

## MUNICIPAL YEAR 2013/14 REPORT NO. 114

### MEETING TITLE AND DATE

Audit Committee – 7 November 2013  
Cabinet – 13 November 2013  
Council – 27 November 2013

Agenda – Part: 1

Item - 8

**Subject: Updated Property Procedure Rules**

**Wards: ALL**

**Cabinet Member consulted: Cllr Andrew Stafford**

### REPORT OF:

Director of Finance, Resources & Customer Services

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### 1. EXECUTIVE SUMMARY

- 1.1 The current Property Procedure Rules were prepared in 2008 and re-approved by Council for inclusion in the Council's Constitution in 2011.
- 1.2 The economic climate over the past five years has necessitated a fresh look at how real assets owned and transacted by the Council are managed. Procedures used by the Council were reviewed together with current best practice in the industry and it was considered necessary to update the current procedures.
- 1.3 This update strengthens the Council's existing procedures, promotes greater transparency in decision-making and enhances alignment with the Council's Contract Procedure Rules. In addition, it clearly outlines a proactive approach to asset management thereby ensuring assets are effectively managed and returns are optimised.

### 2. RECOMMENDATIONS

- 2.1 That Cabinet endorses the attached Property Procedure Rules.
- 2.2 That Cabinet endorses the establishment of the Corporate Asset Management Group.
- 2.3 That Cabinet, subject to any comments from Audit Committee, recommends to Council the Rules for approval and replace the current rules in the Council's Constitution.

### **3 BACKGROUND**

- 3.1 The Council's Property Procedure Rules (the "Rules" or PPRs) apply to all real property, whether freehold, leasehold or other property interests in which the Council has or proposes to have a legal interest. The Rules commit the Council to a rigorous and business-like approach to the management of property.
- 3.2 The Rules are intended to ensure that any transaction is entered into only in circumstances which can demonstrate:
- A clear rationale for owning properties;
  - A demonstration of performance and return from the investment in property;
  - Joined-up approach to ensure a more systematic, whole-of-Council approach to property asset planning, acquisition, management and maintenance, disposals and capital investments;
  - Certainty in the terms of the contract;
  - Consistency in the application of the law and Council policy;
  - Probity; and
  - Value for money.
- 3.3 To achieve these objectives these Rules must be followed every time the Council commences a property transaction and/or enters into a property related contract.
- 3.4 Property Procedure Rules are made under the Local Government Act 1972.
- 3.5 The Director of Finance, Resources and Customer Services has the responsibility to:
- regularly review the application and effect of these Rules in consultation with the Assistant Director Property Services and the Assistant Director of Legal Services; and
  - To propose such amended Rules to the Council as he/she may consider appropriate.

### **4. KEY CONCEPTS AND PRINCIPLES**

- 4.1 The proposed Rules:
- 4.1.1 Enforce the concept that all property interests are held legally in the name of Enfield Council and managed corporately to assist with the delivery of Council services and for investment and regeneration purposes.
- 4.1.2 Ensures all assets are managed in accordance with the Council's Property Strategy.
- 4.1.3 Require all property occupiers to agree asset plans with the Assistant Director Property Services so that property is occupied in accordance with that plan.
- 4.1.4 Delegates powers to the Assistant Director Property Services to manage the implementation of the Rules.
- 4.1.5 Empowers the Asset Performance Group to ensure the effective, efficient and economic use of all aspects of the Council's estate and to provide scrutiny on property matters.

4.1.6 Outlines procedures for the disposal and acquisition of real assets.

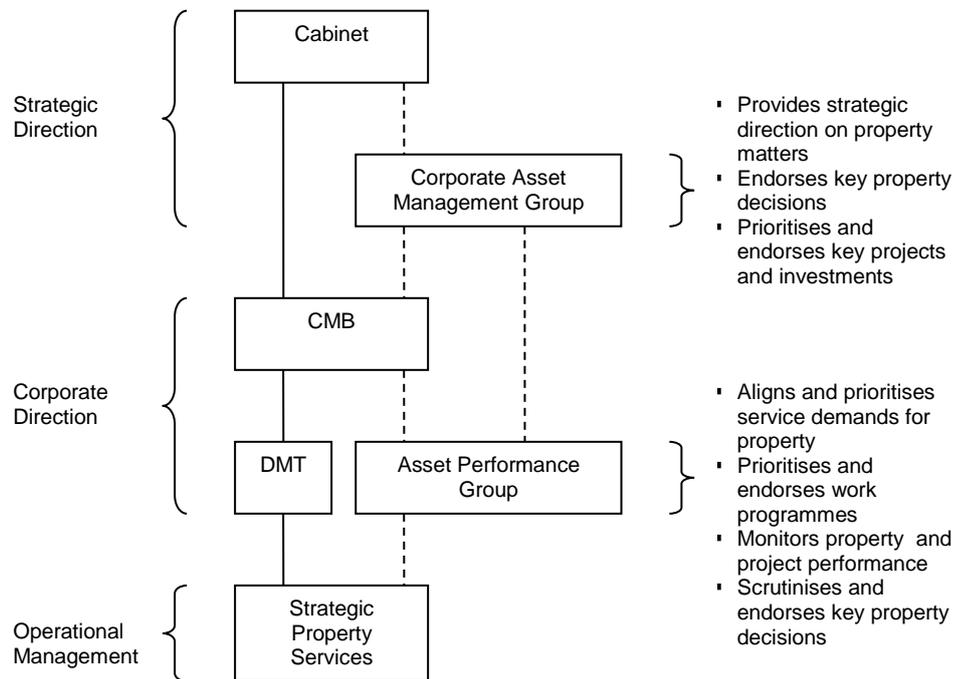
4.2 In particular, the Rules require Asset Management Plans as part of Departmental Business Plans to be prepared by the relevant Director utilising property with the assistance of the Assistant Director Property Services. These will set out for the relevant department a strategy for the use of those assets.

4.3 In addition, these plans will inform the development of a Corporate Property Asset Management Plan for the Council’s combined property asset portfolio to be prepared by the Assistant Director Property Services.

4.4 The Rules outline various forms of acquisitions and disposals and delegates prime responsibility of these activities to the Assistant Director Property Services and in certain instances for final approval to be issued by the Cabinet Member responsible for property and/or Cabinet.

4.5 The Rules also formalises how requests from community organisations for asset transfers will be considered.

4.6 With respect to the governance of property matters, two new “boards” are proposed, viz.: the Corporate Asset Management Group and the Asset Performance Group. The diagram below outlines reporting structures and highlights the key areas of responsibility.



## 5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 Two alternative options were considered, viz.:
- Retain the existing Rules; and
  - Not publish these Rules as part of the Council's Constitution and maintain as Departmental operational procedures.
- 5.2 The former option was not considered feasible in that the drafting of the current Rules had resulted in confusion thereby exposing the Council to unnecessary risks. In addition the current Rules were considered to be too unwieldy and overly prescriptive and did not reflect the economic climate the Council was facing.
- 5.3 Consideration was given to removing the Rules from the Council's Constitution. This resulted from a review of other local authority property procedure rules and it transpired that while a significant number of local authorities had property procedure rules, they were not included in the Council's Constitution. It would appear that this approach would allow council officers greater flexibility (within the statutory framework) in adopting and adapting property related operational procedures without the need for full Council approval. This option was discounted as it was considered necessary to have clear and transparent rules that would guide all officers and members. Officers also considered that the precedent of having existing Rules in the Council's Constitution was a good one and worthy of maintaining.
- 5.4 Both alternative options would also not meet recent Audit recommendations to tighten-up the property procedure rules and ensure greater transparency and less ambiguity in the acquisition, retention and disposal of assets.

## 6. REASONS FOR RECOMMENDATIONS

- 6.1 Various audit reports (internal and external) have suggested that the current Rules should be reviewed and tightened where appropriate. In particular, the audits called for clearer guidelines to all staff and members.
- 6.2 The current Rules were also considered to be too unwieldy and overly prescriptive. The following table highlights key areas of concern with the current PPRs and briefly outlines key changes made to the proposed PPRs.

Area of Concern	Response
Trent Park Café Audit highlighted the need to make a clear distinction between the PPRs and the Contract Procedure Rules (CPRs).	The proposed PPRs include the following amendments: <ul style="list-style-type: none"><li>- "Concessions" defined in section 2;</li><li>- "Concessions" outlined in</li></ul>

	<p>Section 9;</p> <ul style="list-style-type: none"> <li>- Rules regarding disposals clarified and section 11.2 and 11.3 added.</li> </ul>
Approach to evaluating non-financial criteria needs to be taken into account.	As above and in addition section 11.10 (asset transfer to community organisation) included which makes reference to the Social Return on Investment methodology.
State Aid. Previous rules are silent on State Aid matters.	The need to consider State Aid is now explicitly stated under section 11.3.
Delegated authorities need to be clearly outlined.	New rules explicitly state the responsibility of the AD(Property Services) and Director (FRCS). This is particularly needed in light of legislative Corporate Landlord responsibilities and in ensuring good governance. SoD within Property Services also revised with appropriate financial thresholds in place.
In current PPRs the value of a lease transaction is based on the annual figure only irrespective of lease length. This grossly skews the transaction value and does not align with the Council's financial thresholds.	This has changed to ensure the value is aggregated over the length of the lease period so that sign-off limits are appropriately delegated and in line with the Financial Regulations where possible. See Sections 11.1, 11.2, 11.3 and 11.4
Officers have expressed the need to have greater cross-departmental co-operation and strategic steers on property matters.	The PPRs effect the establishment of the Asset Performance Group and the need for asset management planning. See sections 2, 3 and 3.5 in particular.
Asset transfers to community organisations needs clarity. In addition, the Localism Act requires the need to put in place measures to consider Assets of Community Value and asset transfers to community organisations.	See sections 11.9, 11.10 and section 19.
PPRS generally made clearer and disposal routes clarified.	The disposals section has been restructured and requirements specified for each disposal transaction type. See sections 11, 12, 13, 14, 15, 16, and 19.

<p>Service departments were demolishing buildings and parts thereof without approvals and without updating the capital assets registers. Previous practice was not capturing changes to the Council's asset register and insurance policies and were therefore impacting on Capital Valuations.</p>	<p>Demolition of any building or part thereof requires authorisation. See Section 10.</p>
<p>The current process and responsibility for surplus properties is not clear.</p>	<p>Clarity provided in Section 11.5</p>

6.3 Generally, the new Rules aim to provide a fair, transparent and consistent basis for property related decision-making.

6.4 The revised rules will provide a more streamlined process for decisions around the Council's property matters.

## **7 COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS**

### **7.1 Financial Implications**

There is no obvious implication on the existing financial resources of the Council in the approval of the rules. However, the rules would assist to achieve the following:

- Clearer approach to management of corporate assets;
- Aligns property assets with overall corporate objectives;
- Optimising revenue and capital receipts;
- Allows consistency with capital and revenue accounting;
- Allows for greater transparency in allocation of resources and
- Supports effective audit trails.

### **7.2 Legal Implications**

7.2.1 The Rules are made under the Local Government Act 1972 (as amended) which provide powers for the Council to arrange its functions including the discharge of delegated authority. In addition the Council has power under section 1(1) of the Localism Act 2011 to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles.

7.2.2 The Rules once adopted will provide consistency in the application of the law and Council policy and will create a process to ensure transparency and consistency of decision making around the use of Council owned assets.

- 7.2.3 The process set out in the appendix (i.e. The Property Procedure Rules) must be adopted by full Council as a change to the Council's Constitution to become operational.
- 7.2.4 Once adopted transactions made involving property will need to be in accordance with the Council's Scheme of Delegation which delegates responsibility for property functions to the Assistant Director (Property Services) and in compliance with the Contract Procedure Rules.
- 7.2.5 Compliance with the rules will facilitate the on-going good governance and audit requirements of the Council's property portfolio and aid transparency in the decision making process.
- 7.2.6 Any documentation required as a result of a transaction must be in a format agreed by Assistant Director of Legal Services.

### **7.3 Property Implications**

- 7.3.1 The Rules provide a clear mandate to, and clearly outline the roles and responsibilities of the Assistant Director Property Services. In addition, the functions of the Corporate Property Services division are outlined.
- 7.3.2 The Rules highlight clear procedures for the management, planning, disposal and acquisition of real assets (property).
- 7.3.3 The Rules will ensure that all property transactions are completed only in circumstances which can demonstrate a benefit to the Council and in compliance with appropriate legislation; in particular the need to demonstrate best consideration under S123 of the Local Government Act 1972 and best value.
- 7.3.4 The Rules provide structure to the management of the Council's estate thereby ensuring there is a clear rationale for retaining an interest in a property asset including performance and return from investment.

### **8. KEY RISKS**

- 8.1 The adoption of the revised Rules strengthens the Council's risk management with respect to property transactions (in particular acquisitions and disposals).
- 8.2 The Rules are compliant with the law and Council policy and thereby minimises any potential challenge, i.e. Judicial Review, from an aggrieved party.
- 8.3 The consistent and transparent application of the Rules allows for greater public scrutiny, but this is considered right and proper.

## 9. EQUALITIES IMPACT IMPLICATIONS

- 9.1 It is a statutory requirement to undertake an equalities impact assessment on all policies, procedures and programmes that the Council intends to introduce.
- 9.2 Consequently equalities issues were scoped prior to the preparation of the revised Rules. In this regard the following table highlights key issues that were scoped and how they were addressed in the revised Rules.

<b>Issue</b>	<b>Response/Application</b>
<p>Transparency in decision-making: It is imperative that the procedures are transparent and that all property transactions are consistently and fairly implemented.</p>	<p>The Rules are drafted and structured to provide clear and transparent guidance. The publication of the Rules and its inclusion in the Council Constitution enhances such transparency and allows for public scrutiny.</p>
<p>Disposal of assets: Opportunities for all parts of the local community. Disposal opportunities must be available to all segments of our society and no particular group or individual should have any particular advantage above others.</p>	<p>The Rules clearly outline various disposal methods and attempts to minimise collusion.</p> <p>The Rules also specify the need to advertise opportunities locally and nationally. While this is print-media biased and may exclude certain population groups, the complexity, legality and nature of transacting property as well as the Council's need to seek best consideration has necessitated this approach.</p> <p>The Rules however recognises that in certain instances it may be best to dispose of an asset where an open market sale would not achieve best consideration reasonably obtainable, such as instances where a sale is made to a tenant or to an adjoining owner. Appropriate safeguards are put in place to ensure such disposals are approved and a registered valuer has considered the disposal.</p> <p>The Rules also outline the issues that the Council will take into consideration transferring an asset to a community organisations thereby ensuring transparency and opportunity for all.</p>

<p>Acquisition by Compulsory Purchase may be seen as prejudicial to a community or an individual thereby impacting on their Human Rights.</p>	<p>Orders are made as subordinate legislation under powers given to Local Authorities in existing legislation. Sufficient safeguards are in place to ensure that an Authority must demonstrate that the taking of the land is necessary and there is a "compelling case in the public interest". Owners or occupiers can challenge this, and their objection will be heard by an independent Inspector. Compensation rights usually include the value of the property, costs of acquiring and moving to a new property, and sometimes additional payments. The Rules are in conformity with legislation.</p>
<p>The Acquisition of gifts has the potential to raise certain inferences of favourable treatment particularly in light of future transactions thus benefiting/favouring particular segments of society.</p>	<p>The rules allow for the disclosure of such gifts and requires Cabinet approval. As such, the acceptance of gifts is transparent and can be subject to member and public scrutiny.</p>
<p>Certain community groups may not have the ability to compete for assets with other better resourced and vociferous organisations.</p>	<p>The Rules include a section on the Voluntary and Community Sector and outlines a fair, consistent and transparent process for requests to interests in particular assets. In addition, the Council is undertaking a separate exercise into how it can support voluntary and community organisations and publishing a policy that is compliant with the Localism Act.</p>

## 10. IMPACT ON COUNCIL PRIORITIES

### 10.1 Fairness for All

The Rules allow for the transparent and consistent application of procedures for the acquisition and disposal of assets. This will open up opportunities to all parts of the local community.

### 10.2 Growth and Sustainability

The application of the Rules will enable the reuse/transfer of assets that will contribute to regeneration by other organisations. In addition,

the receipt of revenue or income from assets will present the Council with the opportunity to reapply funds towards regeneration activities and/or Council activities.

### 10.3 Strong Communities

Publishing the Rules as part of the Council's Constitution will enhance the democratic process and enables scrutiny in decision-making. The Rules also has the potential to promote social cohesion and provide local communities with more influence over how the Borough's assets are managed and/or utilised.

## **11. PERFORMANCE MANAGEMENT IMPLICATIONS**

11.1 The Rules will enable officers and Members to transact in property in a fair, transparent and consistent manner. The Rules therefore enable compliance auditing.

11.2 The Rules also clearly outline the roles and responsibilities of the Assistant Director Property Services and the functions of the Property Services Division. By also introducing asset management planning, key performance indicators can be established thereby enabling a more rigorous approach to managing the performance of the Division and of the property portfolio.

## **12. PUBLIC HEALTH AND SAFETY IMPLICATIONS**

12.1 The Rules allow for the management of property in accordance with best practice, and in particular clearly delegates corporate landlord and repairs and maintenance responsibilities and the securing of assets.

## **APPENDICES**

Property Procedure Rules

Draft ToR for Corporate Asset Management Group