

Overview and Scrutiny Committee			
<b>Report Title</b>	Review of the Council's Lettings and Disposal Procedure	<b>Item No</b>	
<b>Contributors</b>	Executive Director for Resources & Regeneration		
<b>Class</b>	Part 1	<b>Date</b>	13 February 2018

### 1. Purpose of paper

- 1.1. The Chair of the Overview and Scrutiny Committee requested a review of the Council's lettings and disposal procedures.
- 1.2. This paper sets out the responses from the referral.

### 2. **Recommendations:**

- 2.1 It is recommended that the Overview and Scrutiny Committee note the findings of the review.

### 3. Introduction

- 3.1 The past 10 years have seen significant change for the Council in respect of its estate. As a result of estate rationalisation, in line with the Strategic Asset Management Plan, the Council has seen its Corporate or Operational Estate half in numbers.
- 3.2 Some of these assets have been sold, any capital receipts generally being used to fund the Council's capital programme. However many of these assets have been incorporated into the Council's Commercial Estate which, following the recent addition of the HRA non-housing estate, now stands at 240 properties. These generate a total annual income for the Council of £3.3m, used to fund Council services across the Borough. This does not include the Housing Estate Garages Portfolio of approximately 1,700 properties which generates a further £950,000 per annum.
- 3.3 Recent years have seen a conscious change in approach to ownership and use of Council non-operational assets, moving from disposals to long term retention of assets and a focus on lettings to generate income rather than capital receipts.
- 3.4 Coupled with this has been an increase in "meanwhile" short term uses for land and assets that form part of wider regeneration schemes and programmes. These have taken different forms, recent examples including Place Ladywell, the DEKS in the Old Town Hall in Catford, and most recently

the short term letting of Beckenham Place Park Mansion. These meanwhile uses can save the Council money on running and security costs, bring vacant buildings and land back into use and help contribute to the early stages of a regeneration programme while their long term use is being developed.

- 3.5 As a result of this focus on lettings and income generation more generally, but particularly the rise in short term “meanwhile” leases, and in line with the Chair of Overview and Scrutiny Business Panel request, officers have initiated a review of the Council’s Lettings and Disposal Procedures to ensure that is fit for purpose and provides for a process which reflects best practice.
- 3.6 Currently the Council does not have a formal, adopted lettings and disposal procedure or policy in place.

**4. Teams & Responsibilities**

- 4.1 Currently all disposals, property lettings and landlord and tenant work are carried out within the Property, Asset Strategy & Estates Service Group in the Regeneration & Place division. All land and building disposals are carried out by the Planning & Development team, whilst all landlord and tenant work, including property lettings, are carried out by the Estates Team, which manages the Council’s commercial estate. All of this work is overseen by the Property, Asset Strategy & Estates Service Group Manager, with relevant authorities obtained in line with the Council’s Scheme of Delegation (the Mayoral Scheme of Delegation and the Directorate for Resources and Regeneration Scheme of Delegation).

<b>Role</b>	<b>Function</b>
Head of Regeneration & Place	Responsible for providing overall direction and approvals where relevant, the Head of Service has the ultimate responsibility and accountability to ensure the Council’s disposals and lettings are carried out correctly.
Service Group Manager for Property, Asset Strategy & Estates	The Service Group Manager is responsible for providing direction for the relevant teams and has responsibility for ensuring the correct processes are followed.
Estates Manager/Senior Development Surveyor	Responsible for the day to day management of disposals and lettings as appropriate and for managing surveyors effectively, including allocating jobs as appropriate. This role is also responsible for managing any contracts with agents or consultants in relation to lettings.
Estates Surveyors / Planning & Development Surveyors	Responsible for day to day activities in relation to lettings and disposals

4.2 There are a small number of temporary lettings related to properties and assets which form part of wider regeneration programmes, such as Beckenham Place Park and Catford Town Centre, that are managed by officers in the Capital Programme (Regeneration) team within the Regeneration & Place Division. Where this is the case, all lettings are overseen and signed off by relevant managers in the Property, Asset Strategy & Estates team, again with relevant authorities granted in line with the Council's Scheme of Delegation. The table below sets out the key roles and functions of the officers involved in the disposal/lettings process in the Regeneration & Place Division.

## **5. Types of Disposals**

5.1 For the purposes of this review, the types of disposals are split into four general categories:

- Land and asset disposals – these could be freehold or long leasehold disposals, or those leases over seven years granted in return for a capital receipt/premium; for the purposes of this review it will include all leases granted over 25 years and all freehold disposals.
- Standard commercial lettings – those properties which form part of the Council's existing commercial estate and used to generate income to support service delivery;
- Community building lettings – those properties which are either existing or former community buildings leased on commercial or semi-commercial terms;
- Meanwhile/temporary lettings – those properties which form part of wider regeneration plans and used on a temporary basis whilst long term plans for the buildings are realised. These properties in many cases if left empty, present security, maintenance and compliance issues and costs for the Council and so are often let for short term uses on terms which reflect their condition and investment required, the short term nature of the use and the resulting saving to the Council on security costs which would otherwise be incurred if the buildings were left empty. One of the main drivers for letting these units in this way is ensure they are kept safe and secure while longer term plans are developed for their use.

## **6. Scheme of Delegation**

6.1 The Council's Constitution currently sets out how, where and on what basis decisions can be made in relation to disposals and lettings; the Council's Scheme of Delegation contains the details of this and forms the basis of decision making in relation to land and property.

- 6.2 Key decisions on disposals, and to declare properties/land surplus are made by the Executive (Mayor and or Mayor and Cabinet). In some cases such decisions are delegated to the Executive Director (ED) for Resources and Regeneration where the value of the disposal or asset is less than £500K.
- 6.3 The Scheme of Delegation provides that decisions related to leases, licences and tenancies (including those considered temporary, short term or at market/best consideration) are delegated to the ED for Resources and Regeneration, sub-delegated further to the Head of Service for Regeneration & Place. Accordingly, decisions on the grant of leases, licences and tenancies are not taken by Members unless the Scheme of Delegation does not apply.

## **7. Best Consideration**

- 7.1 Under Section 123 of the Local Government Act 1972, the Council is under a statutory obligation to achieve “Best Consideration” when dealing with any disposal (sale or letting) of its assets. Essentially this is the best value or financial return that can reasonably be obtained, and for disposals will usually reflect Market Value, for lettings it will usually reflect market rental value.
- 7.2 This statutory obligation does not apply to leases granted for less than seven years. Leases for less than seven years are also not disposals for the purposes of the Scheme of Delegation and the requirement to obtain best consideration does not apply to them. However, the Scheme of Delegation requires all lettings to be at Market Value..
- 7.3 For any disposal or letting for less than Best Consideration/Market Value, approval needs to be granted by Mayor and Cabinet.
- 7.4 Market Value or Market Rental Value is usually determined following a full marketing process, however where this has not taken place then it is based on the advice either provided by suitably qualified Officers (either the Service Group Manager for Property, Asset Strategy and Estates or the Estates Manager) or by external professional surveyors.
- 7.5 Whether or not the Council has achieved Best Consideration in relation to a disposal or letting is determined on the same basis. Decisions (delegated or Mayor and Cabinet) are taken on the basis of advice provided either by Officers or external professional surveyors.
- 7.6 It should be noted that there will be occasions, particularly with short term lettings or where buildings require significant investment, where Best Consideration/Market Value may still be achieved without a rental payment being received by the Council. For buildings which require significant investment (such investment being borne by the prospective tenant), longer term leases will usually attract a significant rent free period and for short term leases it may not be financially viable for the tenant to both invest in a building and pay a rent to the Council.

## **8. Existing Disposal/Letting Procedures**

## **Land/Building Disposals**

- 8.1 For the purposes of this report, a disposal is defined as any freehold sale of Council assets or the grant of a leasehold in excess of 25 years.
- 8.2 A property or site is identified as being surplus to the Council's requirements through a process of ongoing property review in which it has been identified by Regeneration & Place and, if applicable, the occupying Service as being unused, under used or not offering value for money (because, for example, as a result of individual property review, the costs of maintenance may be prohibitive such that it is no longer cost effective to retain them).
- 8.3 An options appraisal is carried out which considers the following:
- Existing use and condition;
  - Site/property context – site constraints, planning constraints etc;
  - Legal/title status;
  - Potential alternative uses (including potential for redevelopment and constraints/opportunities associated with that);
  - Valuation – including existing use and alternative use/redevelopment value;
  - If redevelopment – delivery options e.g. Council led, RSL led, private sector led, potential for joint venture or other delivery vehicle;
  - If disposal – consideration and recommendation on the most suitable disposal route.
- 8.4 Based upon the findings and recommendations of the options appraisal, and following consultation with appropriate Members and Executive Directors, a Mayor and Cabinet or Delegated Authority report will seek approval to dispose without further referral and, in the case of a Mayor and Cabinet report, will seek delegation for the Executive Director for Resources and Regeneration to accept an offer and to negotiate further if necessary and to enter into the legal documentation necessary to complete the disposal.
- 8.5 The Cabinet report will recommend whether the sale should be leasehold or freehold and will include an assessment of the value and the impact on value, if any, of the respective methods of sale. It will also advise on the timing of the disposal and when the property should be brought forward.

### Methods of Disposal

- 8.6 The methods of disposal that may be used are:
- Informal Tender;
  - Formal Tender;
  - Auction;
  - Sale by negotiation
- 8.7 Sales by Formal Tender and Auction are largely regulated by the process that needs to be followed to achieve a legally binding contract, they are not used

on a regular basis by the Council and so are not described or covered in this report.

- 8.8 Sales by negotiation usually involve a “Special Purchaser”, examples being:
- i. Sale to a sitting tenant
  - ii. Sale of an access which would enable a purchaser to release development value locked up in another property;
  - iii. Sale to an adjoining owner or sale of a part-interest in a property where amalgamation of interests could enable “marriage value” to be realised;
  - iv. Sale to an organisation or public body (eg a RSL) at less than market value where other benefits are offered to the Council.
- 8.9 In the case of example iii, this has been a relatively common occurrence over the past two to five years, where Officers have negotiated a disposal to an adjoining land owner to realise marriage value. In particular sale by negotiation is a more common occurrence where the Council is seeking to negotiate a disposal generating an income stream rather than a capital receipt. Recent examples include disposals at 1 Creekside and the former Copperas St Depot.
- 8.10 In these circumstances, if a site is has not been declared surplus already by Mayor and Cabinet, then that decision will be taken as part of the same report seeking authority to dispose, once negotiations have completed. The same process is followed in terms of an options appraisal considering different forms of development delivery.

### **Standard Commercial Lettings**

- 8.11 There are two types of assets which come under this definition:
- Sites/buildings which already form part of the Commercial Estate and are being re-let;
  - Operational sites/buildings which have been declared surplus and moved into the Commercial Estate.
- 8.12 For the latter, the same process as for disposal sites/properties is followed. Sites are identified through a process of ongoing property review in which it has been identified by Regeneration & Place and, if applicable, the occupying Service as being unused, under used or not offering value for money. Properties are declared surplus either by Mayor and Cabinet or the ED for Resources and Regeneration where the value of the disposal or asset is less than £500K, and in each case following agreement between relevant service areas, and following notification of the relevant Ward Members. However it is important to note that this does not happen for lettings or lease renewals for properties which are already part of the Commercial Estate.

### **Pre-marketing Activities**

- 8.13 Prior to marketing, a surveyor from the Estates Team will carry out a site inspection to assess:
- General repair and any works required;
  - Site/property safety and security (and make any arrangement to protect against squatters or unauthorised entry);
  - Potential fire hazards.
- 8.14 The surveyor will notify relevant Council departments the property is vacant and arrange/instruct as necessary any statutory assessments, for example Energy Performance Certificates.
- 8.15 The surveyor will also make an assessment of the potential rental value prior to passing the property on to instructed letting agents.

### Marketing Activities

- 8.16 The Council has a contract with local agents to carry out all marketing and leasing activities on its behalf. The Agent will prepare marketing particulars, including the following details:
- Photographs;
  - The address, floor plan and a location plan of the property;
  - A brief description of the property and the area;
  - Rental required;
  - Length of lease being offered;
  - Energy Performance Certificate
  - Viewing and contact details
- 8.17 As well as letting boards on site, properties are listed both on the Agent's website and the Council's. All offers received by Agents are passed on to the Estates Team for review. Offers are assessed on the basis of (but not limited to):
- Level of rent;
  - Proposed use;
  - Track record and experience;
  - Due diligence – company records etc;
  - References (if requested).
- 8.18 Upon selection of an applicant, the Agent will agree Heads of Terms for approval by the Council's surveyor. Once agreed, these are signed off by the Estates Manager and Property, Asset Strategy and Estates Service Group Manager. The Estates Team then instruct the Council's Legal Department to draw up and complete legal documentation.

### **Community Building Lettings**

- 8.19 For community buildings which are transferred into the Commercial Estate, the same process outlined in the previous section is followed.

- 8.20 However there are community buildings which still form part of the Operational Estate but which are not occupied directly by Council employees, but instead by organisations from the voluntary sector. The management of these buildings and organisations is overseen by colleagues in Community Services; a number of organisations occupy under premises management agreements, however some occupy under leases, negotiated by the surveyors in the Estates Team.
- 8.21 Generally speaking, the organisations occupying these buildings have historically done so for some time, and leases or premises management agreements have been put in place to regularise occupation. In these circumstances, there has not usually been a marketing process.
- 8.22 In April 2015 Mayor and Cabinet agreed a framework for the use of Council assets to support the Voluntary Sector and this forms the basis of the grant of any leases to organisations in Council community buildings.
- 8.23 To summarise, there are four categories described as follows:
- **Sole occupancy of a building (not at full market rate)** – This would be a building, wholly or predominantly utilised by one Voluntary and Community Sector (VCS) organisation. In order for an organisation to have sole occupancy of a building it would need to demonstrate a need for specialist facilities that could not be provided elsewhere and/or within a shared facility. The organisation would need to demonstrate that it can't afford full market rate. The organisation would also need to be delivering services that meet Council priorities.
  - **Voluntary and Community Sector Hub** – This would be a shared building with all inclusive affordable rents. This would be the preferred category for organisations that are providing services that meet our priorities (and cannot demonstrate the need for specialist facilities above). The Hubs will provide office and meeting space. Activity space where appropriate and possible may also be provided, otherwise this would need to be hired elsewhere.
  - **Community Centre** – This would be a neighbourhood based facility with activity space that is predominantly geared towards providing services at a neighbourhood level. Community Centres currently have a range of different terms and conditions, some are on full repairing leases, some directly provided and others managed by Premises Management Organisations (PMOs) but with Repairs & Maintenance provided by the Council.
  - **Sole occupancy of a building at full market rate** – This would be for larger Voluntary and Community Sector organisations that can afford to pay full market rates, for those that are not delivering services that meet our priorities or for organisations that are delivering services that meet our priorities but that do not wish to be housed within one of the VCS hubs. These organisations would still be able to access buildings (where available) on the Council's standard letting terms and conditions.



- 8.24 Any new lettings of community premises to a VCS organisation will follow general lettings procedures set out in the previous section, however are carried together with colleagues from Community Services.
- 8.25 Authority for lettings to organisations who occupy Council buildings to deliver commissioned services is granted by Mayor & Cabinet. General terms are set out to bidders as part of the tender exercise, and authority to agree the final terms is delegated to the ED for Resources & Regeneration.

### **Temporary/Meanwhile Use Lettings**

- 8.26 This category includes Council (or Catford Regeneration Partnership Limited) owned buildings or sites which are vacant, but which sit within an area for which long term regeneration or redevelopment proposals are either planned or in place. Whichever team is leading on meanwhile/temporary lettings, oversight is provided by surveyors in the Estates Team and/or other officers in the Property, Asset Strategy and Estates service group as appropriate or required.
- 8.27 Recent examples include the buildings on Beckenham Place Park, Catford Town Centre, former Ladywell Leisure Centre site. In most cases the buildings are in a poor state of repair and require significant capital investment in order to bring them into a safe and statutory compliant state of repairs; they also tend to incur the Council significant security and other costs in order to keep the buildings/sites safe and secure.
- 8.28 Historically, smaller buildings have been occupied by Property Guardians in order to minimise the Council's revenue expenditure, whilst longer term plans for the buildings are realised. Other larger properties where this is not possible have remained vacant and the Council continues to incur revenue costs. However, there is a recognition that bringing these buildings into active use for short term (generally under three years) use, even for no or little rent, can help contribute to the early stages of regeneration plans.
- 8.29 It is important to note that best consideration or the achievement of a market rent for a property may not always result in receiving income, depending on other factors involved in a letting. As stated earlier in this report, these buildings are often in a poor state of repair and require significant investment in order to bring them into an occupiable condition. These costs can either be borne by the Council as landlord or by a prospective tenant. In standard, longer term lettings, an ingoing tenant would be granted a significant rent free period to recognise their upfront capital investment; however for short term leases the investment required may exceed the annual market rent the Council could expect to achieve over the course of the proposed lease term if the property were in better condition.
- 8.30 In addition to the Capital investment required, the Council can benefit from a reduction in holding costs associated with security and other items, which in

some cases can be significant. As a result, in some cases the rent that the Council negotiates will reflect these tangible benefits.

- 8.31 In terms of procedures, the majority of lettings have followed standard procedures followed during the course of a normal commercial letting. The same criteria described in that section when assessing tenant applications are used, however more weight is given to the proposed use, in particular how it helps meet wider regeneration objectives specific to the plans for the area the property is in.
- 8.32 In a small number of cases, lettings have been undertaken directly with tenants by negotiation. Beckenham Place Park Mansion is a recent example of this, with the imminent closure of the golf course resulting in closure of publicly available facilities in the building, a decision was required its short term use in order to ensure the ongoing security of the building from squatting and damage, make the building safe for occupation and, if possible, ensure the availability of the building for use by the public.
- 8.33 In terms of a process followed, an options appraisal was carried out considering the various ways the building could be secured, together with the minimum capital investment required to enable that. This included the Council securing through a security company, property guardians or the grant of a meanwhile/temporary letting. It was concluded that the meanwhile use lease approach offered the best option for safeguarding the mansion. It offered the lowest cost solution to provide the necessary building security and transfers many of the ongoing running costs to the occupier. The introduction of active uses to the park would also help to introduce new users to the space and more widely to the Park.
- 8.34 No formal marketing process was undertaken, although Officers did engage with other potential meanwhile use operators, before negotiating a short term letting with RJK Properties. In the time between the closure of the golf course and occupation by RJK Properties the building was squatted, with RJK Properties assisting the Council in obtaining possession by agreement. Given the investment required by any tenant, together with set up and ongoing management costs, together with the short term nature of the lease, Officers were and are satisfied that the terms agreed were in line with what could have been expected had the property been marketed. Authority for the letting was provide by the ED for Resources & Regeneration and in line with the Council's Scheme of Delegation.
- 8.35 Having reviewed the circumstances of this letting, whilst the terms agreed were in line with market expectations, the Council's fiduciary requirements were met and the Scheme of Delegation followed correctly, it would have been more appropriate to follow the procedures of a standard commercial letting and market the opportunity more widely through Agents. However, it is accepted that in this case there were particular time pressures associated with the building becoming vacant, and the significant cost implications if the Council were to secure the building; therefore a wider marketing exercise was

not feasible in these circumstances. In terms of lessons learnt, in the future the planning of any similar vacant possession proposals should allow time for a marketing exercise in order to ensure the opportunity is more widely advertised.

## **9. Best Practice and Review Findings**

- 9.1 Having carried out an initial review of other London Boroughs, there are few which have published, formal procedures of policy for lettings and disposals. Those which do include London Borough of Tower Hamlets, whilst other Boroughs seem also to be reviewing their procedures in this area. Officers have also liaised with key contacts in property teams at other London Boroughs to understand general approaches in this area.
- 9.2 Whilst there are differences between how local authorities approach disposals and lettings, these are generally limited to the method of disposal, with authorities generally following one or two favoured methods, and how opportunities (disposals or lettings) are marketed, that is through agents or directly through in-house teams.
- 9.3 In comparison to Lewisham, there are Councils whose procedures are broadly similar, and those with some significant difference. Where all Councils align, is that they seek to use practices which result in an open, transparent and consistent process of disposal or letting, and that they result in outcomes which meet both statutory requirements and the individual Council's own constitution and fiduciary requirements.
- 9.4 The key questions therefore for this review are:
- Are the Council's lettings and disposal procedures consistent, clear and transparent;
  - Do those procedures result in outcomes which meet statutory requirements and the Council's own fiduciary requirements.
- 9.5 In respect of the first, Officers are satisfied that this is the case. Generally, the same standard procedures are followed for all lettings, however where they are not there have been demonstrable reasons for doing so and these cases tend to be the exception rather than the norm. The criteria for tenant selection is clear and followed equally for all standard commercial lettings. The increase in meanwhile or temporary lettings within regeneration areas has resulted in a slight change to the standard set of criteria used in these circumstances however there are clear reasons for this being the case.
- 9.6 That said, an even great level of transparency and consistency of approach could be achieved if a more formal lettings and disposal policy were adopted. It is the recommendation of this review that such a policy be formally adopted by Members.
- 9.7 In respect of the second question, both statutory legislation and the Council's own Scheme of Delegation are clear as to the requirements for the Council to

meet in respect of any letting or disposal. Authorities for any disposal type are obtained in accordance with the Council's Scheme of Delegation. In relation to requirements to achieve best consideration, the majority of lettings are carried out following a marketing process. For those which are not, suitably qualified Officers are required to be satisfied that the "best" or market terms have been achieved. For asset disposals, the issue of best consideration is dealt with as part of the reporting for the approval/authority process. In respect of this question Officers are satisfied the Council's procedures are fit for purpose.

**10. Recommendations**

- 10.1 This report recommends that a recommendation is made to Mayor and Cabinet seeking to adopt a formal lettings and disposal policy. If this recommendation is agreed, Officers propose that a draft Policy is brought back to this Committee before going to Mayor and Cabinet for adoption.