

LAND AND PROPERTY POLICY

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1. INTRODUCTION

Causeway Coast and Glens Council is committed to delivering the highest quality public services to the residents of, businesses and visitors to, this area.

In line with Council's Estate Management Strategy the purpose of this policy is to:

- Provide a consistent approach across Council departments for the acquisition and disposal of its land and property
- Set out Council's principles and terms and conditions for the use of its land.
- Provide guidance on how to request the use of Council's land.
- Good estate management of its existing estate and provision of a cost efficient strategy of best use of Council assets.

2. POLICY STATEMENT

Causeway Coast and Glens Council is committed to delivering the highest quality public services and will follow best practice in the management of its Land and Property portfolio.

3. ACCOUNTABILITY AND RESPONSIBILITIES

Council's Estate Management Strategy describes the Council's strategic approach to the management of its land and property resources and was adopted by the Council on 3rd March 2020.

The Land and Property Sub-Committee has overall responsibility for making recommendation to Council on Land and Property matters.

The implementation and effectiveness of the policy will be overseen by the Chief Executive of the Council or by officers so designated by him

SECTION A

1.0 Acquisition of Land and Property

1.1 A requirement may arise whereby the Council needs to consider the acquisition of land and property or acquire easements to meet its strategic objectives.

1.2 The Council may require land to undertake a project or scheme under the general power of competence conferred by Section 79 of the Local Government Act (NI) 2014, or in terms of 'site assembly' for a particular purpose i.e. to construct or provide new facilities or to enhance or develop existing facilities. Within this context it is recommended that the following principles be applied to the acquisition of new land or property:

- The need for the acquisition of new land or property should be identified by the relevant Directorate and should be linked to the Council's Strategic Objectives. A Business Case* should be developed setting out how the requirement meets the Council's strategic objectives and priorities and any other relevant plans. It should include a cost-benefit analysis and feasibility study. The Business Case should be placed before the relevant Council committee for recommendation to Council. Approval should be sought to start identifying a suitable site. Where a site has already been identified, it should be detailed in the Business Case.
- A site survey as part of the necessary due diligence should be carried out on any potential site prior to acquisition to ensure that it is suitable for the Council's need. Professional advice may be required. Officers should identify any potential development constraints and planning advice should be sought prior to purchase / instruction of legal department.
- All land acquisitions and property acquisitions, including final purchase price must be approved by Council. The Land and Property Sub-Committee will be responsible for progressing requests for land acquisition issues.
- Land acquisition will be supported by Legal Services who will review title and provide advice throughout the process.
- Where negotiations on price are required, these will be conducted by a professional Chartered Surveyor and RICS Registered valuer on Council's behalf. Any external agent must carry the appropriate Professional Indemnity

insurance cover for up to £1m for each and every claim. It should be the responsibility of the external agent to agree heads of terms, subject to conditions, and contract for approval by The Land and Property Sub-Committee.

- Unless for any specific reason, each party should bear their own legal costs and agents fee.

All potential acquisitions of land should consider current users and potential users and where adverse impact may be identified in relation to Section 75 dimensions each decision must be screened.

SECTION B

2.0 Disposal of Land and Property

2.1 The disposal of Council land and property falls into two distinct categories:

2.1.1 Land which has been declared surplus to requirements which can be either, large capital assets which will be disposed of guided by the Land and Property Service Guidance Disposal of Surplus Public Sector Property in Northern Ireland (<https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Disposal%20of%20surplus%20public%20sector%20property%20in%20Northern%20Ireland%20-%20guidance%20-%20Nov%2018.pdf>) or smaller assets under a certain value via Estate Agent sale.

2.1.2 Requests received from third parties to purchase Council land or property.

2.1.3 Marketing should be carried out in accordance with section C below for property disposals, use of council land and easements sought.

2.1.1 Land which has been declared surplus to requirement

Although it is recognised that the Land and Property Service Guidance on 'Disposal of Surplus Public Sector Property in Northern Ireland' (March 2013, or as updated) does not specifically apply to Local Councils and that some of the steps detailed in the guidance are not required, it is deemed best practice to adhere to its guiding principles. The Council will therefore take a proactive approach across all Directorates to the identification of land and property which is surplus to requirements.

The relevant Committee, on consideration of a report presented to it will be responsible for identifying land or property potentially surplus to requirements having taken into account the principles of good asset management.

The Land and Property Sub-Committee will be responsible for progressing requests for land disposals.

A site will be deemed to be surplus to the Council's requirements by the appropriate Committee if either of the following has been established:

- makes no contribution to the delivery of the Council's services following consultation with all stakeholders including other service areas.
- has no potential for future strategic, regeneration or development purposes.

- an alternative site has been identified which would achieve a more cost effective service delivery.
- its disposal would help facilitate the achievement of the Council's Strategic objectives.

A site will be deemed to be under-used if:

- the income being generated from the site is below that which could be achieved from an alternative use; disposing of the site and investing the income or intensifying the existing use.
- part of the site is vacant and is likely to remain vacant for the foreseeable future
- demand can be facilitated through other arrangements

Once such land has been identified, the subsequent disposal of same should take into consideration the principles of the LPS Guidance, and should be done so in accordance with the following:

- All disposals must be approved by Council.
- All pre-emption rights should be considered
- Some initial scoping should be done to ascertain if there are any burdens or barriers in terms of the titles or clauses to obstruct the sale. If reports are held under The Control of Asbestos Regulations [Northern Ireland] 2012 are held, these should be made available to the purchaser and circulated to all concerned.
- Offers should be sought through public advertisement unless there is good reason not to do so.
- Planning – full or outline consent input should be sought as to the +/- impact on the value of the site
- Where negotiations on price are required, these should be conducted by a professional
- Advice should be sought from a professional valuer on the most appropriate method of disposal.
- Where appropriate more than one valuation may be sought. Any valuation for agency or brokerage should be in line with the RICS codes of practice and Red Book although valuations for agency or brokerage purposes are a permitted departure from the Red Book.
- Each asset will be assessed on a “case by case” basis in terms of “adding value” prior to disposal.
- Heads of Terms forming the basis of the sale should be drafted and negotiated by the agent[s] on Councils behalf and checked by the legal department prior to public circulation.

- All Heads of Terms should be marked Subject to Contract and Without Prejudice.

2.1.2 Requests received from third parties to purchase Council land or property

Given the wide range and variety of requests received from third parties to purchase a piece of land or property from the Council, each request should be dealt with on a case by case basis. However, the following should be considered in every request:

S96 of the Local Government (NI) Act 1972 – Requirement to get best price or best rent.

Any pre-emption rights.

Has or should market testing take place?

Should the land or property be placed on the open market – is it effectively surplus? Should D1 be engaged?

How is the land accessed? Can the applicant gain access to the land without going over Council property? Are there any rights of way issues?

What is the land required for? Is it necessary to agree a claw back clause or overage clauses?

Is it a key or ransom strip? (Stokes v Cambridge). Other similar case law should also be considered.

Would disposing of the land have any impact on Council operations or services, including maintenance?

Would the disposal have a detrimental impact on the remaining land, where only a portion has been requested?

Is there any relevant historical background to the land?

Should any restrictive covenants or special conditions be attached to the disposal?

Would the disposal have any impact (positive or negative) on any of the Section 75 groupings?

Is the land to be disposed of a revenue generating asset e.g. carparks?

As with the disposal of surplus land requests received from third parties to purchase Council land or property will be subject to the following:

- All disposals must be approved by Council.
- Where negotiations on price are required, these should be conducted by a professional RICS registered valuer on Council's behalf following a conflict of interest check and prior involvement check / declaration from the proposed agent.
- Advice should be sought from a professional valuer on the most appropriate method of disposal. Methods to include Private treaty, Sealed Bid and formal tender.
- Applicants will normally be required pay the Council's reasonable legal and other relevant fees when a direct approach has been made to council for purchase of council asset.

All potential disposals of land should consider current users and potential users and where adverse impact may be identified in relation to Section 75 dimensions each decision must be screened. Council shall keep a written record of its reasoning for engagement or non-engagement of the D1 process.

2.1.3 Requests for access over Council Land

Request to use or access council land for a specific purpose rather than to purchase the land will be considered. Account will be taken of what the access is required for. Advice should be sought if Statutory Compensation is payable for land take in relation to land loss for Road schemes, and by utility companies.

The different types of access are:

Easement: An easement is a permanent right of access over council land. An easement stays with the property forever and is paid for once. Applications for easements from private individuals or companies will be required if there is a need to cross land owned by the council to access part of a property or to lay cables/pipes to part of a property. An easement gives rights to use the land in a specific way but does not give ownership of the land in question or rights to use the land in any other way.

Wayleave: A wayleave is a right to lay pipework under Council land. This is a temporary agreement for a stated period of time and is usually for utility companies.

Licence: If an application is made to use council land for a specific purpose, but not purchase it, a licence will be required. A licence is a legally binding agreement which

gives rights to use a specified area of land, usually for a specific purpose. The length and cost of the licence will be determined by what use the land is requested for.

All requests for access must be approved by Council.

A [valuation](#) of the land in question should be carried out by a Chartered Surveyor and RICS qualified registered valuer

Applicants will be required to pay the Council's reasonable legal, valuation and other relevant fees.

All requests for access will be considered in the context of the Council's overall Estate Management Strategy.

SECTION C

3.0 Marketing of Land and Property

- 3.1 The Council will employ the services of an Estate Agent who are members of the RICS to market all land and property as required in accordance with the Council's procurement policy. The services of a professional valuer will be employed in the consideration of land and property disposal valuations and, where applicable, methods of disposal. A conflict of interest procedure must be adopted prior to appointment of an agent in line with the RICS policy on avoiding conflicts of interest. The nominated agent must carry out the following as appropriate. [1] Internet advertising via its own web page plus a national internet site e.g Property Pal / Property news plus newspaper advertisement within the property section of local newspapers. A 7-14 day Final Notice should also be made within the Newspaper and Internet advertising that an offer has been received and any interested parties wishing to enhance or better the offer must do so with proof of funds before the closing date. This may apply for requests for use of council land, easement and disposals. Marketing under the D1 process shall be guided by the Land and Property Service Guidance Disposal of Surplus Public Sector Property in Northern Ireland (the LPS Guidance/D1).

SECTION D

4.0 Use of Council Land and Property

- 4.1 The Council owns a significant portfolio of land and property assets ranging from parks and open spaces, to facilities and buildings. Various policies will be relevant to the use of most of this land and property, such as Fees and Charges for the use of Leisure Centres, Community Centres, Town Halls, shared Civic Spaces etc. However, where such policies do not cover formal requests for use of other Council land the provisions of this policy will apply. The provisions of this policy apply to the use of all Council land and property in addition to any site specific conditions of use.
- 4.2 No car boot sales or circuses with animals are to be held on Council land.
- 4.3 All requests to use Council land or property are subject to an application fee and a hire fee. A schedule of fees is attached at Appendix A.
- 4.4 The Council reserves the right to waive the fees e.g Small Community Events
- 4.5 Applications accompanied by the application fee should be submitted in writing at least eight weeks prior to the date of use requested. For large scale events applications should be submitted six months in advance of the event. Exceptions to this timescale will be considered where a benefit to the Council area and population as a result of the use can be shown. Applications which are incomplete will be returned to be fully completed.
- 4.6 Senior officers have delegated authority for the approval of routine, repeat uncontentious requests, which have been granted approval in previous years. An example of 'routine' use would be an orienteering event on Council park land, a fun day, or community event.
- 4.7 However, Council approval, which will be reported through the Land and Property sub-Committee, must be sought for Events or other usage.
- 4.8 For Events such as but not exclusively large scale concerts, or other use of land for an extended period the following will apply:'
- A licence agreement will be drawn up between the Council and the applicant.
- A bond of intent (security deposit) will be paid to the Council at the time of the provisional booking. The bond will be returned subject to all other conditions of hire being met.

- Full ground reinstatement costs, the Council's valuation, legal and other relevant costs e.g officer time where required, will be met by the applicant i.e Cost Recovery
- The Council reserves the right to determine a hire fee on a case by case basis.
- Organisers of all events or other use of Council land will be required to adhere to some or all of the Conditions of Hire as detailed at Appendix B, together with any other condition deemed necessary to be applied dependent on the nature of the event.

SECTION E

5.0 Rental of Council Land and Property

- 5.1 The Council has a significant number of properties and parcels of land that are rented to organisations through long standing agreements eg Leases, Licences, and Conacre.
- 5.2 All requests to rent or lease Council land or Property for a period exceeding seven days will be considered by the Council.
- 5.3 Legal advice will be sought on the most appropriate form of agreement to be entered into, taking into account all relevant factors including Business Tenancy Rights.
- 5.4 All renewals of existing agreements (in all formats) must be considered by the Council. All leases should be considered for renewal at least 6 months before the expiry date to allow the minimum notice period for service of the landlords notice to renew or terminate the tenancy e.g. if Council requires the land and property back for its own use or to facilitate works of demolition and reconstruction. Business Tenancy Notices should be served by the agent and checked by Council's Legal department prior to service.
- 5.5 In all instances the Council's Valuer will be used to determine the consideration, except where the land has been marketed for rent via public auction or by tender.
- 5.6 All consideration must be approved by the Council.
- 5.7 Before the renewal of leases an internal check must take place to prevent a case where a renewal of land takes place when in fact a certain *department* within council requires that demise for its own use or to facilitate development to benefit council.
- 5.8 All renewal leases should be no more than 5 years except in exceptional circumstances at Council's discretion. All fresh leases will be on full repairing and insuring terms unless limited by the existing lease or if the building was Listed. Negotiations on this point should be carried out by the Agent.
- 5.9 Tenant's schedules of condition should be avoided which would limit the tenant's liability. Council will assess the need to serve interim and terminal schedules of condition on a case by case basis depending on the cost and likelihood of being awarded damages for a breach of the repairing liability.

- 6.0 All fresh leases should have a rent review mechanism either after year 3 – 5 to market value or linked to inflation whichever higher and best for Council as determined on a case by case basis.
- 6.1 Tenants consent for Alterations and Improvements should be reviewed on a case by case basis to ensure improvements or alterations do not have a detrimental impact on adjacent Council property. All consents for major alterations or improvements will be dealt with by a licence for alterations drafted by Council's Legal department showing the level of works before and after floor plans should be requested. All contractors must have the necessary public liability insurance cover for £10m. The tenant will be expected to reinstate the property should the works be deemed too specialist which would limit market value at lease expiry. All associated legal costs for consent for the documents should be reimbursed by the tenant.
- 6.2 Tenants consent to assign and Sublet the whole only [as opposed to part of] will be considered however, leases should have a first right of refusal in favour of the council . The associated legal costs for consent for the documents should be reimbursed by the tenant.

SECTION F

6.0 Valuation Services

- 6.1 The Council will engage the services of a properly qualified Chartered Surveyor and RICS registered valuer to provide specific advice services including but not limited to advice on the acquisition and disposal of property by sale or lease including the negotiation of leases, rent reviews, lease renewals and surrenders; inspecting properties, supplying estimates on value, advising on disposal methods and procedure, and negotiating an agreed figure as appropriate in respect of:

Acquisition or disposal by agreement of all interests in land and property.

Disposal of land or property in accordance with LPS Central Advisory Unit guidance on the “Disposal of Surplus Public Sector Property in Northern Ireland”.

Acquisition, or the grant of, licenses, rights of way, wayleaves or easements. The agent should issue full terms of engagement detailing any prior involvement, fee basis [per Tenders] basis of value and all assumptions and Special assumptions agreed prior to the appointment. Valuations should be undertaken within 10 working days of the instruction and the report must be in line with the minimum standards as per the relevant RICS Red Book at the time of instruction.

