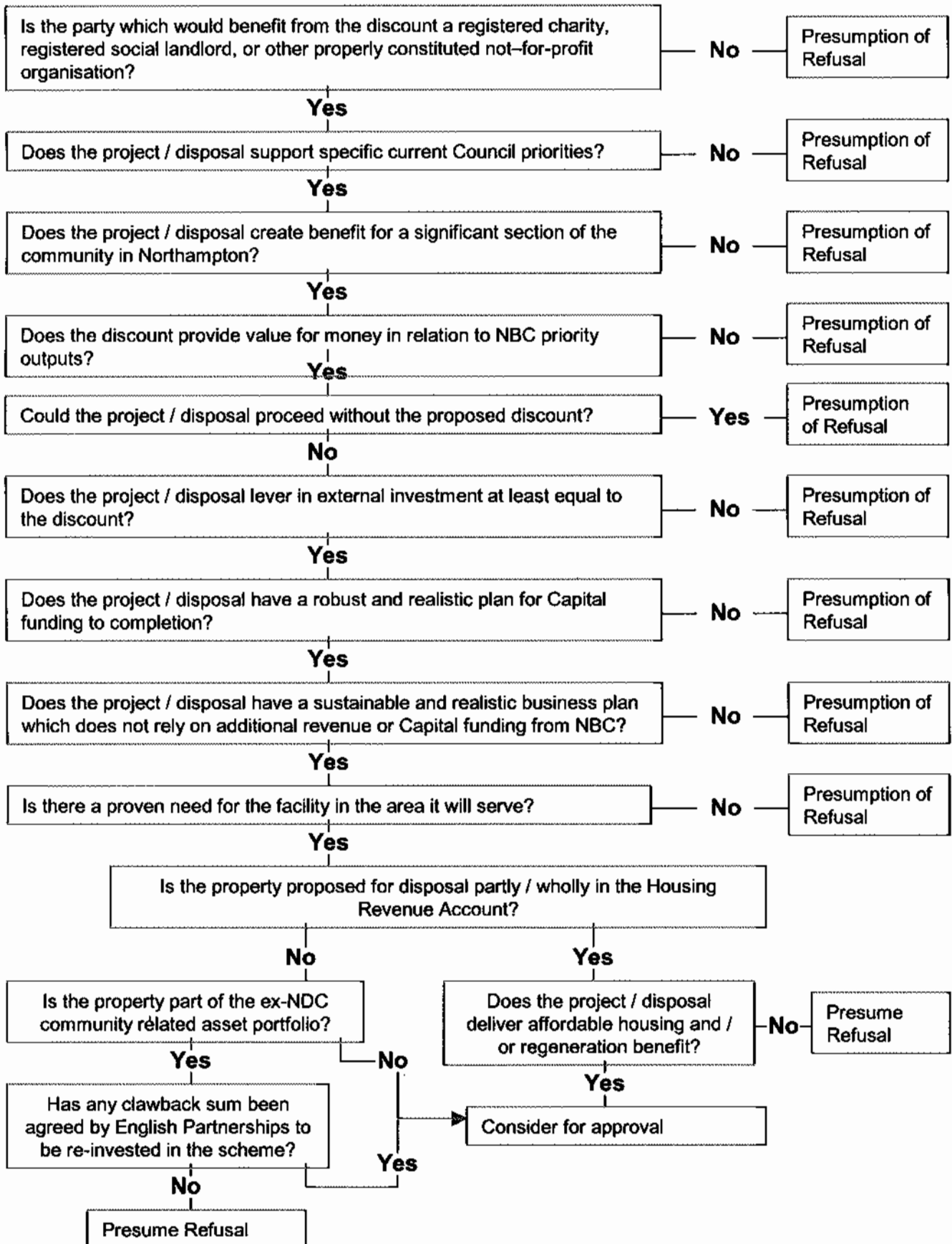
- **N.B. “less than market value” shall here mean in the case of a leasehold disposal a maximum of a £5,000 cumulative rental reduction from open market rental over the whole term of years granted OR in the case of a freehold disposal a maximum of £5,000 below actual market value.**
- 1. The project/disposal must support specific current Council priorities.**
 - 2. The project/disposal must create benefit for a significant section of the community in Northampton.**
 - 3. The amount of discount must provide value for money for the Council in relation to the Council priority outputs the project/disposal will deliver.**
 - 4. The project/disposal could not proceed without the proposed discount.**
 - 5. The project/disposal levers in significant additional investment from sources other than Northampton Borough Council. “Significant” in this context will normally be interpreted to mean a sum at least equal to the amount of the discount given.**
 - 6. The project/disposal must have a robust and realistic plan for capital funding to completion.**
 - 7. The project/disposal must have demonstrated a sustainable business plan that does not rely upon additional revenue or capital funding from Northampton Borough Council.**
 - 8. There must be a proven need for the proposed facility in the locality it will serve.**
 - 9. Where the land or property in question is held partly or wholly within the Housing Revenue Account, the proposed disposal at less than market value must be for the purposes of either “affordable housing” or “regeneration”, or other updated criteria required to avoid the loss of resources via “pooling” payments to central government.**
 - 10. Where the land or property in question was transferred partly or wholly from the former Northampton Development Corporation in 1985 and is**

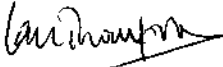

subject to potential clawback on future disposals, the total reinvestment of the claw back amount in the proposed disposal must have been approved by English Partnerships (NDC's successor) prior to reporting to Cabinet.

- 11. The proposed disposal at less than market value must be approved specifically by Cabinet, and the extent to which it meets the criteria above must be demonstrated in the report. It is not sufficient for the disposal to appear to satisfy the criteria above, without a Cabinet approval.**

Northampton Borough Council

Criteria for exceptional disposal of NBC property for non commercial use, at less than market value (excluding right to buy) – Flow Chart



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