



SCRUTINY COMMITTEE

Thursday, 29 September 2022

Subject	Review of the Sale and Disposal of Council Assets Procedure
Report by	Councillor Craig Rivett, Deputy Leader and Cabinet Member for Economic Development
Supporting Officer	Kerry Blair Head of Operations kerry.blair@eastsuffolk.gov.uk

Is the report Open or Exempt?	OPEN
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Wards Affected:	All Wards
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Purpose and high-level overview

Purpose of Report:

Scrutiny Committee requested a review of the sale and disposal of Council assets, to provide reassurance that good governance is in operation over the current procedures of sale and disposal of assets.

Recommendation/s:

That the Scrutiny Committee consider this report on the sale and disposal of Council assets in East Suffolk and makes any recommendations as required.

Corporate Impact Assessment

Governance:

The answers to the questions below set out the process by which ESC carries out valuations of assets. This includes seeking, for example, external valuations for high value assets. Therefore, the council can be assured that sale or disposal prices are informed by an objective process, matched to market values and other comparable data.

Decisions on asset disposals are taken in consultation with the Asset Management Group – a cross departmental group dealing with property matters, relevant Members and ultimately Cabinet.

The Council's Constitution requires that all proposed land disposals (with the exception of disposals which are mandatory by operation of law eg. 'Right to Buys') are reported to Cabinet for approval. Section "5.5.9 *Recommend surplus land and buildings for sale to the Asset Management Group (AMG), followed by a joint report prepared by the relevant Strategic Director/Head of Service and the CFO to Cabinet.*"

ESC policies and strategies that directly apply to the proposal:

Asset Management Strategy 2019-2023.

Environmental:

Environmental issues are considered before assets are disposed of or transferred. For example, amenity land in Melton was transferred to the Town Council along with funding to manage grounds and open spaces. ESC has worked with parish councils to ensure that they have a plan for managing land after transfer.

Equalities and Diversity:

There are no impacts.

Financial:

There are no financial implications arising directly from this report. Questions in relation to finance processes were asked as part of the scope of this review and are answered below.

Human Resources:

There are no HR implications.

ICT:

There are no ICT implications.

Legal:

Under the Local Government Act 1972 (LGA 1972) local authorities can dispose of land in any manner they wish, including sale of their freehold interest, granting a lease or assigning any unexpired term on a lease, and the granting of easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of short tenancies), unless the Secretary of State consents to the disposal (Section 123, LGA 1972). The purpose of Section 123 is to ensure that public assets are not sold by public authorities at an undervalue, save, if at all, with the consent, general or specific, of the Secretary of State.

Risk:

Risks are considered as part of deciding on the best approach for the sale or transfer of any particular asset including the transfer of assets to parish councils. In the latter case this includes the risk that the receiving council may not be able to manage the cost of asset liabilities post-transfer.

This Council works with town and parish councils to ensure that they have a viable plan for the future maintenance and upkeep of transferred assets.

External Consultees:	None.
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Strategic Plan Priorities

Select the priorities of the Strategic Plan which are supported by this proposal: (Select only one primary and as many secondary as appropriate)		Primary priority	Secondary priorities
T01	Growing our Economy		
P01	Build the right environment for East Suffolk	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P02	Attract and stimulate inward investment	<input type="checkbox"/>	<input type="checkbox"/>
P03	Maximise and grow the unique selling points of East Suffolk	<input type="checkbox"/>	<input type="checkbox"/>
P04	Business partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P05	Support and deliver infrastructure	<input type="checkbox"/>	<input checked="" type="checkbox"/>
T02	Enabling our Communities		
P06	Community Partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P07	Taking positive action on what matters most	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P08	Maximising health, well-being and safety in our District	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P09	Community Pride	<input type="checkbox"/>	<input checked="" type="checkbox"/>
T03	Maintaining Financial Sustainability		
P10	Organisational design and streamlining services	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P11	Making best use of and investing in our assets	<input checked="" type="checkbox"/>	<input type="checkbox"/>
P12	Being commercially astute	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P13	Optimising our financial investments and grant opportunities	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P14	Review service delivery with partners	<input type="checkbox"/>	<input checked="" type="checkbox"/>
T04	Delivering Digital Transformation		
P15	Digital by default	<input type="checkbox"/>	<input type="checkbox"/>
P16	Lean and efficient streamlined services	<input type="checkbox"/>	<input type="checkbox"/>
P17	Effective use of data	<input type="checkbox"/>	<input type="checkbox"/>
P18	Skills and training	<input type="checkbox"/>	<input type="checkbox"/>
P19	District-wide digital infrastructure	<input type="checkbox"/>	<input type="checkbox"/>

T05	Caring for our Environment		
P20	Lead by example	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P21	Minimise waste, reuse materials, increase recycling	<input type="checkbox"/>	<input type="checkbox"/>
P22	Renewable energy	<input type="checkbox"/>	<input type="checkbox"/>
P23	Protection, education and influence	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XXX	Governance		
XXX	How ESC governs itself as an authority	<input type="checkbox"/>	<input checked="" type="checkbox"/>
How does this proposal support the priorities selected? Occasions arise when individual assets no longer contribute positively to the Council's Strategic Plan or where it becomes clear that this Council is not the best organisation to manage a particular asset going forward. The Council will always seek to ensure 'best return' from any disposal whether this be a financial return or return in kind, which for some smaller sites might include for example 'community benefit'.			

Background and Justification for Recommendation

1	Background facts
1.1	In July 2019 Cabinet approved the Asset Management Strategy 2019-2023, which includes the Disposal Procedure for Land and Property at Appendix 5. The Strategy was considered by Scrutiny Committee the following year, in July 2020.
1.2	Details of all disposals and divestments, carried out since January 2019, are set out in Appendix B of this report.

2	Current position
2.1	The specific lines of enquiry Scrutiny Committee want answering, are set out below with a response.
2.2	<p>Does the Council have an approved corporate disposal policy which specifies the procedure and responsibilities for the sale of assets?</p> <p>Yes. This was approved by Cabinet in 2019 and is attached to this report as Appendix A.</p> <p>Land disposals are also included in the Council' Constitution at Section 5.5.9 "Recommend surplus land and buildings for sale to the Asset Management Group (AMG), followed by a joint report prepared by the relevant Strategic Director/Head of Service and the CFO to Cabinet."</p>
2.3	<p>Are sales approved in accordance with the organisation's policy and how is this documented?</p> <p>Yes, sales are approved in accordance with the adopted policy. The process is documented in the Asset Management section of the Y drive or more recently Teams folders.</p>
2.4	<p>Are conflicts of interest considered and recorded over sale/disposal decisions</p> <p>Potential conflict of interest for both Officers and Members are discussed and addressed as part of the disposal process. Subsequent actions may include file notes recording any potential conflicts and the outcomes in relation to these,</p>

	individuals not working on particular cases or recusing themselves from particular meetings or decisions.
2.5	<p>How often and when are records updated to record the disposal details?</p> <p>On each occasion that a transaction involving a sale or lease is completed, a completion memo is sent by officer in Legal Services with the conduct of the matter to the instructing officer in Asset Management and the dedicated e-mail address of asset completions. The Legal team provide details of the completed transaction, together with a copy of the completed deed as soon as this is available, and Asset Management deal with the ongoing notifications process to all other relevant departments.</p>
2.6	<p>Are procedures in place to ensure that all relevant parties receive all necessary information relating to sales and that they are notified of disposals and any related details?</p> <p>As far as possible. Some asset disposals are more commercially sensitive than others and require different handling to ensure that wider community interests and the best interests of the Council are protected.</p>
2.7	<p>How are proof of funds received documented and their payment into the appropriate accounts?</p> <p>Funds are paid into an ESC bank account by the 'purchasing party' or through a solicitor. The actual receipt is identified from daily bank statements and coded to the appropriate general ledger account on Navision.</p>
2.8	<p>Are independent checks undertaken to reconcile the amounts received to the approved sale prices?</p> <p>Finance will check the amounts received against the completion memos from Legal Services. Legal Services also confirm receipt before moving to completion of contract for sale.</p>
2.9	<p>Are checks undertaken to ensure that all income due from sales has in fact been received?</p> <p>As above.</p>
2.10	<p>Are all properties examined and formally valued prior to disposal?</p> <p>Yes, all assets are inspected and valued as part of the disposal process.</p>
2.11	<p>Are valuations independent of the organisation's valuers considered where the asset is of high value?</p> <p>Yes, where the value of the asset is likely to exceed £100,000 then Asset Management instruct an independent RICS Red Book Valuation from a third party.</p>
2.12	<p>Do tender/auction arrangements allow the Council to reject offers if they fail to reach the value at which the property is valued?</p> <p>If a proposed disposal is to proceed by way of an auction, then details are provided of any reserve price that is applicable to the sale and the auctioneer is made aware of this. If the sale does not reach the reserve price, the property will be withdrawn from the sale process. If a bid is very close to the reserve price but has not reached this, then discussions can be held after the auction as to whether this may be accepted.</p> <p>It is considered that this is a fair process and protects the Council in such disposals.</p>

2.13	<p>How are rejected offers managed?</p> <p>If an offer does not meet the valuation for the asset the interested party will be informed. They may be invited to submit a further offer. If numerous parties are interested in a particular asset, we may elect to go to an informal or formal tender process and invite best and final bids. Any unsuccessful applicant will then be informed via their preferred mode of communication.</p>
2.14	<p>Are alternatives to sale fully explored before the asset is disposed of?</p> <p>Yes. The exact alternatives considered depend on the asset involved and the strategic priorities of the Council at the time or in the immediate area. As most disposals are for small parcels of land, the best solution is often to dispose of them as there are usually limited alternatives for such sites. The Council very rarely disposes of income producing assets.</p>
2.15	<p>Are the full costs of disposal, including reduced future rental income, etc, evaluated before a decision is made to dispose of a property?</p> <p>The Council very rarely disposes of income producing assets. In such an instance we would evaluate all the costs, so the holding costs of the asset and loss of rental income and present this as part of the Business Case report to Cabinet seeking approval for this course of action.</p>
2.16	<p>Does the Council have a defined policy on methods of marketing 'surplus' properties?</p> <p>The Asset Management Strategy details the process to be followed when disposing of Council-held assets. The method of marketing for each asset identified for disposal will be considered and tailored for each instance. There is no one marketing approach as different assets will require different handling. Given the infrequent nature of any property disposal this allows a tailored approach to be adopted in each instance to maximise the disposal value.</p>
2.17	<p>In what approved circumstances are sales to 'special purchasers' allowed (e.g. owners of adjacent land for which the value of the organisation's asset may be greater than on open market value) and how are the benefits fully evaluated?</p> <p>If the party seeking to purchase an asset is a special purchaser, then the valuation undertaken will reflect that element within its recommended sale price.</p> <p>For example, for a houseowner wishing to purchase land adjoining their existing property boundary, the land value could well reflect the potential for an extension to be added to the house (if applicable) and factor in that 'hope value' to the valuation provided to the purchaser. This ensures that the Council receives the full value of the land to the special purchaser, which will often be more than the open-market value.</p> <p>Each case is considered by Members and approved or not depending on the strength of the particular case.</p>
2.18	<p>Are there formal, written procedures to be followed for all methods of disposal (including private treaty, informal tender, formal tender and auction)?</p> <p>All land disposals are progressed with the benefit of legal, finance, senior officer input and ultimately Member authority to dispose. The Council's Constitution requires that all land disposals (with the exception of disposals which are mandatory by operation of law eg. 'Right to Buys') come to Cabinet prior to any binding commitment being made.</p>

	<p>Any proposed transaction, other than auctions, will result in formal Heads of Terms which contain the agreed terms between the parties. The transaction is then documented in accordance with these Heads of Terms.</p> <p>In terms of auction sales, these are dealt with slightly differently; special conditions of sale are prepared and provided to the auctioneer, and these are included within the auction catalogue. An auction pack is also made available to prospective bidders so they can make an informed decision on whether to bid for the property. In the case of tender sales, prospective buyers are provided with the necessary property and title information along with the conditions attaching to the tender. The matter then proceeds with bidders making sealed bids for the property and then a decision is made having followed a previously agreed scoring system.</p>
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3 How to address current situation

3.1	It is considered that there is a robust process for the valuation and disposal of assets, and that the process protects the interests of the council and is compliant with the council's strategies.
3.2	Any recommendations from Scrutiny to improve this process will be considered by officers.

4 Reason/s for recommendation

4.1	This report is intended to provide reassurance to Scrutiny Committee that the processes followed when disposing of Council assets shows good governance and is legally compliant.
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Appendices

Appendices:	
Appendix A	Asset Management Strategy 2019-2023
Appendix B1	List of all assets divested since January 2019
Appendix B2	List of all assets sold since January 2019