

# Property Procedure Rules

## Introduction

1. These rules constitute the Council's Procedures in relation to property contracts and the effective, efficient use, occupation and management of property.

## Interpretation

2. These terms will have the following meanings in the Property Procedure Rules:-

Acquisition	The acquisition of Property by the Council, including the extension of an existing lease (other than by exercise of an option to renew) and the surrender or assignment of a lease to the Council.
Director	A Director of the Council including the Chief Executive
Disposal	The disposal of Property by the Council, including the surrender or assignment of a lease by the Council
Officer	A Council employee or other authorised agent
Property	Any estate or interest in land and/or buildings
Property Contract	A contract relating to Property including (but not limited to) transfers, leases, easements, tenancy agreements and licences
Surveyor	A professionally qualified surveyor or valuer employed or otherwise retained by the Council to provide expert advice on Property Contracts
Tenderer	A person who has expressed an interest in tendering for a Property Contract or who has tendered for a Property Contract
References	References in these Rules relate to: <ol style="list-style-type: none"><li>(a) any legislation (e.g. Act of Parliament, Statutory Instrument, EU Directive) and include a reference to any amendment or re-enactment of such legislation;</li><li>(b) the singular include the plural and vice versa;</li><li>(c) Directors, the Director of Corporate Services, the Estates and Property Manager and the Borough Solicitor shall be taken to include such Officers as are designated by them to undertake the duties and responsibilities set out in these Rules.</li><li>(d) The Cabinet Member with Resources Portfolio shall be taken to include such Member designated to undertake the duties and responsibilities set out in</li></ol>

these rules

- (e) References to values estimated at the time an approval is given shall not be invalidated by the fact that the actual Acquisition or Disposal figure differs from the estimated figure. The value of any transaction shall be taken to be the Surveyor's opinion as to the open market value as between willing parties, unless otherwise stated

## **General**

- 3. These Rules are made by the Council on the advice of the Director of Corporate Services in consultation with the Borough Solicitor.
- 4. The Director of Corporate Services (in consultation Borough Solicitor) shall regularly review the application and effect of these Rules and shall propose such amended Rules to the Council as he/she may consider appropriate.
- 5. Directors shall endeavour to ensure that relevant officers within their Departments, framework partners and contractors working for the Council, are aware of and comply with these Rules.

## **Management of Council Property**

- 6. The Director of Corporate Services is designated the Council's Corporate Property Officer and through the Estates and Property Manager, is responsible for the application and compliance of Property Procedure Rules.
- 7. The Corporate Property Officer is responsible for the maintenance and updating of the Council's Asset Management Plan
- 8. Where any transaction including the transfer of property from one use to another, requires public notice to be given, for example, the planned disposal of public open space, the Estates and Property Manager and Borough Solicitor will do so and report responses to Cabinet for consideration.
- 9. The Estates and Property Manager is responsible for managing the Council's Property in accordance with the principles of good estate management to include, for example, the following:-
  - (a) New lettings, lease renewals, rent reviews, acquisitions and disposals;
  - (b) provision of all property valuations for example for appropriation, stock transfer, balance sheet, statutory subsidy, Right to Buy, internal rate of return and grant purposes; and
  - (c) lodging objections/proposals and pursue rating appeals in respect of Council property where appropriate.

## **Delegated Powers**

10. To assist with the management of property, approvals for some property related transactions for example, new lease, lease renewal, rent reviews, surrender, assignment, licence, easement etc have been delegated to the Director of Corporate Services under the Council's Scheme of Delegation to Officers.
11. A full list of the delegated powers is available to view in this Constitution under 'Responsibility for Functions', or on the Council's website under 'Delegated Powers Register' at [http://www.darlington.gov.uk/dar\\_public/documents/Corporate%20Services/Democratic/Scheme%20of%20Delegation%20to%20Officers.pdf](http://www.darlington.gov.uk/dar_public/documents/Corporate%20Services/Democratic/Scheme%20of%20Delegation%20to%20Officers.pdf)

## **Compliance with Legislation**

12. Property Contracts shall comply with relevant applicable legislation and government Guidance.
13. The Borough Solicitor shall ensure that the Council has the legal power to enter into Property Contracts and that the Council does not purport to enter into any such contract which is ultra vires.

## **Signature/Sealing of Property Contract**

14. The signing and sealing of property contracts shall be undertaken by the Borough Solicitor.

## **Role of Surveyor**

15. The Estates and Property Manager and any nominated Surveyor shall act on behalf of the Council in connection with Property Contracts and in accordance with these Rules.

## **Acquisitions**

16. In relation to acquisition of Property:-

### **Approval for Acquisitions**

17. Where Property is to be acquired by the Council including by a compulsory purchase order the Director of Corporate Services is to be responsible for seeking Cabinet approval, except where approval is delegated to the Director of Corporate Services.
18. No approval shall be sought or given for the Acquisition of any Property unless there is adequate and foreseeable budgetary provision for the Acquisition and any expenditure consequent upon the Acquisition.

### **Terms of Acquisition**

19. The Estates and Property Manager is responsible for determining the terms of the Acquisition of Property, and shall, except for those acquisitions covered under the Scheme of Delegation to Officers, report such terms for approval to Cabinet.

20. The Borough Solicitor is responsible for preparing and completing documentation for the Acquisition of Property in accordance with the terms referred to in these rules.

### **Declaring Premises Surplus to Operational Requirements**

21. When a Property is no longer required for its current use, the appropriate Director who has responsibility for the management of the property shall inform the Estates and Property Manager. The Estates and Property Manager shall refer to the Procedure for 'Declaring Premises Surplus to Operational Requirements' and the Surplus Assets Disposal Process.
22. The procedure and process is available to view on the Council's web site ([www.darlington.gov.uk](http://www.darlington.gov.uk)).

### **Disposals**

23. In relation to disposals of property:-

#### **Approval for Disposals**

24. Where Property is to be disposed of by the Council, the Director of Corporate Services is to be responsible for seeking Cabinet approval, except where approval is delegated to the Director of Corporate Services .
25. Where a property is to be disposed of by sale or by long lease (i.e. 7 years or longer) at an undervalue, approval of Cabinet is required, and where the amount of the undervalue is more than £2,000,000 the consent of the Secretary of State is also required other than in circumstances where the General Consent Order 2003 of the 1972 Local Government Act applies.

#### **Right to Buy**

26. Where Right to Buy applications are made to the Council under the Housing Act 1985 and where the Right to Buy is admitted, the Estates and Property Manager shall be responsible for providing the property valuation and the Borough Solicitor shall dispose of the Property in accordance with the said Act.

#### **External Consents to Disposal**

27. The Estates and Property Manager in consultation with the Borough Solicitor is responsible for obtaining such external consents (if any) as are required for a Disposal (except in relation to the disposal of school playing fields, for which the Director of Children's Services, or other appropriate Director, shall be responsible for seeking any necessary approvals).

#### **Method of Disposal**

28. The Estates and Property Manager shall ensure that the most appropriate disposal process is used, having regard to the likely value of the property and market conditions.

29. The Estates and Property Manager shall take account of relevant factors relating to a Disposal.
30. If the proposed method of disposal is by public auction, the property must not be sold at less than the reserve price determined in agreement between the Estates and Property Manager and the appointed auctioneer, subject to obtaining the prior approval of Cabinet including the reserve price.

### **Terms of Disposal**

31. The Estates and Property Manager is responsible for determining the terms for the Disposal of Property, and shall report such terms to Cabinet for approval.
32. The Borough Solicitor is responsible for preparing and completing the documentation for the Disposal of Property in accordance with the terms referred to in these Rules subject to any variations agreed with the Estates and Property Manager and subject also to such further terms as the Borough Solicitor considers appropriate in the best interests of the Council.
33. Except where the approval of Cabinet has been obtained in accordance with these rules best consideration for the Disposal shall be sought pursuant to Section 123 of the Local Government Act 1972.

### **Disposals by Tender (Informal or Formal)**

34. This Rule applies to Disposals of Property by tender whether the tender is subject to contract or is capable of immediate acceptance.
35. A tender may only be considered if:-
  - (a) it has been received in a sealed envelope marked "Tender" and indicating the Property referred to in the tender; and
  - (b) the identity of the Tenderer cannot be ascertained from the tender envelope; and
  - (c) subject to these Rules, the tender has been returned to the Director of Corporate Services before the tender closing date (which shall be a time and date when the Town Hall is open for business).
36. The Director of Corporate Services shall be responsible for the reception and safe custody of tenders until they are opened.
37. Tenders shall be opened at the same time and in the presence of the Estates and Property Manager, the Cabinet Member with Resources Portfolio and the Director of Corporate Services who shall maintain a record of the tenders received. Such a record shall include the date and time of tender opening, the identity of the Member(s) and Officers present, the identities of Tenderers and the tendered amounts. A copy of such a record shall be provided as soon as practicable to the Cabinet Member with Resources Portfolio.

38. If a tender is received after the specified tender closing date and time, but before tenders have been opened, it may be considered by the Estates and Property Manager and the Borough Solicitor in consultation with the Cabinet Member with Resources Portfolio.

### **Tender Evaluation**

39. Tenders shall be evaluated by the Estates and Property Manager and reported to the Cabinet Member with Resources Portfolio.
40. The Director of Corporate Services shall accept the tender which best meets the evaluation criteria outlined in sales particulars and offers best consideration for the Property in accordance with these Rules. The Estates and Property Manager shall seek to ensure that the tender evaluation process is fair, and so far as is consistent with the achievement of best consideration by the Council, that the basis on which tenders are to be evaluated has been established before tenders are opened.

### **Alterations to Tenders**

41. Tenders may not be altered by Tenderers after the tender closing date except where the Estates and Property Manager is satisfied that arithmetical errors have been inadvertently made by the Tenderer, in which event the Tenderer shall be invited to correct them.

### **Post Tender Negotiations**

42. Post tender negotiation may be undertaken with tenderer(s) by the Estates and Property Manager (in consultation with the Cabinet Member with Resources Portfolio) to address the following:-
  - (a) To take account of the conditionality elements of the tender (if any) for example the grant of an implementable planning permission and site investigation/ground condition reports and to agree consequential reductions/adjustments to the tender.
  - (b) To consider the effects of vandalism/theft to the value of a property between a tender being received/accepted and contracts being exchanged and to agree reasonable reduction / adjustment of the tender.
  - (c) Where added value may be obtained.
43. The post tender negotiations are undertaken either with all Tenderers, or with such Tenderer(s) as the Estates and Property Manager in consultation with the Director of Corporate Services considers it appropriate to invite having regard to the value of their tenders and any conditions attached to them.
44. Record of the negotiations and any added value obtained or reduction agreed is kept by the Estates and Property Manager.
45. Any such added value obtained or reduction agreed by the post tender negotiations is incorporated into the Property Contract with the successful Tenderer.

## **Exceptions to Property Procedure Rules**

46. There are no exceptions to the property procedure rules unless with the prior approval of Cabinet or if it is deemed to be an emergency in which event the emergency powers conferred on the Director of Corporate Services would be invoked in line with the Council's Procedure Rules.