



Land &  
Property  
Services®



# **Central Advisory Unit Disposal of Surplus Public Sector Property In Northern Ireland**

**March 2010**

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**NOTE: Where appropriate, words and modes of expression throughout this guidance implying: the masculine include the feminine; the singular include the plural; and vice versa.**

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## **1.0 INTRODUCTION**

- 1.1** This guidance follows earlier Central Advisory Unit (CAU) Northern Ireland guidelines of January 1997, January 1999, September 2001 and June 2005. Relevant public bodies are asked to ensure that this new guidance is incorporated into their property disposal procedures. In addition, all other public sector bodies should regard this guidance as best practice in general terms.
- 1.2** The principle changes in this January 2010 version are as follows:
- Section 3.0 has been added flowing from the outcome of the NI Assembly PAC report of 2007 on the subject of the DE pathfinder PFI schemes. The PAC report findings included recommendations as to the treatment of surplus lands identified as a result of PFI schemes;
  - Former references to Government Accounting NI (GANI) have been updated to Managing Public Money NI (MPMNI) throughout;
  - The procedures relating to the clearing house procedure and transfers within the public sector (sections 5.0 and 6.0) have been tightened up and clarified to address unacceptable delays in this regard;
  - Former owner rules have been clarified (section 7.0);
  - A substantially new “Exceptional Circumstances” section 15.0 replaces the former “Specialised Properties” (section 18) in the previous issue;
  - The remainder has been significantly rationalised and updated to reflect current practices and developments in the property market.
  - The D1 form has been revised and can now be completed and submitted online, or in hard copy. If the latter it must be submitted to the CAU in duplicate and both copies must be signed by an authorised officer. See also paragraph 4.1 and the completion instructions on the form itself. This new form should be used for all new declarations with immediate effect. It is now only necessary to submit the forms to the CAU.
- 1.3** It is for Property Centres and Accounting Officers to ensure that good value for money is achieved and that high standards of propriety are maintained. They should not normally depart from the guidance unless there is a very good reason to do so.
- 1.4** Compliance with these guidelines can be important in the context of a Judicial Review or an investigation by the Parliamentary Ombudsman or other similar body.
- 1.5** Any delegation limits set bilaterally between DFP and individual departments continue to apply.

- 1.6** In regard to the rights of former owners these guidelines apply to all disposals in Northern Ireland of surplus land and buildings by public sector bodies where the property was acquired by, or under the threat of, vesting. A threat of compulsion will be assumed in the case of a sale by agreement if power to acquire the land compulsorily existed at the time and proposals to make a Vesting Order which would affect the property were in progress. See paragraphs 7.2.9 and 7.2.10.
- 1.7** Property transferred to another body, whether in the public sector or not, to carry out the same functions of the disposing body is not subject to this guidance.
- 1.8** These guidelines are also recommended to bodies in the private sector such as Government Owned Companies, to which public land holdings have been transferred, for example on privatisation.

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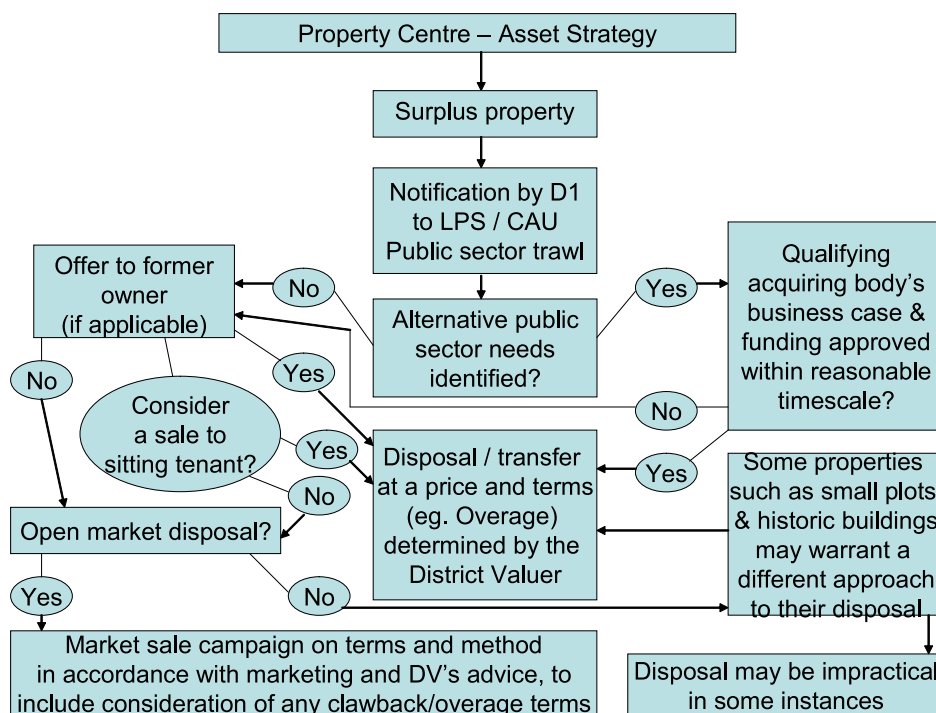
## **2.0 IDENTIFICATION AND DISPOSAL OF SURPLUS PROPERTY**

- 2.1** Identification of surplus land is the responsibility of individual public bodies who should keep their land holdings under continual review. The objective should be to release surplus property with the least possible delay, subject to the need to realise best value for the Exchequer.
- 2.2** Public bodies are reminded of the importance of limiting their holdings of land and buildings to the minimum required for the performance of their present and clearly foreseen responsibilities. In accordance with the report by the Northern Ireland Efficiency Scrutiny on the Management and Disposal of Government Owned Land, public bodies are required to have a property strategy in which they justify the retention of all current land holdings by a system of continuing review.

There may be opportunities for periodic pruning of operational holdings, pruning being defined as the economic disposal of land and buildings, or part thereof, achievable without prejudice to the operational business and objectives. A formal surplus property audit should be carried out every 3 to 5 years.

- 2.3** It is in the public interest to dispose of surplus land with the least possible delay and it should be possible in almost all circumstances to do so. Delays can be avoided if time is taken at the start to ensure difficulties with title or boundaries are dealt with expediently. As part of their Asset Register, complemented by their Asset Management Plans, all disposing bodies should be aware of any rights of way, encumbrances, restrictive covenants or boundary difficulties prior to declaring property surplus formally. Nevertheless, there may be exceptional cases where a longer period may be appropriate or inevitable to produce a better return for the public purse. These could, for example, be disposal of very large areas of land which might flood the local market, heavily contaminated sites, sites where the planning position is unusually complex perhaps requiring clarification, specialist input or a formal consent to be obtained before proceeding to sale, or where a higher price may be obtained by marketing several properties at the same time.
- 2.4** Even in these cases disposal should only be delayed after a careful appraisal of the financial implications, endorsed by professional advice from the District Valuer, covering both the current value and the amount likely to be achieved by a later disposal. The possibility that prices may rise at some time in the future does not in itself justify delay, instead the appraisal is to determine if a particular course of action is likely to result in a significantly improved outcome. Public bodies must be able to show that delaying disposal is cost effective and that a disposal strategy exists for the property. Managing Public Money NI states that disposals of surplus property should occur within 3 years subject to professional advice on the capacity of the market. Vacant residential property should be sold within 6 months of being declared surplus.

- 2.5 Disposing bodies should be aware of the implications of disposals in financial reporting. Property Centres should therefore advise their finance departments of any surplus land so that the correct valuations can be recorded on the balance sheet, the asset register noted and the appropriate accounting entries made when the sale is undertaken.
- 2.6 Public bodies should endeavour to dispose of their entire interest in the surplus property, usually being the freehold title. However, there may be exceptional cases where it may be appropriate to sell a lesser interest than that held, probably in the form of a long term lease. Professional advice should be taken in cases where a sale of the entire interest is considered inappropriate. Note that under the Property (NI) Order 1997 a fee farm grant can no longer be created.
- 2.7 If a body has a legacy of particular arrangements regarding the leasing of property the matter should be reviewed to ensure its continued compliance with good management practices.
- 2.8 Surplus land flowchart

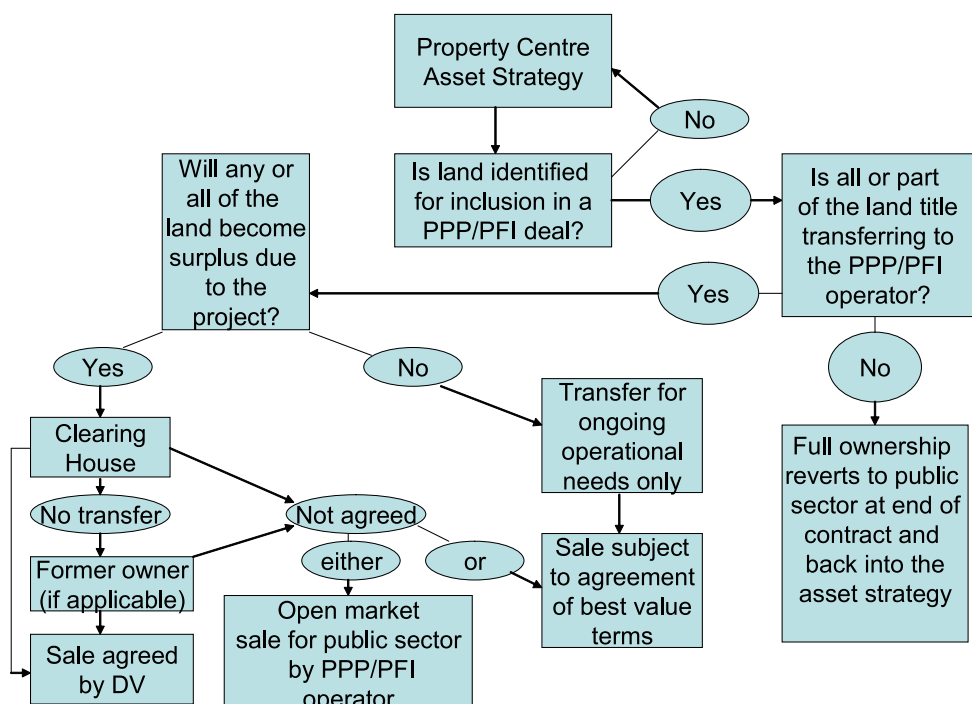


### 3.0 LANDS INCLUDED FOR DISPOSAL IN PPP/PFI SCHEMES

- 3.1 Properties that are identified for disposal as part of a contract with a developer under a PPP/PFI project are not considered to be surplus in the same sense as is considered here and, therefore, this guidance does not generally apply to those properties.
- 3.2 However, the PAC report of Oct 2007 into the DE pathfinders PFI project affirmed its own and the NIAO's view that land transferring to a PFI operator which will, as a consequence of the project, become surplus in whole or in part and be released for alternative, non-public sector development, should first be circulated under the CAU surplus land trawling process to determine if there is another qualifying public sector use for such property.
- 3.3 This would involve completion of a D1 form as described at section 4.0 below as soon as the surplus land has been identified, but with an accompanying note indicating the Department's intention to transfer the land to a PFI operator in the absence of any qualifying public sector interest which proves acceptable to the disposing Department. The necessity and timing of this process would need to be considered in each individual case.
- 3.4 Note that if ownership of the property will revert to the public sector on termination of the PPP/PFI project then this requirement to trawl would not apply.
- 3.5 Departments then need to consider the relative costs and benefits of selling the asset on the open market against those of transferring the asset as part of a project.

Moreover, the current accounting guidance known as Managing Public Money Northern Ireland (MPMNI) states that: "Sometimes PFI projects involve disposals. Each case should be evaluated as part of the PFI project, with due attention to the need to secure good value for money".

- 3.6 Flowchart for lands identified for inclusion in a PPP/PFI scheme



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## **4.0 NOTIFICATION OF DISPOSAL TO LPS AND CAU**

- 4.1** Once a property becomes surplus and all details about title are available a property centre should complete a “D1” form (See Annex D). This form must be accompanied with good quality map(s) which clearly define the surplus area(s) and provide an accurate measurement or enable such a measurement to be carried out. The D1 completed as per the instructions provided therein should be issued to CAU. The CAU will commence the public sector trawling procedure and forward a second copy to the local LPS Valuation Services District office, which will provide marketing advice and an initial estimate of value, if appropriate.
- 4.2** The disposing body should note with the D1 if the land has been identified as surplus in conjunction with a PPP/PFI project. The LPS advice, including commentary on the applicability of former owner rights, will be tailored accordingly in the case of surplus land identified for transfer to a PFI operator (see section 3.0 above).
- 4.3** The disposing body’s legal title to the property should have been investigated thoroughly prior to completion of the D1 and any difficulties with title, or the encroachment of boundaries etc should have been resolved prior to issue of D1 to CAU. This should prevent serious problems or obstacles to progress arising at a later, critical stage when marketing and other costs may have been incurred and will help reduce the time involved to complete a sale of the property. CAU is responsible for the clearing house function described in section 5.0 below.

Copies of the D1 form are available at Annex D herewith, directly from CAU, or at [www.lpsni.gov.uk](http://www.lpsni.gov.uk). Click on “Property Valuation”, scroll to the bottom of the page, then click on “Disposal of Surplus Public Sector Property”.

- 4.4** It is essential that D1 forms are completed as fully and as accurately as possible to prevent any undue delay in marketing which may result in a lesser amount being realised from the sale.

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## **5.0 CLEARING HOUSE ARRANGEMENTS**

- 5.1** The circulation of surplus land to relevant public bodies is the first stage of the disposal process and precedes any offer to the former owner or an open market sale.
- 5.2** On receipt of the completed D1 form CAU will circulate details of surplus land to those Property Centres it considers relevant. Relevant bodies in the clearing house arrangements will be given three weeks to notify CAU of their potential interest in the property. Any delay in response after this time period may prejudice their opportunity to acquire the property.
- 5.3** The focused nature of the circulation of surplus properties is intended to ensure that action to sell to the former owner or on the open market will not be unduly delayed. Where a sale on the open market appears likely, disposing bodies should continue with preparatory procedures in accordance with this guidance (up to the point where the District Valuer instructs a marketing agent) concurrently with the circulation of Property Centres.

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## 6.0 TRANSFERS WITHIN THE PUBLIC SECTOR

- 6.1** Surplus land will only be transferred within the public sector if all of the following criteria are met:
- 6.1.1** The prospective transferee has demonstrated by way of an approved Business Case:
- a strong, immediate need and/or exceptional reasons in the public interest to acquire;
  - the allocation of available and approved funding for the purchase; and
  - that it could have, if it had been necessary in another context, exercised compulsory powers of acquisition in respect of the subject land for the intended purpose.
- 6.1.2** In the absence of specific approval by the appropriate Minister(s) to the contrary (see paragraph 9.4) on behalf of both the disposing and acquiring bodies, the transfer will take place at the best value obtainable, being no less than market value assessed in accordance with the Royal Institution of Chartered Surveyors Valuation Standards (6th Edition).
- 6.1.3** The transfer is approved at a senior level by the disposing body (with such consent not to be unreasonably withheld) and
- Either:
- Where applicable the value is within any delegated authority limits the acquiring body has in place by agreement with DFP Supply.
- Or:
- If there are no relevant delegated limits in place on the part of the acquiring body, or the value exceeds the limits, specific approval of the transfer has been obtained via the approved Business Case.
- 6.2** A public sector transfer may be made to an organisation which does not have compulsory purchase powers itself, but which has a sponsor body or Department that does hold such powers of acquisition. The sponsor body or Department must be willing to endorse such a transfer on their behalf. A frequent example is the transfer of land to a Housing Association by virtue of the compulsory purchase powers the NIHE has in relation to social housing needs and where the funding comes from the Department for Social Development through Housing Association Grant (HAG).
- 6.3** For a public sector transfer to take place a prospective acquiring body should have all the necessary approvals and the business case in place within a 6 month period of declaring a firm interest in the property. Other than in particularly complex cases transfers should be completed within 12 months of a firm expression of interest by the acquiring body.
- 6.4** Annex 4.8.10 of Managing Public Money Northern Ireland (MPMNI) refers to the protocol for transfer of assets which includes land and property. Bodies transferring property to another public sector body should ensure their compliance with these protocols. The most recent version can be accessed on the website [www.aasdni.gov.uk/pubs/MPMNI](http://www.aasdni.gov.uk/pubs/MPMNI)

- 6.5** The estimated market value supplied by LPS will normally have a time limit of 6 months, or such other expiry date as is specified in the District Valuer's report, depending on the nature and circumstances of the subject property. After the expiration of the time limit the disposing body should request the District Valuer to carry out a review of the valuation.
- 6.6** In the event of a relevant body declaring an interest in acquiring a surplus property they must keep the disposing body apprised of all major steps and timescales in the process, e.g. the preparation of an economic appraisal under the HM Treasury Guide – "Appraisal and Evaluation in Central Government" (plus the NI Practical Guide produced by DFP in 2003). Any delays or unforeseen problems in the transfer process should be notified to the disposing body together with a brief summary of the corrective action proposed and the timescale involved.
- 6.7** Submissions seeking approval of senior officers, DFP Supply, Accounting officers and Ministers should contain the following information as a minimum:

  - 6.7.1** Description of the land and its size, approximate value, date, mode of and reason for the original acquisition and whether compulsory purchase powers were available to the acquiring authority for the purchase at that time;
  - 6.7.2** A statement of the reasons for the proposed transfer and detailed reference to the present compulsory purchase powers which would have been available for the purpose for which the land is now required.
- 6.8** The aim of the submission is to seek, in principle, approval for the transfer of the surplus property, subject to the subsequent carrying out of an Economic Appraisal under the Green Book – See Annex C

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## 7.0 FORMER OWNERS

It is considered good general practice for disposing bodies to take reasonable, practical steps to keep the former owner apprised of the disposal process concerning their former property. This is always subject to reasonable enquiries as to the former owner's whereabouts, or those of any identifiable and qualifying successor(s).

By virtue of the provisions of Section 128 of the Land Clauses Consolidation Act, 1845 (LCCA) an individual would have a statutory right to have land offered back to him in certain specific circumstances. Where applicable this statutory right takes precedence over the other rights of former owners as detailed in these Guidelines. Initially CAU advice will normally be required to ascertain if the LCCA provisions are applicable in each case and, where there is uncertainty, legal advice should be taken.

As a very general guide, the LCCA provisions would not be expected to apply to land that was not compulsorily acquired, or is within a town's development limits (at the time of disposal), has been built upon, has been developed for a different purpose since being acquired, or was not severed from a larger holding originally. The provisions are therefore most likely to be applicable to farmland. However, each case should be carefully assessed on its own particular merits and legal advice taken in doubtful circumstances.

### 7.1 Crichel Down Rules\*

This guidance reflects the main premise of the GB Crichel Down rules with some amendments to take account of local statute and practice in NI.

Where a department wishes to dispose of land to which the guidelines apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition. The character of the land may be considered to have "materially changed" where, for example, dwellings or offices have been erected on open land, mainly open land has been afforested, or where substantial works to an existing building have effectively altered its character. The erection of temporary buildings on land, however, is not necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing department should consider the likely cost of restoring the land to its original use.

There are several other exceptions that can apply as detailed in the following paragraph 7.2

Any land offered back would be at its current market value. Each party would be responsible for its own agent and legal fees in respect of the transaction.

Any queries arising can be addressed to Central Advisory Unit.

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\* rules established following a Public Inquiry ordered by the Minister of Agriculture into the disposal of land at Crichel Down, June 1954. The rules were reviewed in GB, the most recent version (October 2004 Circular 06/2004) is available on the Department of Communities and Local Government (DCLG) website: [www.communities.gov.uk](http://www.communities.gov.uk)

## **7.2 General Exceptions to the Requirement to Offer Back to the Former Owner**

There is no requirement to offer surplus land back to the former owner if any of the following circumstances apply:

- 7.2.1** Where the land has been declared surplus more than 25 years after the date of acquisition (date of the instrument of conveyance or transfer or vesting declaration) from the private sector, except where the Land Clauses Consolidation Act 1845 provisions apply.
- 7.2.2** Where there is authorisation as described in section 6.0, or where applicable under section 3.0, to transfer the surplus land within the public sector, i.e. that it is not, in a wider sense, surplus to public sector requirements.
- 7.2.3** Where the surplus land consists of small or otherwise inconsequential areas of land which would be of no satisfactory or reasonably beneficial use to the former owner either alone or in conjunction with other land already in his possession.
- 7.2.4** Where sale of the surplus land would be prejudicial to the disposal of other significant areas held by that body or any relevant public body.
- 7.2.5** Where it would be to the mutual advantage of the public sector and an adjoining landowner to make minor adjustments in boundaries through an exchange of land.
- 7.2.6** Where it would be inconsistent with the purpose of the original acquisition, e.g. where property has been acquired for a regeneration purpose, land acquired specifically to encourage industrial usage or dwellings bought for onward sale to a Registered Social Landlord. In all these cases the property must be disposed of in pursuance of that purpose for it to be considered an exception. In other words, land that is not surplus in respect of the regenerative or similar purposes for which it was acquired and where the disposal is in pursuance of those purposes.
- 7.2.7** Where a disposal is in respect of either:
  - a.** A site for development or redevelopment which comprises two or more previous land holdings; or
  - b.** A site which consists partly of land which has been materially changed in character and part which is not;and there is a risk of a fragmented sale of such a site realising substantially less than the market value of the site as a whole. However, in these scenarios a former owner who has remained in continuous occupation of the whole of his former property (by virtue of tenancy or licence) and/or is part of a consortium of former owners that has indicated a desire to purchase collectively, may still be given a right of first refusal of that property or part of the property as the case may be, provided that the principle of achieving the best overall value is not prejudiced.

- 7.2.8 Where the market value of the land is so uncertain that a competitive sale is advised by the Department's professionally qualified valuer in preference to any other potential solution, such as overage/clawback provisions, in order to safeguard the public purse and where this approach is expressly agreed by the responsible Minister.
- 7.2.9 The land was acquired by agreement and without any threat of compulsion, i.e. there was no Vesting Order proposed or scheduled affecting the property at the time of acquisition.
- 7.2.10 The property was acquired pursuant to a valid Blight Notice served under the Planning Blight (Compensation) (NI) Order, 1981. A Blight Notice successfully served under the above is specifically deemed not to constitute a compulsory acquisition, even if it results in the purchase of a property in advance of vesting.
- 7.2.11 Where the former owner or his successor has disposed of lands from which the surplus land was severed and the disposing authority considers that it would be inequitable not to offer the surplus land to the present owner of the land from which the surplus land was severed. For example, where a strip of roadside land would comprise a key access or command a ransom value if returned to the former owner instead of the present owner and where the key/ransom value would not have been inherent at the time of acquisition.

### **7.3 Former Owner Whose Address Is Known**

In all appropriate cases the disposing body will write to the former owner by recorded delivery post offering to sell to him his former interest in the land and asking him to indicate in not later than 8 weeks time whether or not he is interested in purchasing. The letter will indicate that sale to him will be at a price to be determined by the District Valuer as representing current market value. If he fails to respond or indicates that he does not wish to purchase, the land will be otherwise disposed of.

### **7.4 Former Owner Whose Whereabouts Are Not Known**

- 7.4.1 The disposing body will contact the solicitor or agent or any other known professional adviser who acted for the former owner when the land was acquired with a view to establishing the former owner's whereabouts and, failing that, may advertise locally or on a Northern Ireland basis taking into account the value of the disposal relative to advertising costs.
- 7.4.2 The advertisement should invite him to contact that body within 4 weeks of the last date on which the advertisement appears. The solicitor or agent or any other professional adviser contacted would be informed about the advertisement. If there is no response within the 4 weeks period or if any other party contacted is unable to confirm the former owner's whereabouts by the end of that period the land should be otherwise disposed of.
- 7.4.3 Advertising to find the former owner should be such that it adequately covers the whole community.

## **7.5 Negotiations with Former Owners on Sale Price and the Time Limits Applicable**

- 7.5.1** Negotiations on the price at which a sale to the former owner will take place will be conducted by the District Valuer.
- 7.5.2** If the former owner enters into negotiations under either Land Clauses legislation or Northern Ireland Disposal Guidelines the former owner is given 6 weeks from date of the formal approach by the District Valuer to agree terms. If agreement on price cannot be reached then if that land falls within the Land Clauses Legislation the matter should be referred to Lands Tribunal. If Northern Ireland Disposal Guidelines apply then there is no formal right of appeal to any other body with regards to the amount assessed by way of market value by the District Valuer. The former owner should be notified when it is put on the open market so that he can continue to bid to acquire it if he wishes.
- 7.5.3** If, for sound reasons, an extension of the stipulated time limits is warranted additional periods may be allowed at the disposing body's discretion. The overall objective should, however, be to complete transactions in as orderly and as expeditious a manner as possible (see section 2.0)

## **7.6 Interests Qualifying for Offer Back to Former Owners**

Land will normally be offered back to the former freeholder, or the primary occupier if same held the property under long lease subject to a nominal or small ground rent payable to the freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, departments may at their own discretion, offer the full freehold interest to the former leaseholder, particularly if the freeholder is not interested in buying back the land. If neither the former freeholder nor the leaseholder is identifiable or interested in buying back the land then the freehold freed from any lease can be disposed of.

A long lease may be defined as a demise of the exclusive possession of property for a term of not less than 900 years.

## **7.7 Successors in Title Qualifying for Former Owners' Rights**

- 7.7.1** If at the time of disposal of surplus land the former owner of a property holding is deceased and where the land was vested in its entirety, is not contiguous to another holding retained by him and where considerable time has elapsed, then the strong presumption will be that his pre-emptive rights do not pass to any of his successors. This is because of the practical difficulties involved in tracing any successors' whereabouts and the fact that the entire holding was acquired. That is unless the LCCA provisions apply, in which case all reasonable efforts will be made to trace successors.

- 7.7.2** In circumstances where the former owner of a property holding, which was vested in part only or is contiguous to other holdings retained by him, is either deceased and has bequeathed his remaining interests to a natural successor in title or, for example, has transferred the remainder of his holdings to a natural successor, probably a family member, the successor in title will be offered the same pre-emptive rights as the former owner himself would have had, unless the successor cannot be traced after reasonable enquiries.
- 7.7.3** For the avoidance of doubt, a qualifying successor in title does not include any third party, family member or not, who has subsequently purchased from a former owner at arm's length the balance of any holdings retained by him.
- 7.7.4** If the successor to adjoining land has acquired it by means of transfer within a Family Trust, including a transfer for monetary consideration, their former owner rights may not be disqualified. Again the applicability of the LCCA must be taken into account.

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## **8.0 OPEN MARKET SALES – AGENTS, METHODS, MARKETING**

### **8.1 District Valuer Services**

If a property is to proceed to sale on the open market having passed through the public sector trawl and former owners stages described above, the disposing body will already have issued a CAU/D1 form to the District Valuer and received a preliminary report containing the following:

- An estimated current value, if appropriate.
- Advice on disposal.
- Advice on any potential difficulties in the way of disposal.

The additional services and functions of the District Valuer will include:

- Reviewing and taking account of Area Plan information and known Planning policies affecting the property and advising accordingly;
- Where considered appropriate advising the disposing body of any actions it should undertake in regard to making formal planning application(s), possibly including the appointment of specialist planning advisors;
- Selecting and appointing a selling agent, in accordance with procurement procedures managed by LPS, with assistance when required from DFP CPD, from a list of property agents qualified for all, or a specific range of tasks. Generally, public sector marketing opportunities are put to tender among a selection of the pre-qualified agents, taking account of the type of property, location etc. and ensuring that the appointed agent will have the required expertise;
- Devising a marketing strategy and the initial guide price in consultation with the selling agent;
- Advising, in consultation with the selling agent, on the final reserve price in sales by tender or auction;
- Advising on the acceptability of offers and bids received within the sale deadline;
- In private treaty sales advising on any authentic late or revised bids received after the closing date, but before the sale has become legally binding, which are higher than bids received within deadline;
- When the final sale is at a price below the initial guide price, certifying, jointly with the selling agent, that it is the best offer reasonably obtainable.

### **8.2 Appointment of Marketing Agents**

Where private sector agents are used to carry out sales of property only those firms with membership of a professional body such as the Royal Institution of Chartered Surveyors, Irish Auctioneers and Valuers Institute or National Association of Estate Agents among their partners or directors, will normally be considered eligible for inclusion in the tendering exercise or in any pre-approved list of agents.

Checks on the professional indemnity insurance carried by the agents and their appropriate experience for the commission being offered will have been part of the pre-qualification process.

On the advice of the District Valuer it may be considered more cost effective in some, usually minor cases for the disposing body to appoint LPS to act in the marketing role and sell the property without an Agent.

- The normal method of disposal should be to place an advertisement in the appropriate section (Property Sales) of the local newspaper(s) giving brief details of the property together with a contact name and telephone number. The contact should be available to take enquires on the next working day the advertisement appears.
- All offers must be recorded on a record sheet that covers:
  - Name, address, telephone number of the offeror;
  - The date and time of the offer;
  - The amount of the offer;
  - Any conditions attaching to the offer.
- If competitive bidding cannot be brought to a swift conclusion consideration should be given to:
  - Bringing the bidders together for a closed auction; or
  - Taking final written offers.
- The highest bidder should be informed in writing that his bid has been accepted, subject to contract.

It should be noted that since 1st January 2009 DFP has a service level agreement in place to use the Government Advertising Unit for the placement of all classified advertising. This service is available by contacting the Communication Office on (90) (5) 27278

### **8.3 Sale Methods and Marketing**

Professional advice should be obtained on the appropriate sale methods having regard to the particular transaction. The sale method will take account of the nature of the property and will form part of an overall marketing strategy. Typical sale methods are described as follows:

#### **8.3.1 Sale By Private Treaty**

In private treaty disposals offers are normally accepted on a “subject to contract” basis, which allows either party to withdraw. The selling agent will be asked to advise on the precise sale terms, which will depend on the particular circumstances of the case, e.g. it may be desirable to seek binding offers by a specified date, i.e. an informal tender, or offers subject to contract or other conditions, such as funding.

- Disposing bodies should take care to ensure that they are neither legally nor morally committed to proceed with the sale until a formal contract is in place in case it becomes necessary or desirable to break off negotiations at an advanced stage.

- If a deadline for receipt of offers has been set this should not prevent consideration of higher offers received after the deadline nor should a further offer be ruled out of consideration because a lower offer has been accepted “subject to contract”. In such circumstances if a higher offer is received following the initial acceptance on a “subject to contract” basis, professional advice should be taken. In doing so the public body will need to weigh its duty to the taxpayer in regard to obtaining the best possible price for the property, against the risk of the original bidders’ withdrawing their offers because of the delay, or accusations of bad faith. Where necessary sufficient time should be allowed for enquiries into the late offeror’s financial credentials (see paragraph 8.5).
- When closing a private treaty sale where a number of parties have expressed interest it may be appropriate to invite “best and final offers” to resolve matters. This procedure carries certain risks, and it should only be used on the advice of the professional agents handling the sale. Where it is used, all the interested parties should be invited either to submit their best (subject to contract) offers within a stated period or to take part in a “closed auction”.
- When bidding has reached a point where the agents considers it unlikely to go further and the agent has received the approval of the District Valuer and the vendor to sell at the price, the top bidder should be informed that his offer will be accepted if he returns a signed contract within 4 weeks from the date the contract is sent out by the vendor’s Solicitor.

### **8.3.2 Sale By Public Auction**

Sale by public auction provides strong evidence that the disposal was made in a transparently fair manner and that the best price was obtained. In a sale by auction the auctioneer is authorised to act as an agent for the disposing body, but disposing bodies should ensure that an appropriately senior office and a legal advisor are present to confirm the auctioneer’s instructions at the point of sale.

- The solicitor dealing with the contract and title details should be advised to make these documents available for inspection by interested parties well in advance of the auction date.
- The conditions of sale should be prominently displayed at the auction.
- Sale should be to the top bidder who has reached or exceeded any reserve price set prior to auction, unless there are reasons to doubt his financial credibility.
- The District Valuer or his representative should also normally be in attendance to ensure that the top bid represents best price.
- It is normally advisable to set a reserve price. The District Valuer will consider with the auctioneer the level at which it should be set.
- The reserve should normally be set as near to the time of the auction as possible, and not more than seven days in advance.

- Where the reserve price is not reached and the highest bid is only marginally lower than the reserve, the District Valuer in consultation with the auctioneer will advise on whether it would nevertheless be worthwhile accepting that bid or conducting negotiations with that bidder.

### **8.3.3 Sale By Tender**

In a sale by tender, sealed bids are invited by a certain date and all are opened at the same time in a controlled environment. It should be made clear at the outset that the best bid will not necessarily be accepted, e.g. where there are reasons to doubt the financial status of the top bidder.

Disposing bodies should bear in mind that sale by tender requires much more in terms of administrative oversight than the other two methods. It also usually involves the prospective purchasers in carrying out detailed investigation of the property being sold without them knowing whether they have any real chance of acquiring it. For these reasons sale by tender is only likely to be chosen as the most suitable method of sale in particular market circumstances.

- Tenders may be binding where the acceptance of an offer creates a contract, or non binding where the final terms will be settled after an offer has been accepted. Both procedures have advantages and disadvantages, and disposing bodies should seek advice from their agents on which procedure to adopt.
- As with auctions it is normally advisable to set a reserve price with the level being fixed following consultations with the District Valuer and the selling agent. The agent should subsequently consider whether the initial valuation needs to be revised in the light of changed market circumstances prior to a final reserve being set.
- The final reserve should normally be set as near to the tender deadline as possible and not more than seven days in advance.
- In a sale by tender it is unacceptable for a bid to be made on the basis that a certain sum over and above the highest tender will be paid or that the bidder will top the highest bid.
- Property should normally be sold for the highest bid which at least equals any reserve price; the under bidders should not be invited to improve their bids.
- The highest bid made would normally be accepted provided that the professional advisers consider it reasonable, even if only a single bid is received.
- If none of the bids clear the reserve all the tenderers may be told this and be given an opportunity to revise their offers by a specified date as an alternative to a re-advertisement of the sale.
- Alternatively, where the reserve price is not reached and the highest bid is only marginally lower than the reserve, the District Valuer in consultation with the agent will advise on whether it would nevertheless be worthwhile accepting that bid.

- A fixed date and time must be set for receipt of tenders with no revisions to tenders normally allowed. Late bids should be returned unopened. If this is not done confidence in the tender procedures may be undermined and prospective purchasers may be reluctant to submit bids in other disposal cases.

#### **8.4 Conditional Offers**

In private treaty or tender sales, and where land is being sold for development purposes, offers may be received, or sometimes even be invited under the marketing campaign, where all or part of the receipts will depend on the outcome of the purchaser's scheme. Conditional offers of this sort will usually involve some form of deferred completion.

- In such cases it is essential to consider the way changes in the market prior to completion may affect the receipts and to weigh this and any other inherent risks against other offers or ways of disposing of the property. The contract should provide express time limits for actions which are the intending purchaser's responsibility, for example applying for planning permission. It should also have provisions which prevent indefinite or lengthy delays in completion.
- The use of staged payment of the consideration monies may be helpful in off-setting these risks, but other possible approaches may also be feasible. As any contract term could adversely affect the price, it is important that disposing bodies obtain proper professional advice as to the most appropriate methods having regard to the particular transactions.

#### **8.5 Checking a Purchaser's Financial Credentials**

In sales by tender and private treaty the credit-worthiness of the bidder should be examined before acceptance of an offer. However, the effort devoted to this examination should always be proportionate to the value of the property. Various credit rating agencies are available to advise in this regard. Where agents are used to establish the credit-worthiness and development track record of bidders, it is recommended that disposing bodies ensure that they obtain the advice in writing, including the nature of the evidence on which the recommendation is based.

However, in an auction sale, acceptance of a bid results in a binding contract with the purchaser having to pay a 10 per cent deposit immediately. Therefore, it may not be practical or feasible to check on bidders' credit-worthiness, unless in respect of larger disposals (say greater than £2m value) where efforts to do so may still be advisable.

## **8.6 Advertising**

It is most important to ensure that cross community coverage is achieved, even if this means placing the advertisement or notice in more than one newspaper circulated in the area.

- When an agent is acting he should advise on the advertising media to be used but if there is any element of doubt, disposing bodies and their advisors should satisfy themselves that adequate equality of coverage has been achieved.
- Marketing strategy, draft advertisements and estimated costs should be submitted for approval and information. Any marketing material, should it be advertisements in newspapers or periodicals, brochures, for sale signs or notices, should be proportionate to the nature and circumstances of the subject property. The costs and effort should be commensurate with the expected return.

## **8.7 Avoidance of Corrupt Practices**

Disposing bodies must be scrupulously fair in their land disposal dealings. It should be recognised that the sale of surplus land may offer opportunities for corruption and bodies should ensure that both they and their selling agents have appropriate procedures in place to minimise these risks.

- Sale by Tender is perhaps the method most exposed to potential irregularity and particular attention is required in the procedures to deal with the receipt and opening of tenders.
- When appointing agents it is essential that public bodies receive written assurance that no conflict of interest exists. In the conduct of a sale agents should record in writing all bids received for subsequent examination if necessary.
- Further details in this regard are contained in the Land and Property Services' "Standard Conditions for the Appointment of Agents"— see Annex A

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## 9.0 SALE PRICE AND MARKET VALUE

- 9.1 Generally the legislation under which surplus public sector property is disposed of is Section 5 of the Stormont Regulation and Government Property Act (NI) 1933. This states that “a sale, exchange, lease or surrender of land under this section shall be at the best price or for the best rent or otherwise on the best terms which, in the opinion of the Ministry of Finance\*, can reasonably be obtained”.
- 9.2 Disposal of assets is considered in Managing of Public Money Northern Ireland (MPMNI) issued 30 June 2008, which states at Annex 4.8.12 that: “Public sector organisations should take professional advice when disposing of land and assets...”, and “Further guidance can be obtained from LPS Central Advisory Unit (CAU).”
- 9.3 The District Valuer will be able to act in an intelligent client role when an agent is appointed and when no agent has been appointed he can supply a direct service to the disposing body.
- 9.4 Normally all public sector disposals should be made at the best price reasonably obtainable for the property.

There may occasionally be cases where it will be reasonable to consider wider issues and accept an amount lower than best price. This should only be done in highly exceptional circumstances and must be justified by the public body’s Accounting Officer\*\* and approved at Ministerial level.

In these cases the benefits which are expected to result from the disposal must be clearly identified. Disposing bodies should note that current EU Law on the sale of public sector property restrict the scope for such concessions and professional advice must be taken in this regard if a sale at below market value is being considered.

Values assessed will typically have a time limit of 3-6 months, or such other expiry date as is specified in the Valuer’s report, depending on the nature and circumstances of the subject property. After the expiration of the time limit the disposing body should request the Valuer to carry out a review of the valuation.

- 9.5 Market value is defined by the Royal Institution of Chartered Surveyors’ (RICS) in its Valuation Standards (6th Edition at time of writing – also known as “The Red Book”) as:

“The estimated amount for which a property should exchange on the date of valuation, between a willing buyer and a willing seller in a arm’s-length transaction after proper marketing wherein the parties had each acted knowledgably, prudently and without compulsion.”

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\* Now the Department of Finance and Personnel (DFP) acting on recommendations made by Land and Property Services (Valuation).

\*\* Or the senior full time official of an NDPB if he has not been formally designated as Accounting Officer.

Additionally and by definition, the concept of best value obtainable will include, where applicable, any special value attributable to the bid of a particularly willing buyer, e.g. due to marriage value.

Market Value is measured as the most probable price reasonably obtainable in the market at the date of valuation in keeping with the Market Value definition. The presumptions are “that both the willing buyer and seller are reasonably informed about the nature and characteristics of the property, its actual and potential uses and the state of the market as at the date of valuation. Each is further presumed to act for self-interest with that knowledge and prudently seek the best price for their respective positions in the transaction. Prudence is assessed by referring to the state of the market at the date of valuation, not with the benefit of hindsight at some later date. It is not necessarily imprudent for a seller to sell property in a market with falling prices at a price, which is lower than previous market levels. In such cases, as is true for other purchase and sale situations in markets with changing prices, the prudent buyer and seller will act in accordance with the best market information available at the time.”

A price which is depressed because of current market circumstances and the general economic situation or, because a particular property does not prove attractive to bidders, is still the market price. It is the disposing body’s responsibility to ensure that the property is promptly and properly marketed and that professional advice is taken on its value (which will reflect the nature of the property, its condition, the planning position and location as well as the economic circumstances).

Thus, the mere possibility that prices may rise at sometime in the future does not in itself justify delay. However, delay can still be justifiable if a public body has clear professional advice that holding on to the property for a limited period would enable a significantly higher price to be obtained, (e.g. because planning permission is likely to be granted), or where the sale should be co-ordinated with other public sector disposals. So, there may be reasons that could justify a delay in sale, but in such a case, these reasons need to be identified, evaluated and quantified to explain the decision to delay by way of an appraisal whose findings are endorsed by the District Valuer (see also paragraphs 2.3 & 2.4 above).

- 9.6** In large disposals care must be taken by appropriate phasing or timing of the sale, taking professional advice, not to flood the market and so depress the price. To minimise the risk of the price being reduced because the market, particularly at the local level, might become flooded, it is advisable where major disposals are contemplated to liaise with the Central Advisory Unit which should be informed of all public sector surplus land disposals in Northern Ireland (see paragraph 4.1).

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## 10.0 SITES WITH DEVELOPMENT POTENTIAL

- 10.1** In seeking professional guidance on the sale of surplus property disposing bodies are advised to obtain explicit advice from the local DOE Planning Service on whether there is likely to be potential for development, the nature of such development and/or whether there are particularly sensitive planning issues. This information is critical to the advice offered by the District Valuer on the conduct of the sale. In order to obtain the best price when disposing of sites, it is important that the proposals for the future use are in accord with the planning framework set out in the local area plan, unless material considerations indicate otherwise.
- 10.2** The disposing public body, or the District Valuer on its behalf, will wish to liaise with DOE Planning Service in a timely manner, particularly where large and/or sensitive sites are involved. Close liaison with Planning Service is essential for public bodies with large land holdings which are considering longer term disposals so that their disposal programmes and asset strategies can be properly co-ordinated and integrated with the local area plan. This will also help to achieve a programmed series of disposals and avoid placing too many major sites on the market at the same time which could depress the price.

To achieve best outcomes and on the advice of LPS, particularly where significant site disposals suitable for redevelopment are envisaged, the use of specialist planning consultants may prove beneficial from an early stage in the process. Where considered necessary the assistance of specialist advisors can be procured via DFP's Central Procurement Directorate (CPD). Further information on procurement can be sought from: [www.cpdni.gov.uk](http://www.cpdni.gov.uk)

To minimise the risk of the price being reduced because the market, particularly at a local level, might become flooded, it is advisable where major disposals are contemplated to liaise with CAU, which should be informed of all public sector surplus land disposals in Northern Ireland (see paragraph 4.1).

- 10.3** General economic and property market conditions, as well as specific case circumstances, vary substantially from time to time and these factors will govern whether or not there is advantage to be gained by securing an outline or detailed Planning consent prior to marketing. The appropriate advice will be judged in accordance with these variables and, in simplistic terms, will depend on whether there is a highly confident and active market, or a state of low ebb and activity in the market. The overriding objective is to achieve the best price obtainable within a reasonable timescale, but the latter will vary depending on market conditions prevailing at the time of disposal. LPS advice should be sought as to the optimal way forward.

On the downside, applications for outline or detailed planning permissions will inevitably lead to delay and upfront costs, for example in providing environmental and traffic impact assessments, archaeological surveys, dealing with listed building and tree preservation issues and any other

considerations required by Planning authorities. Also, a risk remains that the eventual determination or conditions attached by Planners could make the property less attractive to the market than had been anticipated.

On the other hand, there may simply be no realistic alternative but to go to the market with the benefit of a planning consent already secured, with the gains in value achievable easily outweighing any downside at particular times in the economic and market cycle.

- 10.4** Where it is decided to proceed without applying for planning permission there are various alternative means which may be used to protect the public interest from any perceived risk of failing to secure best value. These are detailed in Section 11 following and may, on occasion, also be applicable even where development land is being sold with the benefit of a valuable planning consent.
- 10.5** In summary, professional advice is particularly important in cases where the surplus land being disposed of has development potential. This advice should be obtained as early as possible in the disposal process so that the optimum course of action can be chosen. It would be expected that this process would begin as a result of the disposing body's asset management plan and well in advance of its formal declaration as surplus.

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## **11.0 OVERAGE PROVISIONS (AKA CLAW-BACK)**

**11.1** Overage provisions comprise a monetary “claw-back” to the benefit of the vendor to recoup a reasonable share of any exceptional gain, often in reference to sales of development sites, potentially made by the purchaser if particular events should happen after the sale. These events will have been identified prior to the point of sale as being possibilities which would have the effect of substantially increasing the market value if they were to happen, but which are not certain to happen since otherwise they should have been reflected in the sale price achieved.

**11.2** Where there are, or are likely to be, unusual delays in resolving uncertainties about the planning permission in respect of a property which is considered to have development potential, or where there is doubt as to the use which would generate the best price, a public body may decide that it should sell the property without the benefit of planning permission, leaving those uncertainties to be resolved by the market.

Where this is the case the public body should carefully consider, in the interests of the taxpayer, whether they should seek to secure from the purchaser, as part of the disposal terms, a percentage or share of any increase in value which is realised subsequent to the original disposal.

This can be achieved by various methods which will depend on the particular circumstances of the case. These methods may include:

**11.2.1** The selling of land subject to a restriction on the permitted use, secured by way of a covenant contained in the title transferred. The normal scenario here is that a developer would want to change the use so as to maximise the development potential of the land. In order to change the use he would have to buy out the restrictive covenant and the disposing body would therefore share in the full development value of the land so released. However, restrictive covenants can be time-bound (reference the Property (Northern Ireland) Order 1978, SI 1978/459(N14)), difficult to secure legally and to enforce later on. They are also open to criticism for potentially limiting the value obtainable for the asset in the first place, thus falling short of the sale at best value principle.

**11.2.2** The selling of land subject to a restriction on access (sometimes referred to as “ransom strips”) similar to (i) but the restriction is physical rather than legal in nature, therefore more secure in the long term. The disposing body would in this case sell its land but retain a narrow strip, usually along the road frontage. Again the developer would have to buy out this remaining interest at a later date in order to achieve his aims, but clear justification is vital in order to demonstrate that best sale value has not in fact been impaired by the use of this method.

- 11.2.3** The selling of an option to purchase - there may be circumstances where it is in the disposing body's interest to retain legal ownership of the surplus land but to sell an option to purchase to a developer. This might be the chosen method where the land being disposed of has complex planning issues attaching to it and where the property market is buoyant. The eventual full disposal would be triggered by some future event, for example the obtaining of planning permission, resulting in payment of the market value for the permitted use, possibly less the amount already paid for the option, assessed at the relevant time. However, this concept can be difficult to implement because purchasers' will normally seek to fix the future, optional, purchase price at present values, but this may ultimately disadvantage the public sector vendor especially in a rising market and lead to a negative perception of the sale in terms of achieving best value.
- 11.2.4** A disposal via a developer's brief and /or a building agreement. This is a method used in urban situations where the public sector is keen to influence the type of development which takes place on the surplus land. This should be a relatively rare occurrence and would be influenced by the strategic importance of the site in question. Typically a developer will make a down payment for the land of a relatively small percentage of its open market value. The balance will then be paid in stages as the development proceeds. However, this method generally applies only to bodies exercising statutory powers to promote or enable particular forms of development for specific reasons and is unlikely to be appropriate in other circumstances.
- 11.2.5** A sale by contract which provides for overage sums to be paid to the vendor, over and above the original purchase price, if and when certain trigger events occur. Normally the vendor will specify a period of time during which any such overage payment will apply and the District Valuer can offer advice in relation to what overage period may be appropriate in the circumstances.
- 11.3** In cases where land has been sold with planning permission disposing bodies will also wish to consider with the appropriate professional advisors whether an overage provision should be included to cover the possibility, for example, of a purchaser significantly enhancing a planning consent to his advantage.
- 11.4** Another aspect of disposing of some surplus public sector property can be a difficulty in gauging the commercial potential of property which has been used in the past for a purpose which is peculiar to the public sector. Increases in market demand can lead to an unforeseen increase in the value of the property after it has been sold.

For those reasons, a public body which has sold property for a price on terms which were defensible at the time of sale may be criticised if the property is later resold for a higher price or used for a purpose which suggests that a higher price could have been obtained by the disposing

body. Once again this sort of scenario can usually be avoided by good advice and, possibly, use of one of the overage/claw-back schemes described above or a bespoke alternative.

- 11.5** The District Valuer will be able to give an assessment of the likely effect of the above schemes on the sale price. In most cases where provisions are appropriate, either options 11.2.3 or 11.2.5 above are likely to offer the best solution to offset any remaining risk identified in the sale process.

However, the above options are not exhaustive and other methods or provisions may be devised as deemed appropriate in the particular circumstances of a case.

- 11.6** The failure of disposing bodies to secure a share in uplifts of the development value of surplus land has in the past attracted audit criticism. These cases tend to produce difficult issues and raise questions to which there may be no single correct solution. To minimise the risk of criticism bodies should follow these guidelines and obtain appropriate legal and valuation advice on a case by case basis.

All provisions aimed at securing for the disposing body a share in the future development value of surplus land will depend on the definition of a “trigger event” e.g. the obtaining of planning permission. This definition requires careful drafting and sound legal advice is essential. Overage provisions are, by their nature, invariably complicated to devise, invoke and enforce effectively.

**It should always be noted that a general expectation that market values may be on the increase at a point in time is not in itself justification to incorporate any form of overage or claw-back provisions in a sale agreement. The objective is to obtain best value at the time of sale and care is required not to impair the value obtainable by adding unnecessary overage provisions, or similar. Instead the driver to make a sale subject to inclusion of such provisions is an expectation of rising values when coupled with the identification of an ongoing risk to the public sector vendor that a purchaser may make exceptional or windfall gains if that risk is not offset by a suitable mechanism.**

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## **12.0 DISPOSAL OF SURPLUS HISTORIC BUILDINGS**

**12.1** This section should be read in conjunction with the rest of the guidelines and in the disposal of Historic Buildings the basic principles as stated in Section 9.0 above should still be the prime objectives. However, it is Government policy that the maximisation of receipts should not be the overriding objective in such disposals. The aim should be to obtain the best return for the taxpayer having regard to:

- i.** The provisions of the statutory development plan for the area.
- ii.** Government policies for historic buildings and areas;
- iii.** The fact that these policies are likely to restrict the opportunities for realisation of development value;
- iv.** The clear recognition that the most appropriate long term use for an historic building may not be the use which generates the optimum financial return;
- v.** The building's current state of repair, and the likely costs of future maintenance and repair.

**12.2** All surplus historic buildings should be disposed of as quickly as possible; this may point to a particular method of disposal.

If the building is economically viable, has been kept in good order and has a positive value in a recognised use for which there would be demand in the market, normal methods of open market sale will be sufficient.

**12.3** Historic buildings are defined as:

- i.** Listed buildings;
- ii.** Scheduled ancient monuments;
- iii.** Unlisted buildings, which make a positive contribution to the character or appearance of a designated conservation area;
- iv.** Locally listed buildings where policies for their protection have been formally adopted by the planning authority and are either incorporated in, or linked to, the statutory development plan for the area.

The status of buildings should be clarified before formal disposal procedures are put in place.

**12.4** If a historic building is surplus to requirements in its present use consideration should first be given to a cost effective alternative use. This will involve assessing the feasibility of alternative uses (which will require suitable professional advice), the likely cost of adapting the building to a new use compared with alternative means of accommodating that use, the prospects for disposal and the likely receipts.

In appraising these options maintenance and running costs need careful assessment, taking account of the advice given in the Conservation Guide (see paragraph 12.6). It should not automatically be assumed that historic buildings are necessarily more expensive to run than modern buildings, although they often will.

In assessing the financial prospects for disposal account should be taken of:

- I. the cost of maintaining the building prior to disposal; and
- II. the extent to which sale value may be depressed by restrictions on future use, or by costs of repair or adaptation which a purchaser would have to meet.

All appraisals should look at the overall costs of retention/disposal. In the case of a substantial building, or where buildings are grouped, the economic appraisal should also include an assessment of any wider costs and benefits. In some cases it may be permissible and appropriate to consider the applicability of the provisions at section 11.0 of this guidance in relation to specialised properties.

- 12.5** Paragraph 2.4 of these guidelines stipulates a general target for disposal of three years, or less, from when a property is declared surplus. This may not always be achievable in complex cases involving historic buildings but, as a general rule, it is particularly important to set disposal procedures in train as soon as possible after historic buildings are judged surplus to requirements, even if they have not yet become vacant. Risks of deterioration, vandalism and theft are a serious threat to historic buildings and wherever possible it is better to keep them in full or at least partial use up to the point of disposal. Where buildings are unavoidably vacant during disposal it is essential that they are inspected and maintenance regimes strictly adhered to. Inadequate maintenance will make the disposal more difficult.
- 12.6** Additional guidance called The Disposal of Historic Buildings 1999 and the Protocol for the Care of the Government Historic Estate 2003 have been produced by the Department of Culture, Media and Sport and are available within their website [www.culture.gov.uk](http://www.culture.gov.uk).

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## **13.0 SMALL, INCONSEQUENTIAL AND/OR UNMARKETABLE SITES**

### **– LIMITED MARKET VALUE**

### **– SALE POSSIBLY RESTRICTED TO ADJACENT OWNERS**

- 13.1** There may be occasions when, in the opinion of the District Valuer, portions of land have no marketing potential where, for instance, the cost of marketing the site may be higher than the expected purchase price. The type of site envisaged is amenity or agricultural land that will be subsumed into a contiguous site to supplement the latter, but without significantly increasing the value of the new enlarged site.
- 13.2** Such a site will normally be contiguous with only one other land holding, and may or may not have direct vehicle or pedestrian access.
- 13.3** It is permissible in these cases to open ‘confined’ negotiations with the adjacent owner in order to achieve the most advantageous financial result. However, departure from open marketing should only be considered in the circumstances as outlined in this section and on professional advice.
- 13.4** In cases where there is more than one other contiguous land holding consideration should be given to alternative disposal strategies (e.g. sealed tenders) to obtain the best price.
- 13.5** Where the District Valuer has estimated the value of the land at £5,000 or less and there is DFP approval for disposal to proceed at less than that estimated value, provided an appraisal has been carried out which shows that the projected costs exceed the projected returns.
- 13.6** There will be occasions when property will be incapable of disposal. This type of property will be identified either by testing the market or by professional advice. The reasons may be varied and may relate to size, shape, location, access difficulties or disinterest on the part of the market.
- 13.7** In the case of obviously unmarketable property initial professional advice should highlight the problem and provide suitable advice on what action to take.
- 13.8** For property that has been exposed to the market and has attracted no interest in a 6 month period from the date it is first marketed it should be reviewed by the District Valuer and a recommendation made to the disposing body. If it is decided to continue with disposal action progress should be reviewed in conjunction with the District Valuer at regular intervals of no more than six months.
- 13.9** It may be that the disposing body will be faced with continuing responsibility for the property. The District Valuer will, in his reporting letter offer whatever advice is considered appropriate for dealing with the situation which may be one of continuing, long term management.

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## **14.0 DISPOSAL OF SURPLUS TENANTED PROPERTY**

The disposal of surplus tenanted property whether residential or commercial is a complex matter and professional advice should be sought at the earliest possible stage.

### **14.1 Residential Tenanted Property**

Ideally surplus property should be offered for sale with vacant possession as this usually attracts the best price. Where a property that was compulsorily acquired, has a sitting tenant in residence at the time of disposal, the freehold should be offered to the sitting tenant rather than the former owner.

**14.1.1** Sitting tenant in the context of 14.1 is described as a tenant who has indefinite or long-term security of tenure. That is where a tenant has a tenancy that is or analogous to a restricted or regulated tenancy under the Rent Order (NI) 1978.

**14.1.2** A person is not considered to be a sitting tenant if they hold a license only or a tenancy known as a protected short-hold tenancy under Housing Order (NI) 1983 or hold any uncontrolled tenancy.

It is recognised that some tenants who fall within paragraph 14.1.2 may have occupied the property over a number of years and may well have carried out improvements to the property. Where the former owner or successor does not wish to purchase the property, or cannot be traced, the disposing Department may wish to consider sympathetically any offer from such a tenant, of not less than two years, to purchase the freehold.

### **14.2 Commercial Tenanted Property**

Under the Business Tenancies (NI) Order 1996, qualifying tenants have rights to continue in occupation or to receive compensation in order to provide vacant possession. It may also be the case that a sitting tenant may in fact be in a position to out-bid the rest of the market in any event. Professional advice of a legal and valuation nature should be sought to ensure best practice is being adhered to in every circumstance.

The District Valuer may advise an approach to the sitting tenant who, as a special purchaser, may be prepared to pay more than the market value. Where successfully negotiated the disposing body should seek the District Valuer's written confirmation that the price finally agreed is the best obtainable and exceeds the market value otherwise achievable in respect of the tenanted property. In the interests of equity this process would precede any offer to the former owner, if applicable.

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## **15.0 EXCEPTIONAL CIRCUMSTANCES**

- 15.1** In exceptional circumstances a public body may wish to sell a particular property to a selected purchaser by means of private treaty, on the basis of a market valuation only.

Examples might be to charities which either provide services, possibly under contract to a Government body, which the public sector might otherwise have to provide itself, or one which is perhaps concerned with the restoration, maintenance and protection of a heritage property.

Examination of the aims and objectives and motives of any such charity or other organisation will need to be carefully assessed to ensure genuine compatibility with public sector objectives and to protect against fraud, profiteering or other future misuse of the property to the cost and detriment of public sector interests.

The aims and objects of registered charities and their property and other asset dealings are subject to the scrutiny of DSD Charities Branch which offers some security regarding future deployment and use of property.

- 15.2** In such circumstances the same principles as set out in section 6.0 (transfers within the Public Sector) will apply, including Business Case approvals. If this is the preferred course of action disposing bodies should discuss the proposals with CAU at the earliest opportunity. As it is envisaged that this type of transfer would only be in exceptional circumstances the usual requirement to have compulsory purchase powers available for the intended purpose may be waived if considered appropriate.

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## **16.0 RECORDING OF DISPOSALS**

Disposing bodies are required to maintain a central record or file of all transactions covered by this guidance.

In all cases the record should note the case history and in particular the outcome where the offer back to a former owner was made, or one or more of the exceptions to offer back were applicable (see section 7.0).

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## **ANNEX A: STANDARD CONDITIONS FOR APPOINTMENT OF AGENTS**

### **DEPARTMENT OF FINANCE AND PERSONNEL**

#### **LAND & PROPERTY SERVICES AGENCY**

#### **STANDARDS CONDITIONS APPLYING TO THE APPOINTMENT OF AGENTS TO DISPOSE OF PROPERTY ON BEHALF OF THE PUBLIC SECTOR BODIES**

1. The Agents appointed shall have no other interest which will in any way conflict with their responsibilities to the disposing body.
2. The Agents appointed shall have and maintain professional indemnity insurance at least in accordance with RICS guidelines:
  - I. £250,000 for each and every claim where the gross income of the Firm in the preceding year did not exceed £100,000; **or**
  - II. £500,000 for each and every claim where the gross income of the Firm in the preceding year exceeded £100,001 but did not exceed £200,000; **or**
  - III. £1,000,000 for each claim where the gross income of the Firm in the preceding year exceeded £200,001; **or**
  - IV. In larger value disposals such higher levels of insurance cover as are considered commensurate with the scale of the particular task. This may inevitably exclude consideration of smaller Firms to undertake large disposal briefs.

The policy and the receipt for the last premium will be produced for examination if required by Land and Property Services (LPS).
3. The Agents appointed shall not commit the vendor to any action without prior written consent.
4. Subject to reasonable notice the Agents appointed will attend any meetings with LPS representatives, legal advisers etc, at which their presence is required.
5. Legal advice will be provided by the disposing body's solicitor and requests for such advice by the appointed Agents are to be directed through LPS.
6. As it is essential for the sale to be carried out in a demonstrably impartial manner the appointed Agents will not disclose any details of the property until the commencement of the advertising campaign. Any enquirers prior to that date are to be advised that sale particulars will be sent to them as soon as the advertising campaign begins.
7. Particulars of Sales, press advertisements, press releases or other public announcements concerning the subject property both before and after the sale are to be subject to LPS prior written approval and in particular treaty or tender.
8. Any Agent's boards must be securely affixed to the property and must conform to Planning Regulations.
9. Agents appointed shall keep LPS advised of progress during the period leading up to the sale or until a sale has been agreed in the case of a private treaty sale.

10. All information concerning this commission is in confidence between LPS and the appointed agents and must not be disclosed to any third party.
11. The fees and expenses of the Appointed Agents will be payable on the completion of the sale of the property. In the event of a sale not being completed due to the actions of the disposing body a fee based on “quantum meruit” (not exceeding the tendered fee in total) together with approved expenses incurred up to the date of termination will be payable.
12. The sales publicity programme and its cost must be agreed with LPS in advance; any expenditure over the agreed limit may be disallowed.
13. The benefit of any discounts received by appointed agents in respect of advertising, printing etc., must be passed on to the disposing body and the appointed Agents will be required to certify that the charges to be met by the body for disbursements are net, with receipted accounts being produced in support.
14. LPS, acting on behalf of the disposing body, reserves the right to terminate the commission at any time by notice in writing stating the reason and upon receipt of such a notice the commission shall be terminated forthwith. If terminated by LPS on the grounds of unsatisfactory performance or breach of any of the conditions set out herein no fee or expenses shall be payable by the disposing body.
15. The appointment made shall be personal to the appointed Agents who shall not be permitted to delegate their authority or to instruct sub-agents.
16. The appointed agents must abide by the terms of the Estate Agents Act 1979 and the Property Misdescriptions Act 1991.

**(NB.** References to LPS in the above may be substituted by “Project Manager” or similar in some instances, e.g. large individual or portfolio disposals.)

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## **ANNEX B: DEFINITIONS**

### **PUBLIC SECTOR BODIES**

These include:

- I. Northern Ireland Government Departments and their Executive Agencies.
- II. Non Departmental Public Bodies (NDPBs)
- III. Education & Library Boards

Health & Personal Social Services Trusts were excluded from the report by the NI Efficiency Scrutiny on the Management and Disposal of Government owned land. Nevertheless, the requirements to apply good practice to the management and disposal of land should be implicit in Trusts' framework documents and in accordance with the HSS Executive Land Transaction Handbook.

The above is not a definitive list of those bodies that can be involved. Please refer to section 6 for information on who can become a transferee and in what circumstances.

Note that CAU would also strongly encourage District Councils to adopt this guidance and it routinely includes them in the clearing house procedure in respect of surplus properties declared by other bodies in their area.

### **NON-DEPARTMENTAL PUBLIC BODIES (NDPBs)**

A NDPB is a body which has a role in the process of national government, but is not a government department, nor part of one, and which accordingly operates to a greater or lesser extent at arm's length from Ministers.

### **SURPLUS LAND**

Land or Buildings in this context means land in the ownership of the public sector bodies which is no longer required for the purpose for which it was acquired or is held.

### **LAND**

Defined in Section 45 of the Interpretation Act (NI)1954 and includes houses, buildings other structures and land covered by water.

### **PROPERTY CENTRE**

A centre dedicated to the effective management of all land and buildings held by that public body. It will seek to adopt the features of best practice and ensure compliance with policy guidelines issued by the Central Advisory Unit. The formation of property centres was recommended by the NI Efficiency Scrutiny on the Management and Disposal of Government Owned Land.

### **CENTRAL ADVISORY UNIT**

A body located within the Land & Property Services Agency whose role is to adopt a more proactive approach to estate management with the main aim of improving estate management practice and the performance of all operational property assets in the public sector. The unit was set up on the recommendation of the NI Efficiency Scrutiny and in January 1996 it assumed the land disposal policy role formerly held by DOE Lands Service.

**VACANT POSSESSION**

This describes a property which is available for exclusive occupation and use by the present owner or, on sale or letting, by a purchaser or incoming tenant.

**PLANNING BRIEF**

This a brief prepared by the Planning Authority and the Disposing Body. It will set out the development possibilities based on the policies in the local development plan and it should be subject to public consultation.

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## **ANNEX C: GREEN BOOK**

This refers to the latest HM Treasury “Green Book” and the Northern Ireland Guide to Expenditure, Appraisal and Evaluation (NIGEAE).

The Green Book sets out HM Treasury’s general principles regarding public sector economic appraisal and evaluation. In Northern Ireland, DFP produced NIGEAE in 2009, comprising an update of previous similar guides. The purpose of the DFP guide is to provide technical and procedural guidance which is more specific to the needs of the Northern Ireland public sector, as a supplement to the HM Treasury Green Book itself.

The DFP’s NIGEAE should therefore be the first port of call for relevant NI bodies, since it is tailored more specifically to their requirements.

The Green Book still provides much detailed guidance that is not duplicated within the NIGEAE and NIGEAE should be read in conjunction with it.

# DISPOSAL OF SURPLUS LAND

## REQUEST FOR PRELIMINARY ADVICE (D1)



Land &  
Property  
Services®

**N.B.: This form is for use by public sector organisations only.**

FOR LPS USE ONLY

LPS Reference:

**Email** completed PDF form to: [clientservices.lps@dfpni.gov.uk](mailto:clientservices.lps@dfpni.gov.uk). Refer to Sections 6 and 7 below.

**Or** please complete all sections and send **two signed hard copies** to:

**Land & Property Services**  
Central Advisory Unit (CAU)  
Queen's Court  
56–66 Upper Queen Street  
Town Parks  
Belfast, BT1 6FD

### SECTION 1 – DECLARATION

**Note:** Public Bodies should not declare property surplus until any problems or disputes about access, ownership, title or boundaries, etc, have been resolved.

Name of organisation

**1.1**  has declared the land described below as surplus to its requirements and intends to dispose of it.

**1.2** In accordance with the CAU Disposal of Surplus Public Sector Property Guidelines (the Guidelines\*), the LPS Valuation Directorate is requested to provide the following to the above organisation:

- preliminary marketing advice,
- a report, including if possible an estimate of value,
- and to commence the public sector trawling process as set out in the Guidelines.

**\*For a copy of the Guidelines please visit [www.lpsni.gov.uk](http://www.lpsni.gov.uk)**

### SECTION 2 – DESCRIPTION OF THE SURPLUS PROPERTY

**2.1** Address or location (street, townland etc)

Site area (in hectares)

Postcode

**2.2** Description (please tick):

Land only    Land and House    Land and Commercial Building    Commercial Building

Other (please describe)

**2.3** Please provide contact details to arrange an inspection:

Name

Telephone number

Email address

2.4 Has there been any indication of private sector demand for the surplus land for a particular use? .....  Yes  No

If **Yes**, please give details

2.5 Has any other government department or public body expressed an interest in acquiring this property? .....  Yes  No

If **Yes**, please give details

2.6 Is the land zoned in the local area plan for a particular use? .....  Yes  No

If **Yes**, please state permitted use

2.7 Is the land completely vacant, disused and free of any illegal or unauthorised uses?  Yes  No

If **Yes**, please go straight to Section 3 (taking note of 2.10 below)

If **No**, is it scheduled to be fully vacated? .....  Yes  No

If **Yes**, Please give the date (if known) when the land will be fully vacated .....  or Date Unknown

2.8 If still in use is the land legally occupied in whole or in part? .....  Yes  No

Name of legal occupier(s)/tenant(s)

Type of tenure?  Lease  Licence (Term & Rent)

Were any present tenants in occupation at the date of acquisition? .....  Yes  No

**N.B.** If more than one occupier or tenant, please provide details on a separate page.

2.9 Is the land or any part(s) of it illegally occupied or used for any unauthorised purposes? .....  Yes  No

If **Yes**, please give details

2.10 Please attach a map identifying the property

**Map Instructions:**

- Maps should be A4 size, with an appropriate, identified scale;
- The surplus land should be clearly identified; and
- Its access and relationship to any surrounding land in the vendor's ownership should be indicated.

**SECTION 3 – NATURE OF VENDOR'S INTEREST**

3.1 Nature of Vendor's Interest

Freehold

Leasehold (give term and rent)

Other (give details)

3.2 Is the land registered? .....  Yes  No

If **Yes**, please provide folio number:

If **No**, please provide a copy of evidence of title.

Who holds title documents?

**Note:** LPS can assist with land registration queries, including if the land is registered and, if so, in providing a folio and entry number. The relevant LPS contact details are:

**Land & Property Services**  
Lincoln Building  
27–45 Great Victoria Street  
MALONE LOWER  
Belfast, BT2 7SL

**Telephone:** 028 9025 1515  
**Email:** customerinformation.landregistration@dfpni.gov.uk

## SECTION 4 – DETAILS OF WAYLEAVES AND EASEMENTS

**Wayleave** is used to describe rights acquired to construct, use, inspect and maintain pipes, cables etc through another person's land. When acquired formally by deed these are usually referred to as easements.

**Easement** is a formal right to use or restrictive use of another person's land in some way. The most frequently encountered easements are rights of way, rights of light, rights to abstract water and rights to support buildings.

**Restrictive covenants** are explicit obligations in a deed usually included to regulate matters such as the use of the property or the type of development to be carried out. Restrictive covenants can be positive or negative, eg to use or not to use for a particular purpose or to construct or not construct.

4.1 Does the disposal body have a wayleave or easement over other lands to give access to the surplus land? .....  Yes  No

If **Yes**, please give details and show on the map

4.2 Does any department or public body need to reserve a right of way or other easement over the surplus land? .....  Yes  No

If **Yes**, please give details and show on the map

4.3 Has a wayleave or easement over the surplus land been granted to any person or body? .....  Yes  No

If **Yes**, please give details and show on the map

4.4 Does any person claim possessory title/rights/easements over the surplus land? .....  Yes  No

If **Yes**, please give details and show on the map

4.5 Does the disposing body wish to make any exceptions or reservations in relation to the surplus land? .....  Yes  No

If **Yes**, please give details and show on the map

4.6 Are the lands subject to a public right of way? .....  Yes  No

4.7 Are there any restrictive covenants or other encumbrances which materially affect the vendor's interest? .....  Yes  No

## SECTION 5 – ACQUISITION DETAILS

5.1 Date of acquisition from the private sector

How was the land acquired?  Agreement  Blight Notice  Vesting

Purpose of acquisition

5.2 Has the land been developed (ie. materially changed in use or character) since it was acquired? .....  Yes  No

If **Yes**, please give details

5.3 Is the land within the current development limits of the Area Plan? .....  Yes  No

5.4 Name of former owner or successor

Address of former owner or successor  
  
  
 Postcode

## SECTION 6 – AUTHORISATION BY THE INSTRUCTING PUBLIC BODY

Name of Authorised Officer  
(usually at least DP Grade or equivalent)

Your reference number

Address or location (street, townland etc)  
  
  
 Postcode

Telephone Number  Ext.

E-mail address

Signature

Date

Any other comments

## SECTION 7 – CHECKLIST

**Please be sure you have:**

- Included a map indicating the land
- Marked any easements/wayleaves on map
- Supplied all required supplementary information (eg copy evidence of title/folio)
- Submitted **either** two hard copies signed by an authorised officer **or** an electronic copy with a scanned map from the authorised officer's email account