

Fradley and Streethay Parish Council

Policy and Procedure - Land Disposal or Land Acquisition

Introduction

Fradley and Streethay Parish Council is committed to developing its landholding for the benefit of its residents. From time to time opportunities may arise which will enable the council to acquire land, either through donation, purchase, or lease. The council may also decide to sell, or lease land should opportunities, which benefit residents, arise.

As custodians of the parish land for future generations such opportunities will be carefully considered, however decision making in this regard will be firmly predisposed towards retaining parish land in most instances.

The council will be especially disinclined to dispose of land when, if developed, there might be negative impacts on the well-being of residents, the environment and the character of the parish as a whole, including those areas in close proximity to the land in question.

Any acquisitions or disposals will be to support the aims of our Neighbourhood Plan, the Council's Vision and our residents.

Considerations in all circumstances

The parish council will need to consider and take into account the following:

1. That Government legislation (as detailed in this document) is understood and used as a basis for decision-making.
2. To consider best value for the public purse.
3. To consider how they will demonstrate that maximum consideration has been given to the disposal or sale of land.
4. To consider that land cannot be disposed of for less than it is worth without the consent of the Secretary of State so knowing the value of the land is important to establish in the first instance.
5. To consider an open and transparent bidding process where required and certainly when there is more than one party interested in the disposal.
6. To consider how and when they will advertise the disposal or sale.
7. To consider what the land is currently appropriated for.
8. To consider if the land falls within the exceptional reappropriations and disposals guidance.
9. To consider if such a disposal promotes economic, social or environmental wellbeing, with a limit of £2million between the unrestricted value and the disposal value? If not, the parish council could not dispose of the land without the permission of the Secretary of State and in any case would need to know the value of the land prior to considering any disposal, if for no other reason than to formally confirm the council are not breaching the £2million limit. The council

would need to contact either the District Valuer or a Land Consultant/agent for a valuation.

10. To consider on a case by case basis the valuation of the land – The council could instruct and pay for the District Valuer or a Land Consultant/Agent to value the land.
11. To consider on a case by case basis and ask the proposed purchaser to pay for the valuation as this may demonstrate a commitment. The prospective purchaser would need to be fully informed however, that the final decision to dispose or sale of land would rest with the council as the Corporate Body, so in paying for the evaluation there is no guarantee a disposal of land for example by sale or swap would take place.
12. To consider if the land has recently been valued and proper advice already taken.

Section 1 – Acquisition of land

The parish council are happy to look at ways in which to increase their portfolio of parish council owned land/open space for the benefit of the community.

Opportunities to obtain further land can come from Developers or via the District or County Council. This land/open space is normally gifted to the parish council in most cases for the benefit of the community. It is then transferred to the parish council and the parish council become responsible for its future maintenance and upkeep.

Where land is identified as open space not owned by the parish council but is not currently being maintained to the standard that we would hope. The council will often look to see if there is anything that can be done to improve the area in the first instance by contacting the owner.

Procedure for acquiring land for use of public open space

- 1) Any request to acquire land for the use of public open space will be added to the next available parish council agenda by the clerk.
- 2) The clerk will produce a report to council setting out the proposed acquisition, what the land is currently appropriated for, details of the current owner and what proper advice if any is recommended that the council should consider for example, to obtain a land valuation. The clerk will request a resolution from the council to that effect to be able to move forward.
- 3) The clerk will also request a resolution from the council to make contact with the current owner to gauge their intention for the land and to establish its history for example, has it been used for storing toxic substances, are there any hazards, ponds etc, and to ask if the council could obtain the land for the benefit of the community.
- 4) Once the clerk received information from the current owner a report will be completed to council for their next Parish Council meeting. This will detail if a land acquisition is an option and under what terms. The clerk will ask the council for an indication as to whether the council still wishes to proceed to the next stage, i.e. to acquire the land by resolution.

- 5) If the council do not wish to continue with a sale at this stage the process will stop, and the current owner will be informed that the parish council does not wish to proceed with the acquisition of the land.
- 6) If the council still wish to acquire the land, there is a need at this stage for the council to consider the future cost and upkeep of the land, the clerk will write a report for council for their next meeting.
- 7) If the council still wish to acquire the land, they will consider employing a Solicitor, the clerk will ask the council for a resolution to contact a Solicitor to deal with the acquisition of the land.
- 8) The council will then formally decide at the meeting whether it wishes to confirm its intention to acquire the land based on the solicitor's advice.
- 9) Once the formal resolution is made that the land is to be acquired, the clerk will request delegated authority to deal with the administrative matters of the acquisition through to its legal conclusion along with the Solicitor.

Section 2 - Disposal of land

The parish council will not actively seek to dispose of land unless there are sound justifications, as set out below, to do so. The parish council values its land/open spaces as part of the fabric of the village and in most cases the monetary value of the land cannot match the amenity value to local residents.

A. Procedure if the Parish Council is approached or chooses to sell land

- 1) The request/proposal will be added to the next available parish council agenda by the clerk.
- 2) The clerk will produce a report to council setting out the proposal, what the land is currently appropriated for and what proper advice is recommended that the council should consider for example a valuation of the land and/or instructing a Land Agent.
- 3) If in the first instance a valuation of the land is required, the clerk will request a resolution from the council to that effect and will then arrange for the land to be valued as soon as possible.
- 4) Once the clerk received the valuation a report will be completed to council for their next parish council meeting. This will detail the proposal to dispose, the intended use once disposed and the price of the land. The clerk will ask the council for an indication as to whether the council still wishes to proceed to the next stage, i.e. to establish by resolution the council's intention to dispose of the land by way of a sale as set out in the report.
- 5) If the council do not wish to continue with a sale at this stage the process will stop, and the prospective buyer will be informed that the parish council does not wish to proceed with the sale of the land.

- 6) If the council still wish to sell the land, there is a need at this stage to choose and employ a Land Agent, the clerk will ask the council for a resolution to contact a Land Agent to deal with the sale of the land.
- 7) The council will then formally decide at the meeting whether it wishes to confirm its intention to sell the land based on the valuation, the nature of the proposed use of the land, any objections received and any other factors the council considers relevant.
- 8) Once the formal resolution is made that the land is to be sold, the council will follow the process below.

The council will be inclined to sell land following the tender process:

When it comes to selling land, there are a variety of different methods and strategies the parish council could use to achieve the highest price and best value for the community. One of these options is to work with a Land Agent and to use the tender process, which would be the councils preferred option.

In this type of situation, the council will use the spirit of competition to their advantage by inviting offers from interested buyers through a chosen Land Agent. Selling by tender can be beneficial, in that it allows the council to offer a broad price range, rather than advertise the land with a pre-determined price.

There are some risk involved in selling by tender, which is why it's important for the council to work with a qualified Land Agent who has experience with this particular type of sales process.

See Appendix A for further details of the tender process, including further considerations and the procedure the parish council will follow.

Procedure for the disposal of Parish Council Land by way of swapping for other land, leasing etc.

On the receipt of a request/proposal for the parish council to dispose of parish council land, the following procedure should be followed:

- 1) The request/proposal will be added to the next available parish council agenda by the clerk.
- 2) The clerk will produce a report to council setting out the proposal, what the land is currently appropriated for and what proper advice is recommended that the council should consider for example a valuation of the land.
- 3) If in the first instance a valuation of the land is required, the clerk will request a resolution from the council to that effect and will then arrange for the land to be valued as soon as possible.
- 4) Once the clerk has received the valuation, a report will be completed to council for their next Parish Council meeting. This will detail the proposal to dispose, the intended use once disposed, swap/lease length/rent etc. The clerk will ask the council for an indication as to whether the council still wishes

to proceed to the next stage, i.e. to establish by resolution the council's intention to dispose on the terms as set out in the report.

- 5) If the council do not wish to continue with the disposal at this stage the process will stop and the prospective person will be informed that the parish council does not wish to proceed with the disposal of the land. The council will list any reasons for the rejection as per the considerations below.
- 6) If the council still wish to dispose of the land, there is a need at this stage to advertise the intention to dispose of the land for two consecutive weeks in a local newspaper and to invite objections to be submitted, the clerk will ask the council for a resolution to advertise the disposal of the land and then arrange for this to be carried out as soon as possible.
- 7) Once the deadline for responses has passed the clerk will draw up a further report to council ready for their next meeting, including any objections submitted (redacted under GDPR) or confirm that no objections have been received.
- 8) The council will then formally decide at the meeting whether it wishes to confirm its intention to dispose of the land based on the valuation, the nature of the proposed use of the land, any objections received and any other factors the council considers relevant.
- 9) Once the formal resolution is made that the land is to be disposed, the clerk will request delegated authority to deal with the administrative matters of the lease, swap etc, through to its legal conclusion along with the appropriate solicitors.

When coming to a decision about the disposal of land, the council will use the criteria below, along with any other factors tabled at the time of debate, to reach a balanced judgement as to whether a disposal should be made.

The council will be inclined to dispose of land when:

1. the financial advantage for the parish meets the financial tests described above.
2. the council's current or future liability for maintenance and repair outweighs the amenity the land provides for residents.
3. disposal facilitates broader projects which the council deems to be for the benefit of residents.
4. disposal allows other recognised charitable or not for profit organisations to consolidate landholding for the public good. e.g. Woodlands Trust, Canals and Waterways, National Trust etc.
5. the parish land provides no current discernible amenity to residents nor uncommon environmental advantage for flora or fauna.
6. the value of the land is unlikely to increase beyond inflation, taking into account current market forces, foreseeable additional local developments and national initiatives.
7. Where the disposal will contribute to the vision of the council, goals of the agreed Neighbourhood Plan and the councils' medium-term planning objectives.

The council will be disinclined to dispose of land when:

1. the land's location and current condition add visual amenity.
2. the land has potential to provide opportunity for sport, leisure, or recreation activities
3. the land contributes to the environmental distinctiveness of the area.
4. the land or and its current condition adds to the cultural and heritage dimension of the landscape.
5. the land currently provides useful access routes to residents.
6. its acquisition by a third party might facilitate developments which do not support the principles established in the Council's Vision Statement, Neighbourhood Plan or Lichfield District Council Local Plan.

These lists are for guidance purposes and not exhaustive.

Legislation

Ordinary Appropriation: Land acquired for a purpose is said to be appropriated to that purpose, and can be used for no other purpose, unless the Law permits it, but with certain exceptions a local council, with the Secretary of State's consent, may reappropriate any land not required for the purpose for which it was acquired or appropriated to some other purpose, subject, to the rights of other persons over the land. Appropriation and reappropriation must be made by resolution and are, in their nature, meant to be long lasting. There are no special restraints on the reappropriation of compulsory purchased land as such. [Local Government Act 1972 s126 \(1\)-\(3\)](#)

Ordinary Disposal of Land: Under [Local Government Act 1972 ss127 \(1\) and 131 \(3\)](#), provides that a parish council may dispose of land held by them in any manner they wish, but they must secure the best consideration that they can. (The same provisions in relation to the disposal of land by principal councils are contained in [s 123.](#))

If the land is not held in charitable trust and the disposal is less than the land is worth. The Secretary of State's consent is needed, unless either the disposal is by way of short tenancy, that is a term not exceeding seven years or the assignment of a term with no more than seven years still to run [Local Government Act 1972 s127 \(2\) and \(5\) Local Government Act \(Miscellaneous Provisions\) Act 1976](#). The Secretary of State has given a general consent for the disposal of land at less than full value where:

- A) The council considers that the purpose for which the land is to be disposed is likely to contribute to the achievements of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area:
 - i. the promotion or improvement of economic well-being
 - ii. the promotion and improvement of social well-being
 - iii. the promotion or improvement of environmental well-being; and

- B) The difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 [Local Government Act 1972 s127 \(2\) and \(5\)](#); [Department of communities and Local Government Circular 06/03](#); [Local Government act 1972](#); [General disposal consent \(England\) 2003](#); [disposal of land for less than the best consideration that can reasonably be obtained](#).

Exceptional reappropriations and disposals: In some cases (apart from special covenants) a council owes a duty to the public that land in its possession shall be used for the purpose for which it was acquired. Reappropriation and disposal can threaten that purpose and therefore special formalities must be observed before they can take place.

Open Space: A council cannot reappropriate or, save by way of short tenancy, dispose of any open space or part of it without first advertising its intention for two consecutive weeks in a local newspaper and considering any objections. Such a disposal or reappropriation frees the land from any trust arising solely from its being held in trust for the enjoyment of the public under the [Public Health Act 1875, s164](#), or [Open Space Act 1906 s10](#)

Commons and Allotments: A council wishing to reappropriate land forming part of common or field garden allotments must first advertise its intention for two consecutive weeks in a local newspaper and consider objections. The council then makes the reappropriation by order which has to be confirmed by the Secretary of State, unless the area to be appropriated does not exceed 250 square yards. [Town and County Planning Act 1971 s121](#), amended by the [Local Government Act 1972 s126 \(4\)](#).

Cycle and car parks: A council may, with the Secretary of State's consent, appropriate for the purpose of a cycle or car park any part of a recreation ground , open space or land acquired under repealed [Physical Training and Recreation Act 1937 s 4](#), or its successor, the [Local Government \(Miscellaneous Provisions\) Act 1976 s19](#), provided that the land does not exceed the lesser of one-eighth of the total area or 800 square feet. [Road Traffic Regulations Act 1984 s51](#).

Parking spaces may be let for periods not exceeding seven days, but without prejudice to the council's right to let the land, of which they form a part, for a longer period. [RTRA 1984 s57 \(7\)](#)

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APPENDIX A - Tender Process

Considerations

The advantages of the Parish Council selling by tender:

There are many potential advantages for the parish council selling by tender:

- Because there is no listed selling price, buyers cannot compare the land to others on the market. The sale price of the land is usually kept secret, so complaints about overpriced land are less likely.
- With all bids kept fully confidential, potential buyers cannot base their offer on what others are bidding. This can lead to the winning tender being significantly higher in price than other offers. The amount of the tenders may far exceed the council's expectations.
- The council retains control over the selling process. They don't have to accept the highest tender but knowing this figure can also open up the doors to future negotiations.
- Sales and marketing efforts can be optimised with an intense campaign that aims to put the property directly on buyers' radars, to make them aware of the land's existence before the closing date. This specific closing date also means that sales and marketing campaigns do not last for long periods of time, which saves both time and money.
- The council has control over how much money is spent on the marketing campaign, by limiting the amount of time that the tender sale is to be advertised.
- For council who does not have a clear idea of what the property is worth, this tender bidding process can help indicate a true market value. This is useful for unique land that does not fit into the market in a neat compartment.
- If there are several bidders who are interested in the property, the competitive nature of the tender situation can cause them to bid higher than they normally would.
- Unlike other sales, all tender transactions are completed in cash. This makes tenders different from auctions, which rule out buyers who do not already meet lender criteria for pre-approval. This opens the door to a wider selection of potential buyers.
- Another advantage that a tender has over an auction is that it only requires one interested party, whereas an auction requires at least two bidders to drive up the price. The council also tend to feel less pressure when they are selling by tender, because they do not need to make immediate decisions like they would in an auction.
- A tender process tends to lead to higher bid prices than auctions, because in an auction the highest bidder will stop bidding once the weaker bidder quits. In a tender sale, there is no point when this can happen. The highest bidder

will have to throw out the highest price they're willing to pay, because they do not know what others are bidding. There is no ceiling price that can be put on a sale by tender, meaning that the sky's the limit when it comes to the potential price of a property.

The disadvantages of the Parish Council selling land by tender:

There are numerous potential benefits to choosing the tender process. Yet there is also a certain degree of risk involved for the council. To minimise this risk, the council will choose a Land Agent who has lots of experience with selling by tender. The council will also think about the following potential disadvantages to a tender process:

- The confidentiality provided by this selling process can drive up bids, since the buyers are unaware of what their competitors have offered. However, this can also backfire and lead to lower bids than the expected sale price, because buyers will have no idea of the property's true market value.
- If the tenders submitted are unsatisfactory, it would be possible to negotiate with the interested buyers. This can be a long and drawn-out process, taking a longer time than the council initially hoped for.
- Because an intense advertising campaign is necessary to make buyers aware of the closing date, marketing costs can be high in a tender sale.
- Because the advertising campaign is often shorter than for auction or sale, it is possible that fewer potential buyers are made aware of the property.

Procedure for the sale of land by tender:

1. A tender is essentially a type of closed, silent auction. When selling land by tender, the council will accept tenders from prospective buyers through a chosen Land agent. Who will consider various offers at a pre-specified date. The offers are presented in sealed envelopes to the chosen Land Agent, which are kept secret from other buyers. This means that prospective buyers will remain unaware of what prices competitors are submitting. Before this process begins, the land is first marketed to prospective buyers at inspections. Interested parties can attend these inspections before submitting a written tender by the specified due date. The council are not allowed to accept any offer before the pre-specified deadline has been reached.
2. After the closing date, the council and our chosen Land Agent will go through all the submitted tenders. With our agent's advice, the council can choose the tender that is most favourable – depending on the price offered as well as the terms and conditions.
3. There is no obligation for the council to choose one of the tenders that has been submitted. If none of them are found to be acceptable, the Land Agent can be asked to go back to the potential buyers to see if any of them would be willing to change their conditions or offer a higher price.

4. If this is still not found to be acceptable the council can either accept one of the offers, or they can choose to go back out to tender and the process will start again.
5. The council will then formally decide at the meeting whether it wishes to confirm its intention to sell the land based on the tender process.
6. Once the formal resolution is made that the land is to be sold, the clerk will request delegated authority to deal with the administrative matters of the sale through to its legal conclusion along with the Land Agents and the appropriate solicitors.