

# MUNICIPAL YEAR 2010/2011 REPORT NO. 195A

## MEETING TITLE AND DATE:

Council – 6 April 2011

## REPORT OF:

Director of Finance &  
Corporate Resources

**Agenda – Part: 1**

**Item: 13**

### **Subject:**

Proposed changes to the Council's  
Constitution - Property Procedure Rules

**Wards:** Not Ward specific

**Cabinet Member consulted:**

Contact officer and telephone number:

Brian Smart - 020 8379 4101

E mail: [brian.smart@enfield.gov.uk](mailto:brian.smart@enfield.gov.uk)

## 1. EXECUTIVE SUMMARY

- 1.1 This report sets out proposed changes to the Council's Constitution endorsed at the Governance Review Group meeting held on 15 February 2011. Consideration of the report was deferred at the Council meeting held on 2 March 2011.
- 1.2 The Council's Constitution includes a section on Property Procedure Rules (chapter 4.11 of the Constitution). It is considered good practice to review periodically the content of these Rules, which focus primarily on issues of management, disposal and acquisition of property. The Property Procedure Rules are set out in the Appendix to this report.

## 2. RECOMMENDATION

- 2.1 That the Council delegate authority to Cabinet to approve the making of all Compulsory Purchase Orders (CPO)
- 2.2 That Council approve amended wording to the Property Procedure Rules to strengthen procedures in respect of the acquisition and disposal of property. The amendments are set out in the Appendix 1 in bold italic.

### **3. BACKGROUND:**

- 3.1 Statute does not require approval of a compulsory purchase order by full Council and therefore the Council is able to delegate such a function to Cabinet in order to adopt a more suitable approach.
- 3.2 The Council is currently undertaking a number of projects which require both the disposal and acquisition of property under a number of different powers and it is considered that the Property Procedure Rules can be strengthened to aid clarity and ensure that there is transparency in throughout these processes

### **4. ALTERNATIVE OPTIONS CONSIDERED**

To leave the Property Procedure Rules unamended and the Constitution unchanged.

### **5. REASONS FOR RECOMMENDATIONS**

- 5.1 Cabinet is able to take decisions of significant impact. However, should the Director of Finance and Corporate Resources be of the opinion that the decision is one which can only be taken by full Council, then there is the opportunity for Cabinet to refer items to Council in any event.
- 5.2 Having the option to take a recommendation to full Council or Cabinet will facilitate a smoother, speedier and more effective decision making process and working practice. This is especially pertinent to CPO's as there are very often tight time scales and procedures to consider.

### **6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS**

#### **6.1 Financial Implications**

There are no direct financial implications from the change to the constitution. However, whenever any purchasing or disposal decision is being made, all the financial implications, on a case by case basis must be taken into consideration

#### **6.2 Property Implications**

The revision of the Property Procedure Rules allowing Cabinet to consider the applications rather than reference to Full Council should streamline the process

## **6.3 Legal Implications**

6.3.1 The Local Government Act 1972 - section 101 states that a local authority may arrange for the discharge of any of its functions by a committee, a sub committee or an officer of the authority

6.3.2 Section 13 of the Local Government Act 2000 and the statutory guidance ("New Council Constitutions: guidance to English Authorities"), established that decisions to authorise CPO's be taken by the executive body and leader, which for the London Borough of Enfield, is the Cabinet.

## **7. KEY RISKS**

Effective working practices would be compromised if the Constitution were not regularly reviewed.

The risk of failing to amend the Property Procedure Rules is that making compulsory purchase orders would not be as efficient or streamlined as they would be if the proposed changes are accepted

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

The Constitution ensures that fair rules of debate and scrutiny are operated.

### **8.2 Growth and Sustainability**

An effective Constitution ensures that the priorities of growth and sustainability can be fairly and properly debated.

### **8.3 Strong Communities**

An effective Constitution ensures that the priority of developing strong communities can be fairly and efficiently debated.

## **9. PERFORMANCE MANAGEMENT IMPLICATIONS**

The Constitution must ensure that fair rules of debate are operated and that the Council operates to high and effective standard of performance.

## **Background papers**

None.

# Appendix 1

## Chapter 4.11 - Property Procedure Rules

***The Property Procedure Rules are to be considered and followed when transacting with another party using property in which the Council has an interest***

### **Management of Council's Property**

1. The Council and all employees and agents, shall comply with:
  - a) Property Procedure Rules.
  - b) Financial Regulations.
  - c) Any formal guidance issued by the relevant Director and relevant Council Codes of Practice, policies, and procedures.
  - d) UK and EU law
  - e) ***Contract Procedure Rules***

but the Council may waive these Standing Orders, except (d) above.

***The Director of Finance and Corporate Resources/Assistant Director of Property Services*** shall be responsible for interpretation of the Property Procedure Rules.

In these Standing Orders the word 'property' means any land, or buildings, owned by the Council, or in which it has a legal interest.

2. All Council property is owned corporately by the Council. Any services occupying property shall do so in accordance with an Asset ***Management Plan***. Services occupying property shall pay an asset charge equivalent to depreciation, or rent, as required by the Council's accounting practice.
3. An Asset ***Management Plan Occupation Agreement*** is a document which sets out clearly, for the Council and the occupier of the property, the basis of that occupation, the costs of that occupation and the responsibilities of the parties in relation to the property and its costs. It will also outline any proposals in the short, medium and longer term, which may affect the property, or its use. The Asset ***Management Plan*** will also identify any property which is not fully utilised, or is no longer required for its current use.
4. The occupying service, in conjunction with the relevant Director and the Assistant Director (Property Services) will be responsible for the maintenance and updating of ***service Asset Management Plans annually*** .

5. If a service decides that any property it is using is no longer required for that purpose, it is the responsibility of the **occupying service** Director, as tenant, to give at least six months notice **to the Assistant Director of Property Services on the prescribed form** that **such** property will not be required and during that time allow the Assistant Director (Property Services) and prospective future users to view the property. However, the service will still be responsible for all running and other costs of the property, including security costs, until the six month period has expired. If the property is to be sold but is not disposed of within six months, the Assistant Director (Property Services) will take over responsibility for all outgoings, subject to transfer of appropriate budgets.

The Assistant Director (Property Services) must prepare a report, for the approval of the relevant service Director, in consultation with the appropriate Cabinet Member saying whether the property:

- a) is to be held for use by another service which has identified a specific need either immediately or in the future;
- b) is to be **identified for disposal and** added to the disposals programme;
- c) will be kept under review pending possible future uses.
- d) **Where a surplus asset is to be held pending review or until a future use can be found, the Property Service will be responsible for the running costs which will be met from central contingency.**

This report will be held on the appropriate property file.

All property in categories b) and c) must be reviewed by the Corporate Management Board at least every six months.

6. Where any transaction, including the transfer of property from one use to another, requires public notice to be given, the **occupying service** Director must arrange for this to be carried out and for any public response to be reported, as appropriate, to **the Finance Director** and Councillors. Any such notice and relevant response shall be placed on the appropriate property file.

## **Disposal of Property**

***A 'Disposal' is considered to be where the Council parts with an interest in a property, whether it is a building, part of a building or a piece of land. The parting with an interest may be the freehold or leasehold interest for any term of years***

### **A. Disposals – General**

**8. A Property may only be added to the disposals programme after a report prepared by the Assistant Director (Property Services) has been approved** by the appropriate Cabinet Member, or by Cabinet itself.

If the above report does not recommend a method of disposal a separate report shall be made to the Assistant Director (Property Services) and recorded on the appropriate property file. The Assistant Director (Property Services) may also recommend that a development, planning brief, or statement should be prepared and included in the sale documents.

9. All disposals must be on a competitive basis by advertisement in the open market unless in exceptional circumstances either Cabinet, or the relevant Cabinet Member agrees otherwise (**exceptions are listed below**). Such a decision requires the report from the Assistant Director (Property Services) to state that the Council will achieve the best price which can reasonably be obtained, or has obtained the consent of the Secretary of State for the Environment in accordance with section 123 of the Local Government Act 1972. This report will record both the reasons and justification supporting the decision to sell on this **exceptional** basis and will be held on the appropriate property file.

**9A. The disposal of any property held for education purposes to an Academy will be in accordance with the statutory framework in the Academies Act 2010 and a report of the Assistant Director (Property Services) will be required**

**9B. The arrangements set out below in (J) describe how properties should be acquired and disposed of under the Council's Empty Property strategy**

**9C. The Heads of Terms for any property transaction will be attached to the report of the Assistant Director to the relevant Cabinet member setting out the negotiated Heads of Terms that have been provisionally agreed between the parties.**

**9D. In circumstances where marketing is not undertaken then the valuation and terms agreed may require independent valuation endorsement**

## **B. Disposals – Valuations**

10. In preparing for the disposal of a Council interest in property, the Assistant Director (Property Services) shall ensure that a formal, written valuation report is provided **in respect of** the interest to be sold. If such a valuation is undertaken by Council employees, it should be **ratified** by an appropriately qualified, or experienced valuer and should include the following elements:

- a) a description of the property interest being sold;
- b) a summary of the information and assumptions on which the valuation is

based (such as the presence of restrictive covenants, physical, or servicing constraints and, where appropriate, planning context);

c) normally details of three comparable recent property transactions, including the source and date of the information, the date of the transaction, consideration involved, method of sale and any unusual circumstances associated with the transaction; (only in exceptional circumstances, where comparable recent transactions cannot be found, will this requirement be varied by the Assistant Director (Property Services));

d) the date of valuation and

e) the basis of valuation and an explanation of any technique involved.

11. The disposal valuation report prepared by a Council officer must be authorised by the appropriate Director, or the Assistant Director (Property Services). The Assistant Director (Property Services) may instruct appropriately qualified and experienced external valuers to undertake disposal valuations and this may be combined with instructions to act as sales agent for the Authority. In these circumstances, the valuation report must be drafted and presented to the Assistant Director (Property Services) in line with the requirements indicated above for valuation reports being prepared in-house.

12. All disposal valuations (whether prepared by Council staff, or by external valuers) will be reported to the corporate, inter-disciplinary Asset Management Group of officers. The valuation report and details of its authorisation must also be retained on the appropriate file within the Council's Property Service.

13. Where a disposal exercise has not reached completion within 6 months of the date of the corresponding disposal valuation report, an updated valuation report shall be prepared either by appropriate Council staff, or by external valuers in accordance with the procedures for valuations set out above in these Rules prior to completion of the transaction. Such a report will be placed on the appropriate property file.

### **C. Auction Sales**

14. Where properties are to be sold at auction, the case officer in Projects and Estates will recommend Auctioneers with appropriate experience and catalogue coverage for the approval of the appropriate Director, or the Assistant Director (Property Services). Such appointments shall comply with the Council's Contract Procedure Rules. If the recommendation is for the appointment of an Auctioneer who did not provide the lowest fee quotation, ***the instruction report to be approved by the Assistant Director of Property Services*** shall justify and clearly document the reasons for commissioning that Auctioneer. The documentation on the appointment of auctioneers will be kept on the appropriate property file.

15. Properties to be sold by auction will require a disposal valuation report,

whether provided by Council staff, or by agents, in accordance with the valuation report requirements set out in these Rules.

16. The appointed auctioneer will recommend the reserve price, which should not be less than the valuation which complies with the statutory obligation of s123 of the Local Government Act 1972 (best price which can reasonably be obtained). The reserve price will need to be agreed by the appropriate Director, or the Assistant Director (Property Services) and details of the recommended reserve price shall be recorded on the appropriate property file.

17. Should a property fail to sell at auction, the Assistant Director (Property Services) may instruct the auctioneers to proceed with a sale post-auction, if it can be demonstrated that the property has been properly exposed in the market to potential purchasers and that the disposal terms represent the best price reasonably obtainable. In such circumstances, the Assistant Director (Property Services) will need to sanction the transaction. Details of the instructions to the auctioneers and of the transaction will be held on the appropriate property file.

#### **D. Sale by Tender**

18. If the agreed method of disposal is by competitive tender, then the following steps must be taken:

a) An advertisement must be placed which describes the property to be disposed of, says where further details can be obtained, invites tenders and gives a closing date for receiving the tender, being a period of at least 14 days. The advertisement must be placed in at least one newspaper or journal likely to be read by people interested in the property. If the property is valued at more than £750,000 another advertisement must be placed in a national newspaper, or journal, which is likely to be read by bodies involved in property, or development.

b) The receipt and opening of tenders must be carried out in accordance with Contract Procedure Rules 3.12.

19. If the Assistant Director (Property Services) is of the opinion that a tender other than the highest should be accepted, the reasons must be fully documented. If the Assistant Director (Property Services) considers that no tender received represents the best price which can reasonably be obtained, he or she must consider re-tendering the property concerned, or other method of disposal. Tender documentation and correspondence shall be put on the appropriate property file.

20. It is important that any post-tender negotiations are as open and transparent as a competitive tender process allows. Any such negotiations should include a Council officer who is independent of the Assistant Director (Property Services), his or her deputy, or the Head of Projects and Estates. Any negotiations should take place at the offices of the Council, or of the

interested party, or their advisors and must be clearly documented and followed up quickly by correspondence between the parties to confirm progress on matters agreed and outstanding issues. This documentation and correspondence shall be held on the appropriate property file.

### **E. Private Treaty Sales**

21. Should a proposed sale by private treaty be at a value less than the disposal valuation, then Cabinet approval is required prior to the sale. The officer report to Cabinet must set out clearly the justification for proceeding and indicate the benefits to the Council in doing so. This report shall be held on the appropriate property file.

22. In the case of a proposed private treaty sale, the Assistant Director (Property Services) will consider whether the disposal valuation shall be carried out by an external valuer on behalf of the Council. In determining whether external valuation advice is needed, the Assistant Director (Property Services) will take into account the likely complexity and scale of the valuation and the overall benefits to the Council of proceeding with a sale by private treaty. If external valuers are not appointed, the Assistant Director (Property Services) will note the reasons and justification for arriving at this decision and ensure that this is recorded on the appropriate property file.

### **F. Information for Members on Sale Receipts**

23. Capital receipts achieved after completion of sale, will be reported to Cabinet Members. **A** report indicating a comparison of sale price achieved against the disposal valuation, with an explanation of any material variances between the *two* figures ***should be available to Cabinet at least annually.***

### **G. Disposal Documentation**

24 The Assistant Director (Property Services) must ensure that a thorough audit trail is maintained on file of each disposal transaction. This should include Cabinet, or delegated authority reports and approvals to dispose, disposal valuations, marketing documentation and details of the marketing strategy, as well as details of any negotiations where relevant. If disposals are undertaken by agents on the Council's behalf, ***those agents*** will be required to maintain documentation and return the file to the Council on sale completion. ***Council Officers should maintain a schedule showing*** the costs of asset disposals, such as legal, agent's, auctioneer's and valuation fees inter alia. The Assistant Director (Property Services) will ensure that relevant officers and agents involved in property disposals are aware of the Council's document retention policy and maintain records in accordance with that policy ***and the will comply with the International Financial Reporting Standards and any other financial regulations***

### **H. Risk Issues**

25. If any officer thinks that there is any significant legal, financial **or other** risk involved in the disposal of any property, a special **Cabinet** report must be prepared by the Assistant Director (Property Services). This report must contain a full assessment of the risks, and the views of the Borough Solicitor and Director of Finance and Corporate Resources. The report must also contain a statement from the Assistant Director (Property Services) that the Council will achieve the best price which can reasonably be obtained, or has obtained the consent of the Secretary of State for the Environment in accordance with section 123 of the Local Government Act 1972. Such a report shall be held on the appropriate property file.

## **I. Letting of Property**

26. The Assistant Director (Property Services) is responsible for granting leases, or licences for appropriate periods of time in respect of any Council property, or land holding. The Scheme of Delegation specifies the officers within the Property Service who are authorised to approve such lettings. The case officer (or Council appointed agent) shall recommend the proposed terms for the letting to be approved by another Council officer with appropriate delegated authority. The recommendation shall be supported by suitable documentation to reflect market rental levels, evidence of comparable transactions and any other factors material to the proposed terms. In dealing with such negotiations, the Assistant Director (Property Services) will ensure that account is taken, where relevant, of s123 of the Local Government Act 1972, or the General Disposal Consent, or the need for consent from the Secretary of State.

Documentation relating to recommendations of lettings and their approval shall be put on the appropriate property file.

## **J. Acquisition of Property**

***In this section the term 'acquisition' refers to the Council acquiring an interest in property by virtue of agreement or statutory authority and may include acquisition by way of gift, merger, Compulsory Purchase, or agreement.***

27. All negotiated acquisitions of property must be approved by the Assistant Director (Property Services) in consultation with the relevant Portfolio holder. A Director's report must outline the purpose to which the asset will be put and must demonstrate **by the inclusion of a business case** that the service is able to fund all costs and expenses associated with the acquisition **and running costs**. That report must be subject to consultation with the Assistant Director (Property Services), **Assistant Director of Legal Services and** the Director of Finance and Corporate Resources. **The report** must also contain advice that the property to be acquired represents value for money and is suitable for the proposed purpose, or is required for an approved Council scheme.

The report will be kept on the appropriate property file. Any proposed acquisitions should take account of the Financial Regulations relating to capital expenditure. A report on all property acquisitions shall be submitted to the Corporate Management Board and Cabinet at least every 6 months.

28. Before the Assistant Director (Property Services) approves an acquisition he, or she, must **have received a formal valuation report and to** certify that the price and other terms are fair and reasonable and are the best that can be achieved in the market and this must be documented on the appropriate property file.

29. Acquisitions involving equivalent reinstatement, or **enabling of** accommodation works must be supported by a fully costed statement and the Assistant Director (Property Services) must agree that the statement is reasonable. The statement and its agreement shall be recorded on the appropriate property file.

## **K. Appropriations**

31. Some property is used for particular purposes according to law. Transferring property from one such use to another is termed 'appropriation'. If any property is to be appropriated, then a report must be made to the Director or Directors whose services are involved. The relevant Director or Directors will be responsible for approval of the proposal in consultation, as necessary, with the Cabinet or the relevant Portfolio holders. Any such report and its approval shall be recorded on the appropriate property file.

### **32. Compulsory Purchase.**

***The council has wide powers to compulsorily acquire property for a number of statutory purposes. It is anticipated however that wherever possible the Council will endeavour to negotiate the purchase of a property that is required for such a statutory purpose.***

***Where property is to be acquired by the Council and a compulsory purchase order is recommended then the Director of Finance and Corporate Resources is to be responsible for seeking Cabinet approval***

***Properties acquired under the Empty Property Strategy will be identified in a report to the relevant Portfolio Member who will approve the acquisition of the property having satisfied himself of the need to acquire the property. Once the CPO has been confirmed by the Secretary of State and the property has vested in the Council, the Council will put the property in to auction with a reputable auctioneer. It is not necessary for these properties to be identified on the disposals register as these properties are not assets of the council.***

### **33. Gifts**

***On occasion the Council may acquire a property by virtue of a gift. In such cases the Assistant Director (Property Services) will undertake a***

***valuation of the interest to be acquired and will present a report to the appropriate Cabinet Member for approval. Such report will set out the value of the interest and report on the liabilities and potential uses of the property. The report will also clearly set out any restrictions associated with the property.***