

PROPERTY PROCEDURE RULES**CONTENTS**

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1. Introduction and Purpose

- 1.1. These Rules apply to all real property (property assets), whether freehold, leasehold or other property interests (including licences and concessions) in which the Council has or proposes to have a legal interest.
- 1.2. The Property Procedure Rules (the Rules):
 - 1.2.1. Set out mandatory procedures regarding the acquisition, management and disposal of property assets
 - 1.2.2. Must be followed when transacting with another party using property in which the Council has an interest
 - 1.2.3. Commit the Council to a rigorous and business-like approach to the management of its property assets
- 1.3. The Rules are made under the Local Government Act 1972 which provide powers for the Council to arrange its functions and s.1 of the Localism Act 2011.
- 1.4. All property assets controlled by Enfield Council are corporate assets. They are managed corporately through rigorous performance management by the Responsible Senior Officer to ensure close alignment to business strategy, goals, metrics and initiatives.
- 1.5. Adherence to the Rules will:
 - 1.5.1. Provide consistency in the application of the law and Council policy
 - 1.5.2. Ensure that all property transactions are completed only in circumstances which can demonstrate a benefit to the Council or as are required by statute
 - 1.5.3. Provide a clear rationale for retaining an interest in a property asset including performance and return from investment
 - 1.5.4. Ensure a joined-up, systematic, corporate approach to property asset planning, acquisition, disposal, management, maintenance and capital investment
 - 1.5.5. Meet probity and value for money requirements
 - 1.5.6. Deliver high quality property records
 - 1.5.7. Ensure that no legal interest or informal arrangement with a third party can be acquired, disposed of, granted or relinquished without appropriate approval in accordance with the Council's scheme of delegation as required by these Rules
 - 1.5.8. Ensure no property asset (or part) is occupied without appropriate legal documentation authorising the occupation
- 1.6. The Council, and all employees and agents, including Enfield Homes shall be aware of and comply with the Rules.
- 1.7. These Rules govern wholly property transactions.

2. Definitions

“Asset Management Plan”

means a document that provides a strategic overview of the Council’s complete property portfolio and sets a broad direction for Enfield’s asset management over the medium term, enabling its property resource and professional support to be effectively coordinated to meet identified needs. The plan is a practical tool which helps define, implement and measure how Enfield:

- makes its investment decisions
- maintains and improves its assets
- increases the cost effectiveness of its property portfolio
- promotes innovation and development in asset management
- listens and responds to property users

“Asset Management Planning”

means a structured approach to gathering and managing information about the condition, suitability and sufficiency of property, to enable informed decisions to be taken about priorities, ensuring funding is targeted to those areas where it can have greatest effect in supporting service delivery or optimising investment returns.

“Asset Performance Group”

means the corporate senior officer group (as per the terms of reference for this group) that has responsibility for optimising the beneficial use and value of the Council’s property holdings across both the General Fund and the Housing Revenue Account (excluding the social housing portfolio)

“Cabinet Member”

means a Member of the Cabinet with particular responsibility for a service department Portfolio

“Concession”

means a type of occupation arrangement (whether or not mobile) granting a benefit to provide a defined activity or trade from Council property. A concession must be procured in accordance with paragraph 9 of these rules.

“Disposal”

means the sale or exchange for other property asset(s) of any of the Council’s property asset(s) that has been declared an “asset for sale” or a “surplus asset” as defined by Chartered Institute of Public Finance Accountants (CIPFA) but also includes the leasing-out of Council-owned property and the granting of easements, rights-of-way. Disposal includes leaseholder enfranchisement and sale of residential property under the Right to Buy scheme.

“Freehold”

means the permanent tenure (absolute or possessory) of land with or without buildings.

“HRA”

means the Housing Revenue Account.

“Lease”

means a contract granting exclusive use or occupation of a property asset for a specified period in exchange for a specified rent.

“Leased-In”

means a property asset or part of a property asset that the Council leases in from an individual or organisation.

“Leased-Out”

means a property asset or part of a property asset that the Council lease out to an individual or organisation.

“Licence”

means a permission to use a property asset for an agreed purpose that does not confer any interest (such as exclusive possession) in the property. A licence may include (but is not limited to) oversailing licences, investigation licences and building works licences.

“Market Value”

means the highest price a willing buyer would pay and a willing seller would accept, both parties being fully informed, and the property asset being marketed for a reasonable period of time.

“Operational Procedures”

means those procedures and best practice in place at the relevant time, defined and employed by Property Services.

“Property Asset”

means land and/or buildings and all improvements thereon or any right in on or over the same.

“Property Transaction”

means the transfer of rights in a property asset between two or more parties (for example but not limited to the transfer of a freehold interest, the creation of a leasehold interest or the granting of a licence).

“Responsible Senior Officer”

means the Assistant Director Property Services or such alternative as nominated by the Director of Finance, Resource and Customer Services in consultation with the Assistant Director of Legal Services.

“Social Return on Investment (SROI)”

means a framework for measuring and accounting for a broader concept of value that seeks to reduce inequality and environmental degradation and improve wellbeing by incorporating social, environmental and economic costs and benefits. The methodology is defined by the Cabinet Office (2009): *A Guide to Social Return on Investment*, Society Media, London or other updated guidance.

“Surplus Property”

means a property asset that is not required to meet the current or future programme or operational requirements of the Council and that has been declared by the Council or its delegated authority to be a “surplus asset” or an “asset held for sale” as defined by CIPFA.

“Valuation”

means a valuation by an appropriately qualified (internal or external) valuer

3. Management of Property Assets

- 3.1. The Responsible Senior Officer must manage all property assets to ensure close alignment with the Council’s strategy, goals, metrics and initiatives. Responsibilities include (but is not limited to):
- 3.1.1. Acquisition and disposal of freehold and leasehold property
 - 3.1.2. Agreements regarding rights of way, easements and wayleaves with statutory undertakers, public utility and telecommunications companies and adjoining property owners
 - 3.1.3. Preparing and reviewing the corporate Asset Management Plan
 - 3.1.4. Assist with the preparation of departmental business plans in so far as these relate to property assets
 - 3.1.5. Agreeing Concessions with the relevant Service department
 - 3.1.6. Continuous improvement of processes, systems procedures, records and methodologies necessary for effective control and management
 - 3.1.7. Corporate Landlord responsibilities
 - 3.1.8. Development options and appraisals
 - 3.1.9. Ensuring fairness, transparency and objectivity are the overriding principles in all tender exercises relating to the Rules
 - 3.1.10. Lease issues such as new lettings, lease renewals, rent reviews, repairs, surrenders, assignments, sub-lettings, changes of use, alterations, dilapidations, collection of service charges and rents etc
 - 3.1.11. Marketing activities in relation to Property Assets
 - 3.1.12. Planning applications for marketing or development purposes
 - 3.1.13. Repair and Maintenance of Property Assets
 - 3.1.14. Restrictive covenants including the modification or release of restrictions in freehold titles and leases
 - 3.1.15. Property valuations including asset valuations, insurance valuations, Right to Buy valuations and valuations for appropriation, balance sheet, grant application, internal rate of return, statutory subsidy, stock transfer purposes
 - 3.1.16. Rates assessments
 - 3.1.17. Regular review of all Property Assets to ensure that under utilised property is managed effectively and, where appropriate, identified as potentially surplus
 - 3.1.18. Undertaking Court of Protection transactions
 - 3.1.19. Any other arrangement that involves a Council Property Asset.
- 3.2 The Responsible Senior Officer may:
- 3.2.1 empower specific Council post-holders to be responsible for managing specific Property Assets such as:
 - 3.2.1.1 Highways property
 - 3.2.1.2 Parks property
 - 3.2.1.3 Education property
 - 3.2.1.4 (Housing) HRA property
 - 3.2.2 delegate his/her functions under these Rules to one or more Council officers in compliance with the Council’s Scheme of Delegation.
- 3.3 All such empowerment or delegation must be recorded in writing and the Responsible Senior Officer must ensure adequate operating procedures setting out roles and responsibilities are in place.

- 3.4 All Directors will agree an asset management approach for their service with the Responsible Senior Officer for inclusion in the corporately held asset management plan.
- 3.5 The Asset Performance Group will be responsible for commissioning the corporate property Asset Management Plan, corporate property review programme and the prioritised capital investment in assets. The Group will report to Cabinet via the Corporate Management Board.
- 3.6 Property Assets will be managed according, but not exclusively, to:
- 3.6.1 UK and EU law
 - 3.6.2 Council policies and procedures including:
 - 3.6.2.1 Contract Procedure Rules
 - 3.6.2.2 Corporate Landlord Policy
 - 3.6.2.3 Empty Properties Policy
 - 3.6.2.4 Financial Regulations
 - 3.6.2.5 Health and Safety instructions
 - 3.6.2.6 Property Services Operational Procedures
 - 3.6.2.7 Records Retention Policy
 - 3.6.2.8 Scheme of Delegation for Property
 - 3.6.3 Other such formal Council guidance as may apply or be issued or time to time.

4 Acquisition – General

- 4.1 The acquisition, by any means, of a freehold interest or a leasehold interest over one year in duration requires the approval of the relevant Director and the Responsible Senior Officer, unless the acquisition is:
- 4.1.1 Covered by the Property Scheme of Delegation
 - 4.1.2 Vested by statutory authority
 - 4.1.3 Owing to the Council acting as trustee
 - 4.1.4 Made under planning and highways legislation as a condition of a planning permission or a planning obligation.
- 4.2 Any acquisition with a market value in excess of £250,000 and lower than £500,000 has to also be approved by the relevant service Cabinet Member and the Cabinet Member with the property portfolio, and any acquisition with a market value exceeding £500,000 has to be approved by Cabinet.
- 4.3 Every acquisition must be accompanied by the service Director's report that states:
- 4.3.1 How the acquisition will help deliver the Council's strategy, goals, metrics and initiatives
 - 4.3.2 The life-cycle costs whereby the Council is able to demonstrate its ability to fund all costs (including running costs), expenses, impacts and risks and any other costs associated with the acquisition (for example allowed/required by legislation).
 - 4.3.3 The report is approved by the Responsible Senior Officer and the Director of Finance Resources and Customer Services
 - 4.3.4 The Responsible Senior Officer has approved the provisional terms for the acquisition
 - 4.3.5 The Responsible Senior Officer has certified that the price and terms and conditions represent value and in most circumstances has obtained an independent valuation

5 Acquisition - Compulsory Purchase

5.1 A resolution to make a Compulsory Purchase Order must be made by Cabinet, following a recommendation by the appropriate Director and the Responsible Senior Officer.

5.2 Compulsory purchases or purchases by agreement prior to a Compulsory Purchase Order being confirmed, are considered as acquisitions and subject to these Rules.

6 Acquisition - Empty Residential Properties

6.1 Acquisitions under the Empty Property Policy shall also be in accordance with the Empty Property Policy Guidelines. For ease of reference, the Council may wish to purchase by agreement with the owner, or may wish to consider using compulsory purchase powers in order to bring a property back into use. Where a Compulsory Purchase Order is recommended, then the Director Housing, Health and Adult Social Care is to be responsible for seeking Cabinet approval. Such approval will sanction both the Compulsory Purchase Order and the recommended means of onward disposal.

7 Acquisition - Gift

7.1 The acceptance of a gift of a Property Asset to the Council requires:

7.1.1 A report prepared by the Responsible Senior Officer stating the purpose of the gift, the value of the Property Asset and any rights, restrictions or liabilities, including life cycle costs associated with the gift

7.1.2 The approval of Cabinet.

8. Appropriation

8.1 Any proposed appropriation of property from one purpose to another or any proposed transfer of property between the General Fund and the Housing Revenue Account, requires the approval of the relevant Director(s) and the Responsible Senior Officer. Any appropriation will be in accordance with legislation and any regulations in force at the time and may be subject to Secretary of States consent and/or statutory advertising requirements.

9. Concessions

9.1 Where a Property Asset (or part) is to be let and the Council wants to either control an aspect of trade that is not normally part of a commercial lease or goes beyond what could be required through the planning regime, or wishes to use the Property Asset for community use, the transaction must be subject to the general principles of ensuring value for money, equal treatment, non-discrimination and the obligation of transparency.

9.2 The opportunity to manage/operate a Concession with the type of restrictions set out in 9.1 must be run as a tender process in accordance with the Corporate Procurement Regulations.

10. Demolition

10.1 Demolition of any building or part of a building is not permitted without the authorisation of the Responsible Senior Officer who is to ensure that the Council's Finance Team (for accounts purposes) and other appropriate officers are aware.

- 10.2 On completion of any demolition, the project owner must complete a "Demolition Completion Notice" and forward it to: **PropertyMatters/LBE@LBE**

11. Disposal - General

- 11.1 The Local Government Act 1972 s123 applies to all disposals. For Section 123 purposes, a disposal includes the grant of a lease of more than 7 years or an assignment of an existing lease which has more than 7 years to run.
- 11.2 To ensure transparency in all property transactions as a matter of general principle, disposals or lettings to any organisation, including charitable, voluntary or non-profit organisations, must be on the basis of market value, with any financial assistance or other gratuitous benefit to be provided by way of a grant rather than reduction in the disposal terms.
- 11.3 The Council is highly unlikely to dispose of a Property Asset at less than best consideration, but where this is approved by Cabinet under exceptional circumstances, the Council is potentially providing a subsidy to the new owner, developer and/or the occupier of the Property Asset such that there may be a distortion of competition. Where this occurs, the Council must ensure that the nature and amount of subsidy complies with State Aid Rules, as defined by Article 107(1) of the Treaty on the Functioning of the European Union, particularly if there is no element of competition in the sales/disposals process.
- 11.4 The Responsible Senior Officer may grant any lease of less than 15 years duration on a property shown in the Council's Asset Register as held for investment or other purposes, provided the cumulative value of the term of the lease does not exceed £250,000. Leases greater than 15 years and/or where the cumulative value of the term of the lease exceeds £250,000 will require approval from the Director of Finance, Resources and Customer Services.
- 11.5 When a corporate Property Asset or part of an asset is/are becoming surplus to requirements:
- 11.5.1 The Director of the occupying department:
- 11.5.1.1 Must give at least 6 months notice to the Responsible Senior Officer that the accommodation is no longer required and such notification should set out a reasoned justification why the site or accommodation is no longer required and define the timescale to vacate/handover
- 11.5.1.2 Remains responsible for all running and other costs of the property during the notice period and up to the point of disposal or transfer to another Service. (If the property is a HRA property, the property costs cannot be transferred from the HRA)
- 11.5.1.3 Remains responsible for ensuring vacant possession of the property prior to its transfer to the Responsible Senior Officer
- 11.5.2 On the expiry of the notice period in 11.5.1.1 the Responsible Senior Officer will become responsible for maintaining and disposing or transfer of the property asset.

- 11.5.3 The Responsible Senior Officer must prepare a report recommending whether the property is to be:
 - 11.5.3.1 Retained for use by another service, use by a partner organisation or voluntary community sector organisation
 - 11.5.3.2 Disposed of, or
 - 11.5.3.3 Kept under review pending greater clarity
- 11.6 The Responsible Senior Officer will:
 - 11.6.1 Ensure that the disposal method and negotiation process are transparent and that auditable processes are followed.
 - 11.6.2 Prepare a report to the Asset Performance Group which:
 - 11.6.2.1 Recommends the proposed disposal and its method
 - 11.6.2.2 States the disposal mechanism to be adopted
 - 11.6.2.3 States the disposal is for the best consideration reasonably obtainable
 - 11.6.2.4 If valuation advice is included, uses valuation advice that has been certified by a Valuer in accordance with practice guidance issued by the Royal Institution of Chartered Surveyors
 - 11.6.2.5 Includes the Heads of Terms (if appropriate)
 - 11.6.3 Ensure no property is disposed of in any transaction unless it has been placed on the open market and advertised publicly subject to the exceptions stated below “Disposal – Off Market”
 - 11.6.4 Ensure that in any competition all individuals or organisations are given equal opportunity to succeed
- 11.7 The Asset Performance Group must endorse the disposal of any interest (except where acting as trustee or under a statutory obligation).
- 11.8 Disposals required by statute (for example but not limited to Right to Buy, lease extensions, enfranchisements) will be delegated to appropriate officers however in all other respects these rules must be followed
- 11.9 Any Property Asset owned by the Council that is identified as an Asset of Community Value (as defined by the Localism Act 2011) will be considered in accordance with the statutory framework.
- 11.10 Requests for an asset transfer to a community organisation may be considered where:
 - 11.10.1 the community organisation can provide an adequate business case demonstrating amongst others its ability to sustain its operation and adequately maintain the property;
 - 11.10.2 social, environmental or economic benefits are demonstrated by the community organisation and an analysis of Social Return on Investment is undertaken by the community organisation;
 - 11.10.3 the transfer would meet the Council’s priorities and objectives;
 - 11.10.4 the asset is surplus to the Council’s requirements;
 - 11.10.5 there is compliance with the Contract Procedure Rules; and
 - 11.10.6 there is compliance with s.123 Local Government Act 1972.
- 11.11 Property Assets transferred to a community organisation will have appropriate restrictions on title and use applied to the form of the disposal.

12. Disposal - Auction

- 12.1 The appointment of an auctioneer shall comply with the Council's Contract Procedure Rules.
- 12.2 A sale by auction must be openly and publicly advertised by appropriate methods in agreement with the auctioneers.
- 12.3 The reserve price:
- 12.3.1 Will be set by the Responsible Senior Officer in consultation with the auctioneer
 - 12.3.2 Must be at a figure that is not less than a valuation that complies with the s123 of the Local Government Act 1972
- 12.4 Should a Property Asset fail to sell at auction, the Responsible Senior Officer may instruct the auctioneer to proceed with a post-auction sale, if it can be demonstrated that the Property Asset has been properly exposed in the market and disposal terms represent the best price reasonably obtainable
- 13. Disposal - By offering on the open market**
- 13.1 An offer on the open market is to be appropriately advertised in at least two newspapers or journals (of which one must be a local newspaper) likely to be read by people interested in property.
- 13.2 The receipt and opening of tenders must be carried out in accordance with the Council's Procurement Rules.
- 13.3 If the Responsible Senior Officer is of the opinion that an offer other than the highest should be accepted, the reason must be fully documented.
- 13.4 Negotiations with any interested parties are permitted after the closing date for offers has passed, providing they are open, transparent and clearly documented. If such negotiations are considered to prejudice other persons who have made an offer, then in the interests of fairness and transparency a "call for best and final offers" should be made or the property re-marketed.
- 13.5 If the Responsible Senior Officer considers that offers received do not represent the best price which can be reasonably obtained, then the Property Asset should be re-marketed if the reasons for not attracting satisfactory offers can be addressed or withdrawn for the time being from the market.
- 14. Disposal - Off Market**
- 14.1 There may be instances where a disposal by way of open market sale would not achieve the best consideration reasonably obtainable. Examples include (but are not limited to) sales to a tenant, disposal to a development partner, disposal to an adjoining owner.
- 14.2 Such disposals are subject to a report prepared by the Responsible Senior Officer, and approved by the relevant Cabinet member, that includes:
- 14.2.1 Justification for such a disposal as being in the best interest of the Council
 - 14.2.2 Written advice, including a market value, from an external registered valuer.
- 15. Disposal - Empty Properties that are not Council Assets**

15.1 Disposals under the Empty Properties Policy shall be dealt with in accordance with the Empty Property Policy Guidelines. Such properties should be disposed of as soon as possible with a condition of sale that they should be improved to an acceptable standard and restored to full continuous occupation within a reasonable, specified period of time. A disposal can be by auction or other means, including by agreement with a Registered Social Landlord/Registered Provider.

15.2 These properties are not to be identified on any disposal register as they are not assets of the Council.

16. Heads of Terms

16.1 Where Heads of Terms have been agreed and the property transaction is not covered by the "Scheme of Delegation for Property", the Heads of Terms must be attached to the report that seeks authorisation to the proposal.

17. Insurance of Property Assets

17.1 All buildings owned by the Council are insured by the Council's corporate insurance policy. Insurance for leased-in buildings will be in accordance with the lease of those premises.

17.2 Insurance issues should be referred to the Council's Insurance and Risk Manager.

18. Interpretation and Review of the Rules

18.1 Issues regarding interpretation of the Rules shall be referred in the first instance to the Responsible Senior Officer.

18.2 The Director of Finance, Resources and Customer Services shall regularly review the application and effect of these Rules in consultation with the Responsible Senior Officer and the Assistant Director of Legal Services and shall propose such amended Rules to the Council as he/she may consider appropriate.

19. Leased-Out Property

19.1 Requirements of the Local Government Act 1972 s 123 (that except with the specific consent of the Secretary of State) the Council may not dispose of land for a consideration less than the best that can reasonably be obtained other than by way of a short tenancy. A short tenancy is one not exceeding seven years.

19.2 Leased-out property must be advertised in the open market, and must comply with the process set out in the Operational Procedures. However, there will be instances where letting a property on the open market would not be in the best interest of the Council. Examples include (but are not limited to) providing premises to an individual or organisation that has been displaced by compulsory purchase. In such cases officers will act with due probity, good governance and transparency.

19.3 No Property Asset (or part) shall be occupied without appropriate legal documentation authorising the occupation.

20. Operational Procedures

20.1 The Responsible Senior Officer is responsible for the Operational Procedures to assist with the delivery of these Rules. The Operational Procedures shall be approved by the Director of Finance, Resources and Customer Services and shall be reviewed as appropriate.

20.2 Operational Procedures:

20.2.1 Do not amend/alter the Rules, and in the event of any conflict with operational procedures, the Rules take precedence

20.2.2 Set out the roles and responsibilities of officers to meet the requirements of the Rules

21. Other Interests

21.1 Other interests, such as but not limited to wayleaves and rights of way, either acquired or disposed of and not specifically set out under the Acquisitions or Disposals sections above, requires the approval of the Responsible Senior Officer.

22. Record Keeping

22.1 All Council officers must keep accurate electronic records of their compliance with the Rules.

22.2 Records are to:

22.2.1 Include notes of interviews, negotiations and valuations

22.2.2 Be retained in accordance with the periods set out in the Council's Records Retention Schedule

22.3 Where it is necessary to keep original paper documents, such as a signed documentation, a hard copy file must be maintained.

23. Scheme of Delegation for Property

23.1 The Property Scheme of Delegation only grants authority to the Assistant Director (Property Services), or his/her authorised officers, and to no other Directors.

24. Valuations

24.1 In preparing for the disposal or acquisition of a Council interest in property, the Responsible Senior Officer shall ensure that a formal, written valuation report is provided for the property in question.

24.2 Where a disposal or acquisition has not reached completion within 6 months of the date of the corresponding disposal valuation report, an updated valuation report shall be prepared.