

Corporate Services Overview & Scrutiny Committee

15th July 2015

Property Disposal Protocols and Concessions according to Social Value

Recommendation:

That the Corporate Services Overview and Scrutiny Committee comment on this report, the proposed protocols and criteria to assess rent concessions all appended to this report.

1.0 Introduction

1.1 As its meeting on 25th November 2014 the Corporate Services Overview and Scrutiny Committee (the Committee) considered a report regarding Property Disposal Protocols and Peppercorn Rents (the Report). Comments were received as follows:

1.1.1 'The committee highlighted the importance of having a fair and transparent structure in place so as to assist community groups and providing social value. Other authorities had provided an explanation as to how social value was to be achieved and the mechanism for doing so yet the protocols presented to the Committee did not. Other models and best practice across authorities should be considered'.

1.1.2 'Councillor Alan Cockburn agreed that a mechanism to measure social value would help when comparing the protocols with that of other authorities yet this was problematic due to the diverse range of voluntary sector run services'.

1.1.3 'It was suggested that the protocols required further consideration so as to ensure that the language contained within them was clear and decisive and that the protocols should be more robust and address members concerns i.e. efficiency of the property portfolio. Member and Voluntary sector engagement should feed into the protocol or a consultation should be undertaken on the proposed protocols'.

1.1.4 'The Committee was informed that some services received a concession and the advantages to the authority were reflected in some of the contracts for work with the Council. However, the benefits of

such an arrangement could be reflected in the accounting for the relevant unit and where this has been offset. In addition, it was difficult for Members to make an informed decision about foregone rents if they are not aware of the hidden costs’.

- 1.1.5 ‘Councillor John Beaumont put forward some of his concerns including the financial position of some community groups and the feasibility of them being able to provide services whilst paying increased rents. The community feel that they are being unfairly treated therefore creating a void between the community and the Council.

In his roles at Bulkington Village Centre and Library, his experience is that community groups are unsure from year to year whether they are going to pay a peppercorn rent and as such makes it difficult for them to assess the sustainability of the service when taking into consideration the full market rent and overheads for providing the service. The Council needs to communicate clearly and within good time with community groups’.

- 1.1.6 ‘The Committee acknowledged that, as part of the Health and Wellbeing Board Strategy, the Council was to help and encourage community resilience and the sustainability of community provided services was a part of this and the protocol should reflect this’

- 1.1.7 ‘The Council would consider other ways of working including leasing a building to more than one community groups. This would enable the asset to attract a realistic and sustainable rent for all parties’.

- 1.1.8 ‘To measure the social return on investment (SORI), a consistent approach would need to be undertaken in the form of an assessment. Consistency was important to maintain the integrity of the process’.

- 1.1.9 ‘It was important that community groups were informed within good time as to what their rent would be after the 5 year concessionary period, especially at the beginning of the contract to ensure that they are able to meet the terms of the agreement’.

- 1.2 The Council has a number of policies and procedures which govern the identification and disposal of its surplus property. These are listed in Section 6.0 of **Appendix 1**.

- 1.3 A combination of new legislation coming into force, notably the Localism Act 2011, implementation of the Property Rationalisation Programme and Social Return on Investment methodology has meant that a timely revision of existing policies and procedures are proposed to enable officers to apply the protocols to an individual property disposal.

- 1.4 It is also timely to review the extent to which the Council is providing concessions to organisations occupying Council property and thereby improve consistency.

2.0 Purpose

- 2.1 The purpose of this report is to address the issues raised by the Committee in response to the Report presented to the Committee on the 25th November 2014 and present further revised draft protocols and criteria to assess rent concessions for the Committee to consider.

Responses to Issues raised by the Committee:

- 2.2 Response to 1.1.1 and 1.1.2. These issues are addressed within **Appendix 3: 'Criteria to Assess Rent Concessions (Refining Our Approach and Assessing Social Value)'** (the Criteria). The Criteria is an option document setting out practical ways that social value can be evaluated and translated into a rent concession. Other models and practice have been considered but those models focus on freehold transfers at a reduced or nil consideration whereas community asset transfer by way of granting a lease is considered a more appropriate mechanism.
- 2.3 Response to 1.1.3. This is addressed by further amendment to **Appendix 1: 'The Protocol for Disposal of Surplus Property'** clarifying the stages to be considered and when community interests will be considered. In addition **Appendix 4: 'List of Council Property considered for Community Benefit'** lists Council property considered for Community benefit if surplus to Council requirements. Following feedback from the Committee we will consult with Members and the Voluntary Sector to comment on the draft protocols.
- 2.4 Response to 1.1.4. It is considered that a fair balance to address this is now incorporated in **Appendix 1**. It is proposed that leases granted as part of a Service Tenancy are not deemed as disposals of surplus property. Where a Service Tenancy requires that the service must be provided from that property it is proposed that a peppercorn rent is applied for the Service Contract period. Where the service could reasonably be provided from alternative property open market rental should be payable by the contractor to occupy the property and reflected in the contract cost.
- 2.5 Response to 1.1.5 and 1.1.6. Proposals and Options to remove the uncertainty of the level of rent payable at the end of any concessionary period and assist community groups by way of rent concessions are set out in **Appendix 3**.
- 2.6 Response to 1.1.7. Multi-agency use of buildings will be actively encouraged. However, it would be preferable for the Council to grant a lease of the whole building to one tenant and permit the grant of sub-leases of part or shared accommodation. If the Council leased parts of the property to different

organisations residual responsibilities and costs are likely to rest with the Council e.g. if one tenant vacated leaving void space.

- 2.7 Response to 1.1.8. Measurement of social return or investment (SORI) can be complex and difficult to produce a consistent approach. It is considered that Options 5 to 7 in **Appendix 3** offer more simplistic and consistent models to assess rent concessions.
- 2.8 Response to 1.1.9. The issue of community groups being advised as to rent payable after a concessionary period is addressed in **Appendix 3**. The main proposal is that rent payable following any concessionary period is determined before commencement of the lease and recorded in the lease with future rent reviews based on the increase in Retail Prices. In the case of leases for specific community uses, such as libraries and youth centres by applying the rent concession options set out in **Appendix 3** it is likely that assessed rent will be nil whilst the property continues to be used for that purpose in accordance with the lease.

Property with potential for Community Benefit

- 2.9 It is further understood that Members are seeking greater clarity regarding property that may be made available for community uses. To address this a list of Council owned property that may have potential for Community Benefit has been compiled – see **Appendix 4**. Properties in **Appendix 4** currently occupied at an undervalue are shown highlighted in grey. It is proposed that only Council property included in **Appendix 4** is considered for community use and only where no alternative Council uses are identified and approved or there is not an alternative use which would be of greater benefit to the Council. Any Council property may be the subject of an application for it to be registered as Asset of Community Value (ACV). If registered as an ACV the Council is not obliged to transfer the property. If a Council property becomes surplus; registration as an ACV, local listing, community use planning, or awareness of community interest in the property should be considered first as part of the disposal process.

Use of Capital receipts generated from disposal of Property with Potential for Community Benefit

- 2.10 Officers are aware that some Members have made enquiries as to whether capital receipts (freehold sale proceeds or initial rent premiums above £10,000) received from disposal of property considered for Community Benefit in **Appendix 4** could be used to assist community schemes either by:
- 2.10.1 foregoing or repaying all or part of the capital receipt to the Community Group to assist a community scheme, or
- 2.10.2 providing financial assistance to other community schemes in the locality if the property is not disposed of to a community group .

- 2.11 The general presumption is that any capital receipts are used to repay debt and reduce revenue borrowing costs incurred by the Council. In the case of 2.20.1 this would effectively be a transfer at an undervalue and the protocol drafted in **Appendix 2** would need to be followed.
- 2.12 It could be agreed that assistance by the Council should be limited to agreeing a disposal at an undervalue unless a particular service benefits from making additional financial contributions to establish the scheme. Furthermore, property considered for County Benefit listed in **Appendix 4** reflects the Council's existing property portfolio with no property listed for many locations in the County. Offering further financial assistance to a community group benefiting from acquiring suitable Council property either at open market value, or an undervalue, seems inequitable creating a 'post code lottery'.
- 2.13 An alternative option could be to create a capital fund from all/part of any capital receipts generated by disposal of any property listed in **Appendix 4**. The capital fund could then be used to assist community schemes on a bidding basis assessing community Benefit needs and tangible benefits to the Council.

3.0 Issues to Consider:

- 3.1 The Committee is asked to consider the revised protocols in **Appendix 1** and **Appendix 2** together with criteria to assess rent concessions in **Appendix 3**. **Appendix 3** has been drafted with a number of options. The opinion of the Committee is requested as follows:-

3.1.1 Comment on the revised draft Protocol for Disposal of Surplus Property **Appendix 1**

3.1.2 Comment on the revised draft Protocol for Disposal of Property at an Undervalue **Appendix 2**.

3.1.3 Comment on the assessment of rent for property considered to be leased at an undervalue in accordance with either **Appendix 3** Option 1: Market Rental Value, or Option 2: Restricted Market Rental Value. (This determines the base rental to which any rent concessions would then be applied)

3.1.4 Comment on Option 3 or Option 4 in **Appendix 3** for Stepped Rents to assist start-ups for community groups.

3.1.6 Comment on Option 5, 6 or 7 in **Appendix 3** to assess Social Value and calculate a rent discount/concession.

4.0 Next Steps

- 4.1 That the comments of the Committee further inform the preparation of updated protocols for:

- 4.1.1 Protocol for Disposal of Surplus Property
- 4.1.2 Protocol for Disposals of Property at an Undervalue
- 4.1.3 Criteria to Assess Rent Concessions (Refining Our Approach and Assessing Social Value)

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PROTOCOL FOR DISPOSAL OF SURPLUS PROPERTY

- **Must be read in conjunction with:**
“Protocol for Disposals of Property at an Undervalue”
- **This Protocol must be read before using the Checklist in Annex A**
- Checklist to be completed by Warwickshire Legal Services and Physical Assets

1.0 General Principles

Why do we need a protocol about the disposal of surplus property?

- 1.1 To provide a robust procedural framework that informs and directs decision making and day to day portfolio management activities to assist in effective property asset management.

Why is this protocol being revised?

- 1.2 Previous protocols and procedures require revision to reflect new legislation which has impacted on the Council’s ability to dispose its surplus property. The Localism Act 2011 has had a particular impact in this context with the advent of the ‘Community Right to Bid’: further information about this is provided in Section 5 below.

When will this protocol apply?

- 1.3 In any case where it is proposed to dispose of Council property because it has become surplus to the Council’s own requirements. This includes:
- 1.3.1 disposal of the freehold interest in a property
 - 1.3.2 assignment or subletting of a property held by the Council under a lease
 - 1.3.3 disposal of a leasehold interest in the whole, or major part of a property

The protocol does not include:

- 1.3.4 granting a lease of part or all of a Council property as part of a Service Tenancy
- 1.3.5 granting a lease of part of a Council property where benefits to Council services are realised by co-location
- 1.3.6 granting a lease of a Business Unit, part of a Country Park, or smallholdings/agricultural land.
- 1.3.7 granting a lease of part of a Council property where the property is not surplus to Council requirements
- 1.3.8 short term leases or occupation agreements granted to reduce property holding costs
- 1.3.9 disposal of smallholdings or Country parks land for redevelopment (Member/delegated powers to dispose are still required see **Annex C**)

Management of WCC property portfolio

- 1.4 The vast majority of Council property is managed centrally (“centralised property/ies”) by the Physical Assets Business Unit in the Resources Group.
- 1.5 Exceptions: The only properties currently falling outside of this category (“non-centralised” property/ies”) are held by the Communities Group: ‘Education’ sites (i.e.; Schools, including Special Educational Needs Schools, Nurseries, Pupil Referral Units, and Sixth form colleges) and sites where the property is deemed to be integral to the service being provided (i.e.;

Business Centres, Country Parks, Household Waste Recycling Centres, Gypsy and Traveller sites, roads and bridges). Disposals in the case of Education sites may require consent from the Secretary of State for Education and the Government has dictated the manner in which any proceeds of sale must be expended. Accordingly they are not available for distribution in the way other proceeds of sale in respect of Council land would be. This has been reinforced by the decision at full Council to earmark capital receipts from Education properties for Education developments

- 1.6 This Protocol also provides guidance on how any freehold or leasehold property that is no longer required by the Council is managed prior to its ultimate disposal. This Protocol addresses:
 - 1.6.1 How to determine that a property is no longer required by the Council
 - 1.6.2 What happens once a property has been identified as being 'surplus' to the Council's requirements.
 - 1.6.2 The mechanism for securing appropriate authority for disposal of the property
 - 1.6.4 The funding and management of surplus property prior to its disposal.

Key Drivers

- 1.7 The Council is committed to holding a property portfolio that provides suitable, sustainable accommodation that maximises the efficiency of service delivery.
- 1.8 The Council's property requirements are determined by service delivery needs. These are continually being monitored and reviewed as part of the Asset Management Framework undertaken by the Asset Strategy team in Physical Assets (PA), the Service within the Resources Group which has responsibility for maintaining an overview of all property requirements and service delivery property needs.
- 1.9 Rationalisation of the property portfolio to reduce revenue costs, increase rental income and delivery of capital receipts are key Council objectives and are critical to the delivery of savings.
- 1.10 Where a property is no longer required by a particular Business Unit (BU) or Service, consideration must first be given to the suitability of the property for continued use and ownership by the Council (i.e. is the building in an acceptable state of repair, is it appropriately configured and in a suitable location and is it financially viable etc.) and how this property might be reused? This process is described in more detail under Section 2 – Disposal of Property Assets.
- 1.11 Only property capable of beneficial use or occupation can be declared surplus e.g. parts of buildings that cannot be separately occupied or property that has no alternative practical use cannot be declared surplus (for example land lying to the rear of a closed school site which cannot be accessed except across the rest of the site).
- 1.12 Disposal of any freehold or assignment of a leasehold property cannot take place without appropriate Member or delegated approval being exercised and it being declared it surplus to Council requirements. Details of transactions and the relevant forms of approval that are required are set out in **Annex C** of this Protocol.

2.0 Disposal of Property Assets – Processes

- 2.1 The processes set out below applies to both freehold and leasehold properties and seeks to ensure that property transactions are carried out in an appropriate manner and have the

required approval to enable them to take place. There are slight variations in the process depending on whether the property falls within the centralised or the non-centralised portfolios and these are addressed in this Protocol.

Stage 1 – Determining that a property is surplus to requirements

Centralised Properties

- 2.2 Properties that are part of the centralised property portfolio can become available for disposal in two different ways:
- 2.2.1 When a BU/Service indicates that it no longer has a need for the accommodation (i.e. the property, or part of the property, is no longer required because of a reducing service or it is no longer suitable for the service)
- Or
- 2.2.2 When PA determines that the property should be released (e.g. as part of property rationalisation).
- 2.3 When a BU/Service occupying a centralised property determines that the premises are no longer needed for delivery of their service, they are required to advise PA in writing that the property is 'surplus' to their requirements. This notification must be from the Head of the relevant BU/Service (or alternatively the relevant decision making group e.g. Strategic Directors' Leadership Team) and should be in the form of a Surplus Property Notice (SPN) – see **Annex B of this Protocol**). This will be the formal confirmation from the BU/Service that the property is no longer required by it.
- 2.4 In practice, this notification should only be confirmation of an event that has already been planned and anticipated and that PA is already aware of through their interaction with the BU's.
- 2.5 A centralised property may also be identified as surplus by PA in its capacity as the strategic asset management service overseeing the wider corporate portfolio.

Non-Centralised Property

- 2.6 In the case of non-centralised properties, when the BU/Service responsible for a property decides that an asset is no longer required for delivery of its function, they are also required to notify PA of their intention to vacate the property and declare it surplus to their requirements. This should also be done using an SPN specifying full details of the property including details of annual running costs and known maintenance issues as well as the planned programme for vacation of the property.
- 2.7 The SPN should be issued to PA at least six months in advance of the intended date of vacation.
- 2.8 In the case of Schools an SPN will not be accepted until the necessary consent to dispose are obtained from the Secretary of State for Education (S77 (Disposal of Playing Fields) and Schedule 1 (site not required for an Academy or Free School)).

Stage 2 – Assessment of alternative Council uses

- 2.9 Following the Stage 1 process, an assessment is carried out by PA via the Asset Strategy Board (ASB) to determine if there is any other viable alternative use for the property by the Council. This applies both to centralised or non-centralised property. Any proposals for

alternative Council uses should include a Business Case and financial appraisal addressing the loss of a capital receipt or rental income for the property. Council uses can include occupation or redevelopment of a property by a third party to assist meeting Council commissioning aims e.g. for the provision of extra care, or specialist housing with care secured by care and/or nominations agreements.

- 2.10 If more than one Council uses are proposed to ASB and a decision is not made, the decision to determine which use should be approved would be referred to Corporate Board.
- 2.11 If an alternative Council use is identified it is likely that a scheme to alter, refurbish and fit out the property will be required. Any scheme would need to be included in the Capital Programme. Use of a centralised property for a non-centralised use should include funding arrangements to cover the open market value of the property, either from capital programme funding or revenue reserves. This removes the potential practice of Services seeking retention of Council properties simply because they are available and the capital cost of a scheme is reduced by not acquiring a non-Council owned site or property. Without the need for funding to be identified to cover the open market value of a surplus Council property requests for property could be made on the basis of availability and reduced scheme costs, rather than satisfying location and property requirements and maximising benefit to the Council as a whole.
- 2.12 As part of Stage 2 the local member/s should be informed of potential uses of Council property and asked to comment. The proposed use may require redevelopment of the existing property. Such use would have priority over a Community use of the existing building.

Stage 3 – Assessment of alternative Community and Voluntary Sector or Public Sector uses

- 2.13 If no viable alternative uses of the property by the Council are identified, or approved, the following organisations should be consulted to determine if any of them have an interest to acquire the property (freehold or leasehold) giving 15 working days for an interest to be expressed:
- 2.14 Where the property is included in the list of Council Properties considered for Community Benefit in **Annex B** of the Protocol for Disposals of Property at an Undervalue):
 - 2.14.1 the Community and Voluntary sector (via the Localities and Partnerships Team and local member/s)
- 2.15 Where the property is not included in the list of Council Properties considered for Community Benefit in **Annex B** of the Protocol for Disposals of Property at an Undervalue), or an interest has not been expressed in 2.11.1 above within 15 working days:
 - 2.15.1 the relevant District/Borough Council
 - 2.15.2 Police
 - 2.15.3 Health
 - 2.15.4 Central Government/Agencies
 - 2.15.5 the relevant Parish/Town Council
- 2.16 For the avoidance of doubt this procedure is separate from, and will usually precede the “Assets of Community Value” procedure which is referred to in paragraph 5 below. The two procedures may however overlap to a greater or lesser degree if the property is registered as an Asset of Community Value at an early stage in this procedure.

- 2.17 If the Council considers an expression of interest from any of the groups listed in Stage 3 the assumption should be that disposal will be at open market value with no new restrictions relating to the property imposed by the Council. Stage 3 simply gives public and community bodies the opportunity to purchase from the Council on a one to one basis where they have specific property/location needs. If a disposal (leasehold or freehold) at less than market value, or imposing new restrictions to a property transaction reducing value is considered by the Council, the Protocol for Disposals of Property at an Undervalue will apply.
- 2.18 Open market value can be determined by a valuation report from the District Valuation Service where possible acting on a joint instruction from the Council and the interested public body.

Stage 4 – Assessment of alternative methods of open market disposal

- 2.19 If no interest is expressed and approved by the ASB in Stage 2 above and no interest is expressed in Stage 3 above the presumption is that the property will be disposed of. Disposal could be by:
- 2.19.1 Disposal of a lease interest in the property on the open market
 - 2.19.2 Disposal of the freehold interest in the property on the open market
 - 2.19.3 Grant of an option with transfer of the freehold interest when the option criteria are triggered (usually grant of a satisfactory consents such as planning) on the open market (this would often be a transaction excluded from this Protocol in paragraph 1.3.9 above)
- 2.20 Alternatively the methods of disposal 2.19.2 and 2.19.3 above could be on a one to one basis if suitable justification exists such as the purchaser (or option grantee) having existing interests in adjacent land for site assembly, or ransom over the Council property. The Council would need to be satisfied that best consideration is achieved for any such transaction.

Stage 5 – Determining the strategy for the future of an asset

- 2.21 The assessment of alternative uses in Stages 2 to 4 for the property has four potential outcomes:-
- 2.21.1 To retain the property and re-use it for provision of another Council service (Stage 2)
 - 2.21.2 To dispose of the freehold or leasehold interest in the property to a public sector or community or voluntary sector body (Stage 3)
 - 2.21.3 To retain the property and lease it to a third party (Stage 4)
 - 2.21.4 To dispose of the freehold interest in the property to a third party (Stage 4)
- 2.22 The outcome of this assessment will be reviewed and reported to the Head of PA/ASB or other appropriate decision making group to approve the recommendation. This report must include the business case supporting the chosen option i.e. the rationale for the decision that is being recommended. The approval of the Head of Physical Assets/ASB will be the mandate for the disposal or letting to be undertaken by Estates, subject to Member approval where appropriate.
- 2.23 The remainder of the procedures set out in this protocol only apply if the property is to be leased to a third party, or the freehold interest disposed of.

Stage 6 – Securing authority to declare surplus and dispose of asset

- 2.24 An essential prerequisite to disposal of a freehold or leasehold asset is to obtain Member/delegated approval declaring that it is surplus to the Council's requirements and that a disposal can proceed. Marketing of a property shall not commence until the relevant authority has been obtained.
- 2.25 The relevant report (i.e. Portfolio holder/Cabinet/Council) will be prepared by PA (Estates) in conjunction with the relevant BU where appropriate. Issues to be addressed in the Report are outlined later in Section 3 of this Protocol.

Stage 7 – Disposal of the asset

- 2.26 Disposal, or the release of a property, will differ depending on whether it is a freehold or a leasehold asset.
- 2.27 The procedures for disposing of leasehold and freehold assets are set out below.

Disposal of a Council Leasehold Property

- 2.28 Where property is held by way of lease and it has been determined through Stages 1 – 5 above that the property is no longer required Estates will be instructed by the Head of PA to bring the Council's liability to an end as soon as possible by the most appropriate means, which may be by:-
- 2.28.1 issuing a notice to terminate the lease at the end of the contractual term
 - 2.28.2 triggering a break notice, in accordance with the lease provisions
 - 2.28.3 negotiation of the surrender of the lease
 - 2.28.4 securing a subletting of the property until such time as the contractual term of the lease expires or
 - 2.28.5 securing an assignment of the lease
- 2.29 Disposal of a leasehold property by termination of the lease or exercise of a break clause will not generate a capital receipt, but will remove the Council's ongoing financial liabilities. These methods of lease termination do not usually require specific Member approval and would be progressed under the relevant delegated powers. However, the surrender, subletting or assignment of a lease may require Member approval depending on the financial implications.

Disposal of Council Freehold Property

- 2.30 If it is determined that a freehold property is no longer required by the Council, Estates will be instructed by the Head of PA to dispose of the asset on the open market using the method that is deemed most appropriate for the individual property, having regard to timescale, the nature of the property and prevailing market conditions. In certain circumstances a disposal could be made on a 'one to one' basis and not on the open market (e.g. to a public sector body, partner or community group) identified as part of Stages 2 and 3 or a special purchaser reflecting the decision by the Head of PA/ASB included in Stage 4.
- 2.31 In establishing the most advantageous mechanism for disposing of a property Estates will take into account all appropriate vehicles for structuring the sale e.g.: conditional/unconditional sale/option agreement and the impact of potential deductions to the proceeds of sale such as sums required by way of Section 106 Planning Obligation payments, or Community Infrastructure Levy ("CIL").

- 2.32 The planning status of the property and its location are key factors in determining the open market value.

Stage 8 – Management of surplus property prior to disposal

- 2.33 The management and/or decommissioning of redundant property also needs to be considered when a property is declared surplus to the Council's requirements since there will be ongoing financial and ownership liabilities until the property is disposed of.
- 2.34 Decommissioning and security of the property will need to be addressed prior to the building being vacated.
- 2.35 In the case of centralised properties budget responsibility for the property will pass from the FM central property budget to the Surplus Property Budget on vacation of the property, or a decision by the ASB not to retain the property for Council purposes, whichever is the later.
- 2.36 In the case of non-centralised properties, the BU/Service will remain responsible for managing the asset, together with the associated costs (e.g. security, emptying the property, maintaining grounds, disconnection of services, final utilities) for a period of six months following the date that Cabinet or Portfolio Holder authority for its disposal is confirmed, or until the asset is vacated, whichever is the later (for example, if Cabinet authority is granted, but the occupier does not vacate for a further 12 months, the liability remains with that Service occupier until vacation). The budget responsibility for the property will then pass to the Surplus Property Budget.
- 2.37 In the case of non-centralised property listed under Special Categories of Land (See Section B 2.0 of the Protocol for Disposals of Property at an Undervalue):
- 2.37.1 Open Spaces
 - 2.37.2 Highway related land
 - 2.37.3 Highway Land that has been stopped up

The costs for managing the asset will remain with the relevant BU / Service until disposal i.e. the budget responsibility for the property will not ever pass to the Surplus Property Budget.

3.0 Member Reports

- 3.1 There are a number of essential elements that need to be addressed in any report presented to Members seeking approval for the disposal of any property. The following is not a definitive list but highlights issues that need to be considered.

Compliance with Council protocols and policies

- 3.2 The report should have regard to and expressly mention consideration of this Protocol, the Protocol for Disposals of Property at an Undervalue (where relevant) and other Council protocols and policies listed in Section 6.0, including if they are not considered to apply.

Business Case

- 3.3 A business case is always required to support a request to declare a property surplus and to authorise its disposal. This may be a very simple outline of the financial and operational reasons why the property should be released but may comprise a more sophisticated assessment of the rationale for releasing the property, including the capital and revenue implications. It may also include an option appraisal or feasibility study to support the recommendation.

Financial Implications

- 3.4 The financial implications of a decision to declare a property surplus and dispose of it extend beyond the basic cost benefit analysis which should demonstrate the capital and revenue advantages that arise from this course of action. For example, the report should refer to the level of capital receipt/revenue saving that will arise from the proposed disposal *1, whether the receipt or part is to be earmarked and what implications this may have for the Capital Programme and Capital Fund as well as how any associated costs relating to the release of the property are to be met. These matters are explained more fully in Section 4 – Financial Considerations.

*1 It may be more appropriate not to incorporate estimated capital receipts/rental income into reports in order for them to be public items, with income estimates reported by separate means.

Recommendations

- 3.5 The recommendations proposed by the report should be clear and unequivocal. When the report is seeking authority to declare the property surplus and dispose of the property, the following words should be used: "...that the property known as xxx be declared surplus to the Council's requirements and disposed of on terms acceptable to the Strategic Director of the Resources Group". A recommendation should also be included confirming how the receipt, or rental income will be used or it will be assumed that the benefit is to the 'corporate pot'.

4.0 Financial Considerations

- 4.1 The primary objective of disposing of Council owned property assets is to:
- 4.1.1 generate capital receipts that can be used to fund new capital investment or repay loans that have been taken out to finance capital investment thus reducing borrowing costs (revenue).
- Or
- 4.1.2 Letting property to a third party to generate additional rental income (revenue).
- 4.2 The policy governing the use of capital receipts is set out in the Council's Capital Receipts Strategy.
- 4.3 A report seeking authority for property to be declared surplus and made available for disposal needs to address the following issues:
- 4.3.1 how the receipt will be used
 - 4.3.2 whether there is any necessary capital expenditure required to facilitate the disposal
 - 4.3.3. whether there are Capital Programme implications
 - 4.3.4 how interim costs relating to the surplus property will be funded
 - 4.3.5 any earmarking requirements
- 4.4 In accordance with the Capital Receipts policy it is assumed that receipts will be used to pay debt. For centralised property the consequent revenue savings will usually be linked to the PA One Organisation Plan savings targets.

Earmarking

- 4.5 Earmarking is a mechanism for ring-fencing part or all of a receipt for a specific capital investment project.
- 4.6 To secure proceeds from a disposal for a specific project, full Council approval is required further to a recommendation to Council via a Cabinet or Portfolio holder report, supported by a business case. Earmarking should only be considered where appropriate and necessary. Requests should therefore only be made where the receipt is required to cover legitimate decanting costs and/or replacement costs.
- 4.7 Any application for earmarking of a receipt must provide full justification as part of the business case. This should address:
- 4.7.1 How much of the receipt is required to fund the investment project *2
 - 4.7.2 Whether temporary borrowing is required to finance the project prior to the receipt being obtained
 - 4.7.3 What other sources of finance are being used to fund the project that requires the earmarked receipt
 - 4.7.4 What will happen in the event of a shortfall/surplus in the anticipated capital receipt?
 - 4.7.5 Clarification on the current status of the asset (e.g. its current use, whether it has already been declared surplus and is part of the identified capital receipts programme)
 - 4.7.6 The rationale for disposing of the asset in this way and why the funding requirement is not already identified in the capital programme
 - 4.7.7 Why the earmarking is being linked to the specific capital investment project
 - 4.7.8 The reason for not bringing the scheme forward as part of the Medium Term Financial Planning/Budget process.

*2 If the relevant reports are to be public, income estimates would need to be reported by separate means and the level of earmarking required confirmed as an amount less than the estimated income

- 4.8 All such reports requesting the earmarking of receipts must be cleared by the Head of Finance before the report is circulated to Members.
- 4.9 **The disposal of school sites** - The principal exception to the general earmarking procedure described above relates to the disposal of former school sites or parts of school sites and is outlined in the Capital Receipts Strategy (i.e. capital receipts from school sites are earmarked for Education Capital Schemes).

Disposal Costs and the Capital Programme

- 4.10 Costs associated with disposal activity can be funded from the eventual receipt and can be added to the capital programme provided that this expenditure enhances the value of the asset. Costs relating to the demolition of buildings and obtaining planning consent for redevelopment or change of use are two common items of expenditure that can be offset against the final capital receipt.
- 4.11 All capital expenditure has to be included and accounted for in the Capital Programme which is authorised by Council as part of the annual budget setting process and is amended on a quarterly basis to take account of changes in financial planning.
- 4.12 A report seeking Member approval for a property to be declared surplus and disposed of should confirm if expenditure of this nature will be required and also request an addition to the Capital Programme to cover these costs.

- 4.13 Expenditure of less than £1.5million can be approved by either Cabinet or Portfolio Holders or as part of the annual budget setting process. Council authority is required for expenditure in excess of £1.5million.

Capital Fund

- 4.14 The Capital Fund is a revenue fund to which revenue costs that are directly attributable to disposals can be charged each year. Costs such as fees for work related to disposal of specific property carried out by property staff, legal staff and external contactors are charged to the Capital Fund.
- 4.15 Such revenue disposal costs can be financed from the capital receipt and the first call on any monies received will be to meet these costs. However the amount that can be taken from the receipt is limited to the lesser of the costs that can be evidenced as directly attributable to the disposal or 4% of the capital receipt.
- 4.16 Any disposal costs over and above the 4% cap will have to be met by either the surplus on the capital fund balance or in the absence of an available surplus, other funding sources.
- 4.17 The amount of the capital receipt remaining after this deduction, which will be a minimum of 96% of the amount received, is then available to repay the Council's debt, fund approved earmarked capital expenditure or fund further capital investment. Officers should therefore be aware when planning the use or earmarking of any receipt that the first call upon it will be to fund disposal costs.

Interim Disposal Costs

- 4.18 When an asset is declared surplus there may be on-going costs attributable to the asset which are not directly linked to its disposal (e.g. decommissioning, maintenance and security costs). These cannot be funded from capital and will have to be met from the relevant revenue budgets until the asset is disposed of.
- 4.19 For centralised property assets, interim disposal costs will be met in accordance with Stage 8 2.35 above.
- 4.20 For non-centralised properties, interim disposal costs will be met in accordance with Stage 8 2.36 or 2.37 above.

5.0 Community Right to Bid/Assets of Community Value – Special Considerations

The Listing Procedure

- 5.1 It may be that a Council property is listed by the relevant District or Borough Council (Listing Council) as an 'Asset of Community Value'. The Listing Council is required to give the Council, as property owner, notification of any listing application and its decision. Listing could potentially occur at any stage in the disposal process and will only not apply if an application is sought after the Council has entered into a contract to dispose of the property, or contracts have been exchanged for a freehold disposal.

The Moratorium

- 5.2 If the Council wishes to dispose of a property listed as an Asset of Community Value it has to notify the Listing Council. Any community groups then has a period of 6 weeks to request to be treated by the Council as potential purchasers of the property ("the Interim Moratorium").

- 5.3 If any such group makes a request this triggers the 'Full Moratorium' a 6 month period during which the community group can put together its bid for the Council's consideration. No sale can proceed during this period to another party **BUT** the Council may proceed with marketing, as long as it is made expressly clear to potential buyers that it will not be possible to complete a sale unless/until the Assets of Community Value procedure is completed.
- 5.4 However, the Council is not required to accept any bids made by community groups. When the Full Moratorium expires the Council can if it wishes proceed with a sale to a third party. Accordingly, while listing as an Asset of Community Value may delay a disposal, it does not prevent it altogether.

Must the Council give preferential treatment to Community Bids?

- 5.5 The Council should consider the Community Bids along with any others received in the disposal process and apply the Golden Rule to them all. If any Community Bid is the best according to the "Golden Rule" (defined in paragraph A.3 of the Protocol for Disposals of Property at an Undervalue) the Council should accept it. However, if any Community Bid is not the best according to the Golden Rule it should not be given preferential treatment purely because it is a Community Bid.
- 5.6 Neither the 2011 Localism Act nor this Protocol bar the Council from **seeking** other bids prior to determining which bid to accept. However, the Council cannot make a final decision on which bid to accept until the relevant Moratorium Period has expired.
- 5.7 Any decision as to which bid is to be accepted must be clearly recorded; so that if a legal challenge is brought it is clear what criteria the Council applied when reaching that decision.
- 5.8 The Community Right to Bid procedure is complicated. Advice should be sought from Warwickshire Legal Services at an early stage if it appears likely that it will become relevant.
- 5.9 More detail regarding the procedure can be found here:
<https://www.gov.uk/government/publications/community-right-to-bid-non-statutory-advice-note-for-local-authorities>

What is "the Community"?

- 5.10 The exact meaning of community may vary from property to property, and from time to time. Ultimately all residents of Warwickshire (and businesses based within the County) constitute the wider County Community. Within that County Community are many sub-communities (Districts and Boroughs, Towns, villages, localities etc.).
- 5.11 Proposed disposals must be judged firstly against the needs of the County Community as a whole. If sale at open market value would achieve an overwhelming benefit for the whole County Community (through the proposed use of the proceeds, or by the use to which the land is to be directly put) that will sometimes outweigh the aspirations of more local community bodies.
- 5.12 However, in the case of many (perhaps most) proposed disposals, the impact on the local community may be greater than that on the County Community as a whole, and the particular wishes and aspirations of the local community will accordingly carry more weight.

Council Property considered for Community Benefit

- 5.13 **Annex B** of the Protocol for Disposal of Property at an Undervalue lists Council owned property that may be considered for disposal, or has already been leased, to a Community Group rather than disposed of on the open market. Other Council owned property will be disposed of in the open market unless uses are identified and approved in Stage 2, or at open market value set out in Stage 3 or Stage 4 (one to ones)

6.0 COUNCIL POLICY

- 6.1 Regard should be had to the following in so far as they may impact on a proposed transaction:

- 6.2 **Asset Management Framework/Property Strategy 2013 - 2018**

<http://intranet.warwickshire.gov.uk/ourcouncil/Structurestaff/Resources/PhysicalAssets/Asset%20Strategy/Pages/AssetManagementFramework.aspx>

“The Right Property, in the Right Place, at the Right Time”

- 6.3 **Capital Receipts Strategy** (Cabinet 11 January 2007, Agenda 5)

Determines how proceeds of sale are to be expended, and restricts the practice of ‘ear marking’ i.e. devoting the proceeds of sale to a particular purposes rather than being held centrally to repay the County Council’s debts. The objective of the Strategy is:

“To ensure, at all times, that we make the best use of the capital value tied up in our assets, whilst maximising the capital receipt income generated to release resources for investment in priority services”.

Also refers to the Golden Rule in so far as any sale at less than open market value necessarily involves a departure from the Capital Strategy which must be justified in terms of the benefit generated.

- 6.4 **Housing Strategy and Affordable Housing Policy** – Cabinet 22 April 2010, Agenda 6:

While the County Council is not a statutory housing authority the provision of adequate housing is a critical driver in securing economic and social wellbeing and hence the possibility of directing surplus property to secure affordable housing provision needs to be considered for all freehold or long ground lease disposals .

Annexes

Annex A CHECKLIST RE SURPLUS PROPERTY

Annex B Surplus Property Notice

Annex C Member/delegated powers

Version 2 – April 2015

ANNEX A

CHECKLIST RE SURPLUS PROPERTY
(for completion by Warwickshire Legal Services and Physical Assets)

FILE REFERENCE (Physical Assets).....

FILE REFERENCE (Legal).....

FILE/MATTER NAME

TASK**DATE**

Instructions received from BU/ Service/Physical Assets indicating premises are to become surplus

Predicted date to become surplus

File opened/re-opened

Protocols reviewed and note filed re issues arising

Asset Strategy Board (ASB) report (date to circulate report by)

ASB approval received (date)

Assessment of alternative uses completed and note filed re issues arising

Local member/s consulted

Community Right to Bid – Check if property listed as Asset of Community Value

If listed as Asset of Community Value:

Expiry of Interim Moratorium:

Expiry of Full Moratorium:

Protocol re Disposal of Surplus Property fully complied with?
Inc. consultation with public and community/voluntary sector:

Is the proposed transaction at an undervalue/any new restrictions imposed by the Council on the transaction?

Yes/No

(If Yes refer to additional tasks Checklist in Protocol for disposal at an undervalue)

If Yes above has the Protocol re Disposal of Property at an Undervalue been fully complied with?

Report to Cabinet (or date of decision by other Decision Maker)

Date of Legal Instructions to dispose

Legal proceedings received

Completion of disposal

ANNEX B – Surplus Property Notice

[Address/Description of property]

I *[authorised officer]* of the *[BU/Service]* confirm that the above property is no longer required by the *[BU/Service]* and it is our intention to vacate the property on *[date]*

In the case of a ‘non-centralised’ property this Notice should also include details of the annual running costs of the property and any maintenance issues of which the Service/BU is aware.

Annual Running costs

[Complete details]

Maintenance Issues

[Complete details]

Signed
on behalf of *[BU/Service]*

Dated 20[]

To: Head of Physical Assets
Resources Group
Warwickshire County Council
Shire Hall
CV34 4RL
Copy to Estates and Smallholdings Service Manager, Resources Group

I acknowledge receipt of your Notice dated []

Signed
Head of Physical Assets
Dated 20[]

ANNEX C – Member/delegated powers

Action	Threshold	Authority required
Declare a property surplus and dispose at market value	Value less than £100,000	Delegated powers – Strategic Director
Declare a property surplus and dispose at open market value	Value more than £100,000 but less than £1 million	Delegated powers – Portfolio Holder for Customers
Declare a property surplus and dispose at open market value	Value in excess of £1 million	Cabinet
To grant at market rental value leases, easements and licences over County Council property or for the benefit of the County Council	Annual rent or fee is less than £25,000	Delegated powers – Strategic Director of Resources
To grant at market rental value leases, easements and licences over County Council property or for the benefit of the County Council	Annual rent or fee is greater than £25,000 but less than £250,000	Delegated powers – Portfolio Holder for Customers
To grant at market rental value leases, easements and licences over County Council property or for the benefit of the County Council	Annual rent or fee is greater than £250,000	Cabinet
Earmark the whole or part of a capital receipt	All transactions	Council (further to a recommendation via Cabinet or Portfolio holder report)
Add an item of expenditure to the Capital Programme	Value up to £1.5 million	Cabinet
Add an item of expenditure to the Capital Programme	Value in excess of £1.5 million	Council

PROTOCOL FOR DISPOSALS OF PROPERTY AT AN UNDERVALUE

- **Must be read in conjunction with**
“Protocol re Surplus Property”
- **Protocol must be read before using Checklist**
- Checklist to be completed by Warwickshire Legal Services and Physical Assets

A GENERAL PRINCIPLES

1.0 WHEN WILL THIS PROTOCOL APPLY?

1.1 This Protocol is relevant whenever the Council is considering disposing of any property interest at less than the best value which could have been obtained had the same interest been disposed of on the open market (“Open Market Value”). This may arise in various scenarios. The following are examples, not a complete list:

- 1.1.1 In connection with the delivery of services by a third party on behalf of the Council (e.g. by way of a service level agreement) requiring use of non-centralised property.
- 1.1.2 To promote a particular policy goal of the Council e.g. the disposal of land to a housing association, or the provision of business accommodation to new businesses.
- 1.1.3 Supporting voluntary and community groups whose aims and objectives are consistent with the Council's own priorities and who will benefit the social, economic and environmental wellbeing of the Council's area.
- 1.1.4 Complying with specific legal obligations applying to the Council e.g. the “Community Right to Bid” under the Localism Act 2011.
- 1.1.5 Considering any request by a School or Academy that the Council should forego its entitlement to claim all or part of the proceeds of sale generated by the sale of School land.

2.0 MAIN DRIVERS

2.1 All decisions by the Council must be based on the following (in sequential order):

- 2.1.1 Law
- 2.1.2 Council Policy

3.0 LAW

- 3.1 The “Golden Rule” – Fiduciary Duty – The Council is the custodian of public funds provided by the taxpayer. As such there is an overriding duty on the Council to deal with those funds as efficiently as possible. This duty applies to all spheres of Council activity but is of especial importance when it is proposed to dispose of property assets for less than their Open Market Value. Whatever legal provisions may be relevant in a particular case they should always be applied with regard to the Golden Rule. Just because the Council has a power to do something, it should not do it if that would involve breaking the Golden Rule.
- 3.2 Section 123 of the Local Government Act 1972 – Provides a general power for councils to dispose of land, but Section 123(2) provides that without the consent of the Secretary of State no disposal may be “for a consideration less than the best that can reasonably be obtained”.
- 3.3 The Department for Communities and Local Government Circular 06/03: Local Government Act 1972 general disposal consent (England) 2003 – Permits disposal of land at an undervalue (up to a maximum undervalue of £2 million where that promotes “**economic, social or environmental well-being**” (these are the essential criteria which need to be identified):
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7690/462483.pdf
- 3.4 Special consents may permit sales at greater undervalues in connection with specific purposes e.g. disposal of land for affordable housing purposes.

4.0 “The Test”

- 4.1 To apply the Golden Rule properly it is necessary to consider three values:
- 4.1.1 Open Market Value of the Land
 - 4.1.2 Consideration (purchase price, rent premium or rental value) proposed to be paid by the acquiring party, which could be nil.
 - 4.1.3 Value of Social Benefits (Social Value) to the Council that would be generated by the proposed disposal. Valuing Social Benefits is dealt with below in Section B 3.0.

Once these values are known they can be balanced against each other.

- 4.2 Any report to dispose of a property at an undervalue must include the following elements demonstrating how the proposed disposal will:
- 4.2.1 fulfil the Council’s fiduciary duty
 - 4.2.2 explain the circumstances and justify this proposal together with capital and revenue implications
 - 4.2.3 assess how this proposal will further the Council’s corporate objectives

B. PARTICULAR ISSUES

5.0 LOCALISM ACT 2011

- 5.1 Community Right to Bid (Sections 87-104) (“CRTB”) – If the property in question has been listed by the local District/ Borough Council as an “Asset of Community Value” the Council will be required to observe additional procedures prior to any disposal. These are explained in greater detail in the “Protocol for Surplus Property”.
- 5.2 Community Right to Express an Interest (Sections 83-84) (“CRTEI”) – This right should not be confused with CRTB. It refers to the ability of community groups to bid for the right to deliver services for the Council. Provided that the requirements of the Protocol for Surplus Properties have been complied with (Stages 1 and 2) it should become apparent at an early stage whether it is feasible for existing Council services to be continued from the property via a third party. If a definitive decision has been made not to continue services from that property CRTEI will no longer be relevant to the disposal process.
- 5.3 Best Value Statutory Guidance - Setting out the Government’s expectation that Councils should not unfairly target voluntary groups when funding reductions are being sought. As with the CRTEI this will not be relevant in most disposal scenarios unless the voluntary group is already occupying the property in question for the purpose of delivering a service on behalf of the Council and a proposed disposal would have the effect of terminating the voluntary group’s occupation:
<https://www.gov.uk/government/publications/best-value-statutory-guidance--4>

6.0 SPECIAL CATEGORIES OF LAND

- 6.1 **Schools** – Most disposals of Council land used by Schools will require consent from the Secretary of State for Education. The application procedure is complicated, requires extensive public consultation, and may take in excess of 16 weeks from the date of application to process. In the event consent is forthcoming (which cannot be guaranteed) the consent may require that the proceeds of any sale be devoted to particular recreational or school projects: <https://www.gov.uk/school-land-and-property-protection-transfer-and-disposal>
- 6.2 **Entitlement to the Proceeds of Sale from Redundant (non-Council owned) School Sites** – In respect of certain categories of School the Council may have an entitlement to all or part of the proceeds of sale in the event that the School closes, or moves to a new site, allowing the former site to be sold. The rules governing the Council’s entitlement in such situations are extremely complicated. Advice should be sought from Warwickshire Legal Services in the event that such issues arise. It may be that the Council is sympathetic to allowing the School to retain the sum due to the Council if it will be spent on purposes which are consistent with the Council’s own policies. However, any decision to forego an entitlement is similar to that which the Council has to reach on the disposal of land at an undervalue. This Protocol should therefore be applied in any case where an entitlement is at issue.

- 6.3 **Open Spaces** – There are additional publicity requirements in respect of proposed disposals of open space land. Notices must be published for two consecutive weeks in a local paper and consideration given by the Council to any objections submitted.
- 6.4 **Highway related land** – Land originally acquired for highway purposes and now surplus to Council requirements is likely to be affected by what are known as Crichel Down rules where the Council must offer to sell the land at Market Value back to the previous landowner, unless the nature or use of the land has been significantly altered.
- 6.5 **Highway Land that has been stopped up** – Where former highway land is ‘stopped up’ and thus no longer highway land the land reverts to the freeholder of the stopped up land. In some instances the Council does not own the freehold interest in highway land and so it will revert at nil cost to the freeholder, usually the owner of adjoining land up to the centre line of the former highway.

7.0 VALUING SOCIAL BENEFIT

- 7.1 Social benefit may often be difficult to quantify in monetary terms. For example, exactly how much would the community benefit from a new community centre if the Council were to dispose of premises at an undervalue to a community group for this purpose?
- 7.2 There is a risk that decision makers will expose the Council to challenge if they are perceived as having relied on purely subjective judgements to establish social value. To minimise this risk decision makers should consider the following matters, and record in writing the conclusions they reach.
- 7.3 Various attempts have been made to devise more objective systems for valuing social benefit. One of the best known is “Social Return on Investment” (“SROI”) [:http://www.thesroinetwork.org/sroi-analysis/the-sroi-guide](http://www.thesroinetwork.org/sroi-analysis/the-sroi-guide)
- 7.4 Decision makers should familiarise themselves with the principles which underlie SROI even though it may not always be practical to carry out the detailed research required to produce an exact social value in respect of every proposed disposal. SROI places a monetary value on Social Value as a whole as opposed to value, or savings specific to the Council.
- 7.5 A number of local authorities, including Birmingham City Council and Shropshire County Council have devised criteria to quantify Social Value again in monetary terms, but more simplistically than SROI. These criteria also address Social Value as a whole as opposed to value, or savings specific to the Council.
- 7.6 The Council has devised a set of scoring criteria to consider for disposal at an undervalue, considering Social Value to arrive at a monetary value calculated as a percentage discount of rent. (See **Appendix 3**).

C COUNCIL POLICY

- 8.1 Regard should be had to the following in so far as they may impact on a proposed transaction:
- 8.1.1 **Supporting Voluntary and Community Organisations** (Cabinet 17 February 2011 (Agenda 4), excluding the Protocol for the Lease or transfer of public Assets to community interests
- 8.1.2 **Asset Management Framework/ Property Strategy 2013 - 2018**
- “The Right Property, in the Right Place, at the Right Time”
- <http://intranet.warwickshire.gov.uk/ourcouncil/Structurestaff/Resources/PhysicalAssets/Asset%20Strategy/Pages/AssetManagementFramework.aspx>
- 8.2 **Capital Receipts Strategy** (Cabinet 11 January 2007, Agenda 5)
- 8.2.1 Determines how proceeds of sale are to be expended, and restricts the practice of ‘ear marking’ i.e. devoting the proceeds of sale to a particular purposes rather than being held centrally to repay the County Council’s debts. The objective of the Strategy is:
- 8.2.2 “To ensure, at all times, that we make the best use of the capital value tied up in our assets, whilst maximising the capital receipt income generated to release resources for investment in priority services”.
- 8.2.3 Also refers to the Golden Rule in so far as any sale at less than market value necessarily involves a departure from the Capital Strategy which must be justified in terms of the benefit generated.
- 8.3 **Duration of Leases/ Concessionary Rents** (Cabinet 19 December 2002, Agenda. 35)
- 8.3.1 In 2002 the County Council adopted a policy of not granting leasehold disposals of more than 25 years save in exceptional circumstances, in order to prevent the Council’s future freedom of action being unduly hampered.
- 8.4 **Housing Strategy and Affordable Housing Policy** – Cabinet 22 April 2010, Agenda 6:
- 8.4.1 While the County Council is not a statutory housing authority the provision of adequate housing is a critical driver in securing economic and social wellbeing and hence the possibility of directing surplus property to secure affordable housing provision needs to be considered for all freehold or long ground lease disposals .

9.0 OVERLAP/ CONFLICT BETWEEN POLICY AND PROTOCOL

- 9.1 Every effort has been made to develop policies in a consistent manner. However, policies and protocols often approach the same key Council policies from different perspectives. Some degree of overlap between individual policies and Protocols is inevitable. Outright conflict between policies and the Protocol should hopefully be very rare. However, the possibility cannot be eliminated that an innovative disposal proposal may not sit neatly within the scope of existing policies. Decision makers should be wary of this possibility when formulating proposed disposals. If the risk of a conflict is identified this should be recorded in writing.
- 9.2 A departure from policy or Protocol may be justified on the facts of a particular case. What is important is that the departure, and the reasons for it, be properly explained in the final report considered by the decision maker.

D. PROCEDURES

- 10.1 See the “Protocol re Surplus Property”. The Procedures for Disposal of Property Assets should be followed subject to such adaptation as may be necessary to reflect the specific issues dealt with in this Protocol/ the facts of each case.

ANNEX A

CHECKLIST RE DISPOSAL OF PROPERTY AT AN UNDERVALUE**(for completion by Warwickshire Legal Services and Physical Assets)**

FILE REFERENCE (Physical Assets).....

FILE REFERENCE (Legal).....

FILE/MATTER NAME

TASK	DATE
Instructions received from BU/ Service/ Physical Assets regarding disposal indicating that an undervalue may be involved	<input type="text"/>
Target date of disposal	<input type="text"/>
File opened/re-opened	<input type="text"/>
Protocols reviewed and note filed re issues arising	<input type="text"/>
Social Return on Investment considered and note filed	<input type="text"/>
Localism Act 2011 considered and note filed	<input type="text"/>
Policy re. Supporting Voluntary and Community Organisations considered and note filed re issues arising	<input type="text"/>
Asset Management Framework/ Property Strategy 2013-2018 considered and note filed re issues arising	<input type="text"/>
Criteria to consider for Disposal at an Undervalue considered	<input type="text"/>
Consider issues arising from proposed duration of lease/ term of concessionary rent and note filed	<input type="text"/>
Housing Strategy and Affordable Housing policy considered	<input type="text"/>
Capital Receipts Strategy considered and note filed	<input type="text"/>
Valuations for para 4.1 obtained to include in Cabinet Report	<input type="text"/>
Protocol re Surplus Property fully complied with	<input type="text"/>
Date of Legal Instructions to dispose	<input type="text"/>
Legal proceedings received	<input type="text"/>
Completion of disposal	<input type="text"/>

Criteria to Assess Rent Concessions (Refining Our Approach and Assessing Social Value)

1.0 Introduction and Background

- 1.1 Where a viable community interest has been expressed to the Council and it is appropriate to evaluate that interest, a Business Case will be brought to Cabinet explaining the proposed use of the property, the proposed terms of the arrangement, the social value and the viability of the proposal. This does not imply that this will be recommended as there may be other options which are recommended as preferable.
- 1.2 If Cabinet agrees to support a transfer to a community or voluntary group this would generally be in the form of a lease.

2.0 Transfer of Ownership

Leasehold

- 2.1 Lease terms should be up to a maximum period of 25 years for use of an existing building. Longer ground leases may be granted for redevelopment of the site at an undervalue where Council needs are met.
- 2.2 The Council will seek to transfer all responsibilities relating to maintenance and up-keep of the property. Cabinet approval is required for the grant of a leasehold interest for more than 25 years.
- 2.3 Grant of a leasehold interest allows the Council as landlord to impose user clauses in the lease which can be enforced more fully than restrictive covenants included in a freehold transaction.

Freehold

- 2.4 If a freehold purchase is required by the community group and the Council is satisfied that continued community use of the property can be achieved via the sale contract the Council may decide to dispose of the freehold interest in the property. Such a disposal at an undervalue could range from nil consideration up to a consideration equating to a small discount from open market value, with restrictive covenants imposed as appropriate.
- 2.5 The Council could consider the maximum purchase that the community group can offer and provided that their proposed future use of the property satisfies the 'Golden Rule' disposal at an undervalue could be justified. The Council's position is weakened compared to the grant of a lease if the community group use the property differently to its intended purpose. Remedies available to the Council in the event of a purchaser being in breach of any sale covenants may have to be considered by the courts: Upper Tribunal (Lands Chamber) and in some cases relatively low monetary compensation could be awarded to the Council, rather than an injunction imposed for the breach to cease.

3.0 Rent arrangements (Method to value rent, rent review and Stepped Rents for initial assistance)

Assessment of Rent

- 3.1 Rent for non-commercial uses can be assessed in a number of ways. Market Rental Value (MRV) can be determined using rent that a commercial use would pay for the accommodation. E.g. a community library could be let as office space or a day nursery. A discount can then be applied to the MRV to reflect Social Value.
- 3.2 Alternatively a Restricted Market Rental Value (RMRV) can be determined for accommodation based on restrictions contained in the lease, particularly use restrictions. It could be argued that there is no market for community libraries and accordingly the RMRV is nil. Granting a lease with a rent assessed using RMRV would be considered a disposal at an undervalue when the restriction is imposed by the Council. The RMRV could range from nil to a small discount off MRV.
- 3.3 Other restrictions can affect MRV such as user clauses contained in the title or head lease and in accordance with planning policies. These would apply to the whole market and hence are reflected in the MRV.
- 3.4 MRV and RMRV rental value reflect any required maintenance works that the tenant will need to undertake on commencement of the lease and other general lease terms.

Rent Review

- 3.5 Usually rent reviews for commercial accommodation are assessed according to the current market rental value. In the case of leases of non-commercial accommodation at an undervalue to the community and voluntary sector market evidence to establish market rental value is not readily available and an Retail Price Index (All items) (RPI) increase is an appropriate alternative method to determine MR or RMRV and provides certainty to the parties. RPI rent reviews are generally applied every three years.

Option 1 - Market Rental Value (MRV)

- 3.6 The Assessed rent, to which any discount is applied will be the MRV. The lease would include provision that if any specific community use ceases, or is reduced the rent concession would be reduced, or removed. i.e. any rent reduction due to terms imposed by the Council would be minimised.

Or

Option 2 – Restricted Market Rental Value (RMRV)

- 3.7 The Assessed rent, to which any discount is applied will be the RMRV. The lease would include provision that if any specific community use ceases, or is reduced the rent concession would be reduced, or removed. The rent reduction would be more greater than in Option 1. If RMRV is assessed as nil any proposal to vary the user

clause would trigger a fresh assessment of the rent as only a nil rent will be recorded in the lease at commencement.

Rent Assistance for start-up of Community Groups from the Property

- 3.8 In some cases the community group will require assistance by way of rent concession for a limited time period only to offset start-up costs and/or allow for forecast initial shortfalls in income whilst use increases. In some cases grant of a stepped rent could be followed by a permanent rent concession at different levels within the initial five year period.

Option 3 – Stepped Rent (Version 1)

- 3.9 Where a disposal (grant of lease) at an undervalue is agreed it may be appropriate to implement a stepped rent to assist the tenant with establishing the business, whilst paying rent from commencement. Current rent assistance has been to grant a concession period of up to 5 years generally at nil rent which has led to issues when the concession period expires with tenants unprepared or unable to pay rent and also creating uncertainty as to the rental amount that may be payable following the rent concession period.

- 3.10 It is proposed that the maximum rental assistance for stepped rents offered to tenants is as follows:

Table 1

Period	Level of Rent Assistance
Year 1	80% of assessed rent
Year 2	60% of assessed rent
Year 3	40% of assessed rent
Year 4	20% of assessed rent
Year 5	nil discount

- 3.11 To give tenants greater certainty and assist budgeting for rental levels the rent payable from year five would be determined before commencement of the lease and recorded in the lease with no rent review during any stepped rent period. After the stepped rent period rent can be reviewed on a 3 year basis based on the increase in the RPI. Using the above stepped rent discounts the first rent review would fall due at the start of Year 6.

Or

Option 4 – Stepped Rent (Version 2)

- 3.12 Alternatively, similar to existing a rent free period, or reduced rent, could be agreed based on the merits of individual cases as follows:

Table 2

Period	Level of Rent Assistance
Up to Year 5	up to 100% discount of assessed rent

- 3.13 To avoid uncertainty the rental payable at the end of the rent free, or reduced rent concession period should be recorded in the lease at commencement. An RPI rent review should also be incorporated every three years with the first review at the start of Year 6.
- 3.14 This Option would give greater flexibility , but is less transparent than Option 3. Similar to Option 3 the issue of uncertainty for tenants not knowing of rental levels payable after the concession period is addressed.

Triggers to amend / cancel rent concessions

- 3.15 By granting a leasehold interest the Council can more effectively control use of the property in comparison to imposing covenants in a freehold disposal.
- 3.16 If a stepped rent is agreed the rent concession ceases at the end of the relevant period – generally five years.
- 3.17 Alternatively a continued concession could be granted for the full lease term reflecting Social Value (Options 5 to 7); provided that the tenant continues to use the property in accordance with the lease any rent concession will continue . If the tenant seeks to amend the use of the property; partially or fully, the Council will be able to review the rent and cease any rent concession if required. If the proposed change is significant the Council is not obliged to approve the change of use. The tenant can be required to pay open market rent (reflecting the lease terms) or exercise a break notice to terminate the lease – returning the property to the Council to dispose of the property. In some cases the tenant may not be prepared to exercise a break due to funding arrangements (e.g. outstanding loans for improvements to the property).

4.0 Assessing the social value of Property

- 4.1 The Council's approach is to seek the maximum value possible from its assets, and any reduction in the purchase or rental price needs to be determined through an assessment of the potential 'social' value of transferring any property.
- 4.2 In considering this social value, a range of issues need to be considered (as detailed in Table 2 below). Where possible, the Council will seek to offer the property at a reduced cost only where the potential social, community and economic benefits are significant or there are high tangible benefits to the Council.
- 4.3 The Council will need to weigh these benefits up against the potential benefits of securing the market value of the property.
- 4.4 Where there is low social value, and/or little benefit to the Council, the Council will generally seek to secure the full market value.
- 4.5 For the Council to agree that the proposed transfer has a significant social value, each of the following factors would need to be assessed:

Table 3

Factors to determine Social Value	
1	The proposed use of the property addresses evidenced community needs and is supported by the local community
2	The proposed management of the property is through 'community governance', and any revenue generated through the property will be recycled into the community
3	The applicant has the capacity to manage the property and has a viable business plan
4	All alternative options have been considered
5	The property will benefit people facing disadvantage or is situated in an area with a lack of community facilities, or will enable the continuation of local services that would otherwise be withdrawn
6	The proposed use of the property is not restricted to a particular interest group
7	The proposed use of the property will be flexible to meet changing needs
8	The proposal will bring in additional funding and investment not available to the Council
9	The proposal will help to deliver the Council's priorities
10	The rental/purchase price would significantly reduce the potential benefits
11	There are mitigating factors (for instance if the applicant has made an historic investment in the property)

- 4.6 Some local authorities have attempted to use factors such as these to create a formula to produce a monetary value, which provides the basis for any discount on the purchase price, notably Birmingham City Council and Shropshire County Council. Both these tools consider wider community benefits calculating a monetary value, rather than focusing on quantifiable financial benefits to the particular authority. A more complex means of assessment on a similar basis is the use of Social Return on Investment calculations.
- 4.7 An alternative mechanism is to discount rental levels only if the proposal can demonstrate a direct saving to the Council of at least the level of the assessed rental.
- 4.8 A hybrid approach is suggested as follows for evaluation of discounting rents of Council property:

5.0 Rental Discounts allowing for Social Value

- 5.1 There are a number of options available to the Council to discount rents where Social Value is demonstrated:

Option 5

- 5.2 A simplistic model based on the level of Social Value. Discounts to the assessed rent as set out in Table 3 would be applied using the definitions contained in Table 4.
- 5.3 **Significant Social Value**
Where there is genuine community governance, the use of the property is to secure and provide services for the local community. Where there are no other local community facilities disposal at an undervalue will generally be seen as having a significant Social Value. This is likely to be the case with the business cases for community-run libraries and community youth centres.
- 5.4 **Medium Social Value**
Where the proposed use has a narrow community benefit, or where there are other factors which reduce the potential social value, then any disposal will be considered to be of Medium or Low Social Value.
- 5.5 **Low Social Value**
Where the proposed use of the property is essentially for a private enterprise, or where the Council is not satisfied that there is an evidenced community need – then the Transfer would have no Social Value, and the Council will seek market value.
- 5.6 The assessment of Social Value may differ depending on whether the proposal is short-term or more permanent. A short-term agreement could be made on the basis of the Council's immediate priorities, and the required outcomes may be more important than the governance arrangements. Any long-term agreement would need to demonstrate permanent community benefits, and robust community governance.
- 5.7 It is suggested that the following formula is used as a guide:

Table 4 - Basis of rent discount (Option 5)

Assessment of social value	Discount applied to Assessed Rent
Low	nil
Low/Medium	Nil - 25%
Medium	25% - 50%
Medium/ Significant	50% - 75%
Significant	75% - 100%

- 5.8 In making this calculation, the following should be used as a rough guide to estimating the social value of activities and governance models:

Table 5 – Estimation of Social Value

Social Value	Activities	Governance
Significant	Providing a multi-purpose hub for community provision Enabling people facing disadvantage to achieve positive outcomes Preserving the natural environment and/or heritage for future generations Enabling communities to help themselves to be less reliant on provision from public agencies Sustaining services which would otherwise be lost to the local community Activities which directly support the Council's priorities	Community Governance Parish Council Charitable Trust (for benefit of local community)
Medium	Recreational, sporting or cultural activities where these would otherwise be unavailable	Charitable Trust (for specific benefit)
Low	Recreational, sporting or cultural activities (unless these are in response to specific needs) Faith activity Services which are funded through mainstream budgets	Private enterprise

Option 6

- 5.9 Using the same principle as Option 5 but using different percentage discounts as contained in Table 5 below:

Table 6 - Basis of rent discount (Option 6)

Assessment of social value	Discount applied to Assessed Rent
Low	nil
Low/Medium	nil
Medium	Nil - 25%
Medium/High	25% - 50%
High	50% - 75%

Option 7

- 5.10 Using a scored and weighted criteria matrix to assess Social Value as a percentage discount, rather than a monetary value to deduct from capital value.

Table 8 – Category definition

Key for Scoring Social Value Evaluation Matrix	
Score Category	Score
S = Significant	2
D = Demonstrated	2
P = Partial	1
N = No / Not demonstrated	0

Table 9 – Social Value Evaluation Matrix

Social Value Evaluation Matrix (1)			
General/About the Property	Score 2,1or 0	Weight	Sub Total
Are there restrictions on the purposes for which the property can be used? (S,P,N)		1	
Are the plans for the property consistent with the Council's values and priorities, including environmental sustainability (D,P,N)		1	
Are there good reasons why the applicant cannot pay the full value of the property? (D,P,N)		1	
Has the applicant provided a medium term financial plan which is based on reasonable assumptions and shows the proposed use of the property to be financially viable? (D,P,N)		3	
Is any funding or support available to help facilitate the community asset transfer? (S,P,N)		1	
Suitability of the applicant			
Does the proposed use of the property address evidenced community needs? (D,P,N)		1	
Will the local community be directly involved in managing the property? (D,P,N)		1	
Does the applicant have the capacity to manage the property? (D,P,N)		1	
Has the applicant addressed any support needs? (D,P,N)		1	
Social value and community benefit			
Have all alternative options & premises been considered? (D,P,N)		1	
Is there evidence of public support for the proposed transfer? (S,P,N)		1	
Is there any local objection to the proposed transfer? (S,P,N)		(-2)	
Is the property situated in a disadvantaged neighbourhood? (D,N)		1	
Social Value Evaluation Matrix (2)			
General/About the Property	Score 2,1or 0	Weight	Sub Total
Is the property situated in an area with a lack of community facilities? (D,P,N)		1	
Does the proposal benefit a broad cross-section of the local community? (D,P,N)		1	
Will the proposed use of the property benefit people facing specific disadvantage, and help them to achieve positive outcomes? (D,P,N)		1	
Is the proposed use of the property flexible to meet changing needs? (D,P,N)		1	
Have community needs been thoroughly researched? (D,P,N)		1	
Will the proposed use of the property involve local		1	

volunteers? (D,P,N)			
Is there stronger evidence of community need, for instance identified through the Community Forum and Locality Plan? (D,P,N)		1	
Social Value Evaluation Matrix (2)			
Will the proposed use of the property bring additional funding or investment? (D,P,N)		1	
Other benefits to the Council			
Will the proposed use of the property help to deliver a Council service? (D,P,N)		3	
Does the proposal help to deliver one or more of the Council's priorities in a way which can be tangibly assessed? (D,P,N)		3	
Will the proposed use of the property save the Council money? in a way which can be tangibly assessed? (D,P,N)		3	
Mitigating Factors			
Is the Council withdrawing services from the local community? (S,P,N)		1	
Has the local community and/or the applicant invested in the property? (S,P,N)		1	
Risk			
Is the successful use of the property contingent on any other factors? (S,P,N)		(-3)	
Total			

Using scores assessed using Table 9 the level of rent concession

Table 10 – Basis of rent discount (Option 7--)

Basis of rent concession	
Assessment of Social Value	Discount applied to Assessed Rent
Total Score over x	100%
Total Score between y and x (* 2.5% for each point)	25% to 97.5%
Total Score less than y	0%

5.11 Application of this scoring of Social Value has not been tested against real examples and different percentage discounts can be applied as alternative Options.

APPENDIX 4

Council Property considered to be of Community Benefit if surplus to requirements

KEY Property currently occupied at an undervalue as a Community Asset Transfer

UPRN	Property	Town	Current Use
1013	Bedworth Youth Centre Croxhall Street	Bedworth	Accommodation for PAYP Social Enterprise Co.
5264	The Emscote Centre Nelson Lane	Warwick	Accommodation for PAYP Social Enterprise Co.
1074	Bulkington Village Centre School Road	Bulkington	Community Centre
1126	Whitestone Community Centre Magyar Crescent	Nuneaton	Community Centre
2055	Grendon Community & Youth Centre Former Youth Club	Baddesley Ensor	Community Centre
1143	Horsa Building at Queen's CE Junior School (Academy) Bentley Road	Nuneaton	Community Centre
4223	Community Centre within Bishopton Primary School Drayton Avenue	Stratford-Upon-Avon	Community Centre
1077	Bulkington Community Library School Road	Bulkington	Community Library
1083	Keresley Newland Community Library & Information C Bennetts Rd North	Keresley	Community Library
2107	Dordon Community Managed Library Roman Way	Dordon	Community Library
2182	Water Orton Community Library & Community Centre Mickle Meadow	Water Orton	Community Library
3035	Dunchurch Community Managed Library The Green	Dunchurch	Community Library
4376	Bidford-on-Avon CE Primary School / Community Libr Bramley Way	Bidford On Avon	Community Library
3111	Hill Street Community Youth Centre Hill Street	Rugby	Community Youth Centre
4091	Henley in Arden Community Youth Centre Henley High School	Henley-In-Arden	Community Youth Centre
5242	Warwick Youth Centre 71, Coten End	Warwick	Community Youth Centre
5358	71 Coten End Former Area Community	Warwick	Community Youth Centre
5394	Kenilworth Youth & Community Centre Abbey Car Park	Kenilworth	Community Youth Centre
3266	Binley Woods Community Youth Club	Binley Woods	Community Youth Centre
1262	Family Community Care Centre Ramsden Avenue	Nuneaton	Health Centre (NHS)
2056	Baddesley Former Library & Information Centre Little Brum	Baddesley Ensor	Lease to commercial nursery
2142	Kingsbury Former Library & Information Centre Bromage Avenue	Kingsbury	Lease to commercial nursery
3009	Former Binley Woods Library & Information Centre Monks Road	Binley Woods	Lease to commercial nursery
1298	St. Nicolas Parish Church Hall Vicarage Street	Nuneaton	Lease to faith group
3116	Bilton Evangelical Church 27 Main Street	Rugby	Sub-Lease to faith group
5060	Waverley Centre 65 Waverley Road	Kenilworth	Service Contract Care Provider
1034	Former Bedworth Heath Library Heath Road	Bedworth	Temporary additional space for WCC Nursery
5137	Former Bath Place Community Venture Bath Place	Leamington Spa	To be developed for Specialist Housing with Care
4264	Studley Youth and Community Centre High Street	Studley	Vacant with community interest expressed
2048	The Atherstone Centre North Street	Atherstone	WCC use identified Specialist Housing with Care
2063	Coleshill Former Youth Wing Packington Lane	Coleshill	WCC use identified Specialist Education
4407	Badger Valley Childrens Centre Tilemans Lane	Shipston-On-Stour	WCC Childrens Centre
5389	Lillington Community and Children's Centre 3, Mason Avenue	Leamington Spa	WCC Childrens Centre and sub-lease to Community Centre
1114	Camp Hill Early Years Centre Hollystitches Road	Nuneaton	WCC Early Years Centre
1122	Stockingford Early Years Centre & Library (Maintd) St Paul's Road	Nuneaton	WCC Early Years Centre
2016	Atherstone Early Years Centre (Maintained) Kings Avenue	Atherstone	WCC Early Years Centre
4234	Stratford-Upon-Avon Library & Information Centre Henley Street	Stratford-Upon-Avon	WCC Library
5110	Lillington Library & Information Centre Valley Road	Leamington Spa	WCC Library
3225	Wolston Library & Information Centre Warwick Road	Wolston	WCC Library / Early Years Centre
4305	Wellesbourne Library & Information Centre Kineton Road	Wellesbourne	WCC Library / Early Years Centre
5293	Whitnash Library & Information Centre Franklin Road	Whitnash	WCC Library and Whitnash Town Council offices
1157	Hatters Space Community Centre Hatters Space	Nuneaton	WCC Youth Centre
2017	The Ratcliffe Youth & Community Centre Ratcliffe Road	Atherstone	WCC Youth Centre
1287	Camp Hill Education Sports & Social (CHESS) 460 Cedar Road	Nuneaton	WCC Youth Centre / Library
5105	Lillington Youth Club Mason Avenue	Leamington Spa	WCC Youth Club
5352	Coten End Music Block County Music Service	Warwick	WCC Youth Club