

## **Appendix 5 - Organisations' Disposals guidance and consideration of the Rules**

### **Introduction**

When carrying out the Nationwide Survey, we asked all organisations to advise us whether they had guidance on disposal of properties and whether this specifically considered the Crichton Down Rules. We requested a copy of the relevant disposal guidance and, in particular, the parts on how to deal with disposals under the Rules. We have compared the way in which organisations which undertake disposals choose to adopt, interpret and apply the Rules. This has been done by undertaking a critique of the written guidance which we have been sent.

### **1. Government departments**

#### **(a) The Scottish Office Finance Manual - Section 5: Disposal of Property**

##### **Application of disposal guidance**

The Scottish Office Finance Manual states in its Disposal of Property section, that the Government should not hold land for its own sake and should dispose of surplus land as soon as possible, subject to the need to realise "best price". Any sale of land is required to be by competitive bidding, unless there are exceptional circumstances. Sales should normally be complete within 3 years of being declared surplus, or six months in the case of residential property. The Rules are stated as applying to all of the Secretary of State's departments and NDPBs responsible to the Secretary. Local Authorities are not covered by these procedures, however they are expected to follow the same principles to land acquired with the aid of specific grants. Nationalised industries are not covered by the procedures.

##### **Procedures in disposal guidance**

To achieve the best possible price, the department must:

- obtain professional advice from the D A S Land and Property Division;
- obtain a title report;
- follow the trawl procedure and notify PACE, if appropriate;
- check the application of the Rules with the Solicitor's Office;
- check the planning position (and any development potential);
- obtain a pre-sale valuation;
- appoint a professional selling agent;
- consider offers;
- recommend an offer and instruct the Solicitor's office to conclude legalities.

External professional advice should be sought for all but the smallest disposals to cover planning, valuation (departments are no longer tied to the VOA), marketing and negotiation. The two stage tender process stipulates that offers are invited from prospective purchasers, then those making the accepted offers are invited to submit a further offer, which will be considered in the normal manner.

An exercise of any break option, assignation, surrender/renunciation, or sub-letting can dispose of leasehold interests in property. The Secretary of State is not bound by Right to Buy legislation, however the same principles should be applied administratively.

Leasing, rather than selling, is permitted under certain circumstances.

The Rules are stated as applying to the disposal of all Crown land, to protect the interests of former owners of land acquired by or under the threat of compulsory

purchase, including acquisitions under the Blight provisions of s101 of the Town and Country Planning Act (Scotland) 1997. The disposal guidelines reiterate the exemptions under the Rules and are shown accurately.

The disposal guidance states that where land is acquired by compulsory purchase, or the threat or shadow thereof, and is not returned to the former owner/successor, the acquiring body must reimburse the former owner or successor, where the value is enhanced by planning permission given within 10 years of any acquisition completed on or after 25th September 1991.

Development potential must be considered in any valuation. If development potential is seen as a distinct possibility during the sale process, the acquiring body can incorporate clauses into sale agreements to alter them to clawback some or all of the increase in value attributable to the grant of planning permission (for a limited time).

### **Comments**

The Scottish Office written guidance on land disposal is full and generally faithful to the procedures and intentions of the Rules.

## **(b) Department of the Environment - The Vacant Public Land Manual (June 1996)**

### **Application of and procedures in disposal guidance**

Scant reference is made to the achievement of “best consideration” in the disposal of land. The DoE has prepared this manual for use by “Government Office for the Regions contacts” and a further reference is made to Circular 6/93, which is appended to the Manual. This Joint Circular, issued by the DoE and the Welsh Office, provides guidance for authorities on the disposal of land for less than the best consideration that can reasonably be obtained. However, the Memorandum accompanying DoE Circular 6/93, contains a reference to the Rules, as the second subheading in Part III (“some general points”). This appears to occupy up to one page. This Part is not incorporated into the body of the Vacant Public Land Manual.

### **Comments**

This manual contains vague and obscure references to the application of the Rules to the disposal of vacant public land.

## **(c) Ministry of Defence - Defence Estates Organisation “Circular 38/1992 - The Disposal of Surplus Government Land for the Defence Estates”**

This circular, which is binding on MOD Defence Estates (DE), is a reproduction of the Rules from section 1 to section 27.

### **Defence Estates Guide for Ministry of Defence – Stages and Procedures in Disposal (Chapter 38)**

#### **Application of disposal guidance**

The MOD Defence Estates (DE) produces internal guidance on the disposal of surplus property and specific reference is made to the disposal of surplus government land to former owners under the Rules published by the DoE in October 1992. This guide interprets the Rules to apply to all land acquired by or under threat of compulsory acquisition. As a general rule, former owners are to be given the first opportunity to purchase back their former land, provided it has not materially changed in character. The time horizons for offer-back are the same as those in the Rules. There are several

specific and limited exceptions to the general obligations to offer back, including one in favour of certain sitting residential tenants.

Land acquired compulsorily or by agreement under Section 3 of the Defence of the Realm (Acquisition Act) 1916 may be subject to a right of pre-emption. Section 5(3), as amended by Section 2(1) of the Defence of the Realm (Land Acquisition) Act 1920, provides for land to be subject to offer-back, subject to a number of exceptions. These are when buildings of a permanent nature have been erected on the land for disposal and those buildings have been erected wholly or partly at public expense, or by arrangement with any Government Department, or the land for disposal is used in connection with such buildings, provided the land was both acquired between 22 December 1916 and 31 August 1924, and on acquisition, severed from other land.

### **Procedures in disposal guidance**

Disposals to former owners are to be at current market value, as determined by the disposing department's appointed valuer. The guidance indicates that the planning situation is to be resolved prior to the offer-back to former owners, otherwise the Secretary of State could be placed in an intolerable position. Tracing former owners is to be carried out in accordance with paragraphs 18 – 20 of the Rules.

The procedures for dealing with former owner claims are clearly set out:

- Once planning and valuation issues have been resolved, the DLA is required to write to the former owner. If at the end of four weeks a reply to any letters sent is still not received, a reminder is to be sent requiring written intention by the former owner to purchase.
- If there is more than one former owner involved, no immediate reply is sent to those saying they are not interested. However, at the expiration of two months, any intentions received back are to be acknowledged and they should be advised that the property is being sold to other interests.
- When all the former owners (or successors) have been identified and their interest confirmed, the DLA will consider the best allocation to former owners based on the extent of the land available.
- Where the formal offer is not accepted by the former owner, or there is an unacceptable delay on his part, the land is to be offered for sale on the open market, normally by auction, although tender may also be considered, if it is more likely to raise "best price".

A flexible approach is recommended when boundaries of agricultural land have been obliterated, where that is consistent with the proper benefits to public funds. After land required by other Government departments has been excluded, the residue should be divided between former owners with stated considerations. If one or more former owner does not wish to take up the apportioned land offered back, recasting of lots is required. If complete deadlock is reached with former owners, the land is sold by public auction in the "most convenient parcels".

### **Comments**

This disposal guidance provides a full account of procedures to be followed with full and specific reference to the operation of the Rules.

## **2. Government agencies and non- departmental public bodies**

### **(a) Environment Agency – Estates Manual Volume 15, (version 3), October 1998**

#### **Application of and procedures in disposal guidance**

This advice from DETR to the Agency is that in exceptional circumstances, the requirement to dispose of surplus property “as soon as reasonably practicable” and to “seek to secure” market value on disposal is not absolute. This may be deviated from where the Agency can identify and demonstrate an “overriding need” to do so. Notwithstanding this, transactions are to take place on the best possible terms for the Agency.

The Agency is advised to adhere to the Rules and Procedures for the Disposal of Government Land, but where advertising beyond the local area seems expensive and appears likely to be unproductive, the requirements of the Rules need not be applied.

#### **Comments**

Reference is made to the Rules, with few specifics in their own guidelines. The Agency’s guidelines on advertising of proposed disposals are more flexible than the stricter and more conventional approach contained in the Rules.

### **(b) Forest Enterprise - Disposal of Property – Rules and Procedures for Offer-Back to Former Owners or Lessors (J - Appendix 3)**

#### **Application of disposal guidance**

The Rules are deemed to apply to all landed property, if it was acquired by or under the threat of compulsion. A threat of compulsion is assumed in the case of a voluntary sale, if power to acquire the land compulsorily existed at the time, unless the land was publicly or privately offered for sale immediately before negotiations for acquisition.

The guidance states that the Rules cannot set aside any legally constituted right of pre-emption.

#### **Procedures in disposal guidance**

Former owners/successors are to be given the first opportunity to repurchase the land, provided it has not materially changed in character. Land with development potential is not to be excluded from offer back by reason of that potential. Where possible, planning consent is obtained prior to disposal and the land is to be offered back at a value that reflects this fully. Where this is not practicable, the sale is to include clawback provisions.

The time bars on offer-back are those laid out in the Rules, although “leasehold land where the lessee has been in existence for 75 years or more” is added. The exceptions to the offer-back are also as per the Rules, again with the added proviso that residential land held by leasehold is not necessarily to be offered back to sitting tenants. Residential tenants are still offered the first right of refusal.

Tracing former owner provisions are similar to the Rules; however, where a former owner’s address is known and he indicates his desire to purchase, he has three months to agree heads of terms other than price, rather than the two months stipulated in the Rules. The procedures where the former owner’s address is not known are identical. Time limits for negotiation with former owners are stipulated.

Disposal of surplus property to former owners is to be at “**current open market value, as determined by the District Valuer**”. In the case of sales of woodland and plantable land, the DV is to be instructed that he is not empowered to reach agreement at lower than the reserve price.

In accordance with the Rules, lessors and their successors are included in the offer back provisions. On land held freehold or by disposition, purchases by sitting tenants are to be given preference over former owners. However, the terms of many forestry leases effectively prohibit sales to sitting tenants. In the interests of a consistent approach to all such tenants, house tenants are not given preference over lessors.

The offer back provisions for former owners do not apply when the land has been materially changed in character.

### **Comments**

The disposals guidance is full and comprehensive and makes specific reference to the Rules. Some amendments have been made to their application and procedures by extending the timescales set out in the Rules.

## **3. Development agencies e.g. CNT, English Partnerships and The Regional Development Agencies**

### **(a) Commission for New Towns (CNT) – (Guidance Note on Disposal of Land and Built Assets) – (date not known)**

#### **Application of disposal guidance**

CNT is expected to keep its strategy for the orderly disposal of land under continuous review to ensure that it is in line with Government policy and likely to yield optimum results.

The Guidance Note on Disposal of Land & Built Assets (Appendix C) states that, unlike the former development corporations, CNT is empowered to dispose of property for a consideration which is the best reasonably obtainable in the market (as determined by CNT) without requiring the authority of the Secretary of State. However, CNT may hold property for a limited period if it receives clear advice that doing so will bring a higher price in future. A low price due to economic depression is still a market price. It is for CNT to decide whether or not to use external consultants or agents to handle disposal details.

#### **Procedures in disposal guidance**

The marketing strategy for the sale of surplus land is based on a case by case basis and is tailored to suit the state of the market. CNT considers that the best price is normally achieved by maximising price competition and is therefore not too concerned about the method of sale, as long as the property receives full market exposure. The use of external consultants is at the discretion of CNT. The sale price represents the best price attainable after negotiations with potential purchasers.

Clawback provisions are in place which provide CNT with a negotiated portion of the ‘hope’ value associated with the sale of property with planning permission which could bring a higher value to that property at a later date. Should there be marriage value when joint interests are merged creating higher value, CNT will normally seek to acquire 50% of this value.

CNT provides tenants with a fair opportunity to purchase the property they rent. It stipulates the need to have regard for the former owner provisions under the Rules as issued by the DoE on 30 October 1992 & Part IV of the Land Compensation Act 1961.

Section 26 refers to reimbursement of former owners, where the value was enhanced by planning permission within 10 years of acquisition after 25 September 1991.

### Comments

CNT provides a fairly well rounded guidance note to the Rules.

(b) **Urban Development Corporation Guidebook Section E –  
Land Acquisition, Valuation and Disposal (Chapter 15 – Disposal) – August 1996**

### Application of disposal guidance

The guidance has been agreed with Treasury as the basis for the implementation of the disposal strategies. The guidance states that where it differs from Treasury Guidance, that this document prevails, or that clarification should be sought from the Department's Headquarters Division. The two principal differences noted are that the market value for UDCs may reflect regeneration objectives rather than necessarily the use which would give best price and that sale by Private Treaty will be less exceptional for UDCs because of regeneration objectives.

### Procedures in disposal guidance

UDCs are expected to dispose of land at market value which reflects “...*best price reasonably obtainable for a proposed use which is in line with regeneration objectives rather than necessarily reflecting the value of the most profitable use that could take place on the site.*”

UDCs should only hold land which is required to secure the regeneration of their UDA. Regular reviews of their holdings are held and they are required to dispose of any land not required for that purpose, unless there is a compelling reason for deferment.

UDCs should obtain a professional valuation prior to negotiation to establish a guide price or provisional reserve price. For properties where value is likely to be less than £5m, either an internal or external valuer is acceptable; otherwise a qualified valuer independent of UDC must be retained. They are advised always to consider clawback arrangements for hope value and to seek 50% of any marriage value. Tenants should have a fair opportunity to buy the property which they rent.

The state of market is considered relevant to the method of sale selected, the purpose being to maximise price competition to achieve “best price”.

The Guidance Note states that when disposing of land acquired compulsorily or under threat of compulsion, UDCs should have regard to the Rules, as issued by the Department on 30 October 1992. When land acquired in these circumstances is to be sold for purposes which do not contribute to the UDC's objectives, it should be offered back to the original owners, unless one or more of the exceptions apply.

When a UDC disposes of land vested in it or acquired by it under the 1980 Act, it is required by Section 146(2) of the Act to ensure **so far as practicable** that occupants of the land who wish to obtain alternative accommodation within the UDA, have an opportunity to obtain accommodation suitable to their requirements on terms settled with due consideration to the price at which the land was acquired from them.

A UDC's industrial and commercial/head-lessees should have a fair opportunity to buy the property which they rent. In cases where it would be appropriate for a UDC to negotiate with a sitting tenant by private treaty, such negotiations must be conducted against a full knowledge of market value. In some circumstances this will only be possible if there is a parallel test of open market interest.

## Comments

UDCs are advised to have regard to the Rules when disposing of surplus land. However the checklist for disposals does not specifically refer to the Rules. Otherwise, the Guidance on disposals is reasonably comprehensive.

## 4. Health Sector (RHAs & Trusts)

### (a) NHS Estates – Estatecode (1993) (republished 1995)

#### Application of disposal guidance

This guidance is produced by the NHS Estates, an executive agency of the Department of Health. It is guidance which under the National Health Service and Community Care Act (1990) is deemed to be binding on all Health Trusts. This document requires that a Trust must first consider whether another NHS body may require any surplus property. The basis of such a sale is open market value. The District Valuer can settle on the market value of the property, should negotiations not be successful.

#### Procedures in disposal guidance

The guidance states that Trusts should recognise that land will usually be deemed to have been acquired compulsorily, therefore the Trust will need to ascertain if there is the requirement to offer back a surplus property to its former owner. The Rules are not considered to apply when:

- the property was acquired on the open market;
- if agricultural land, was acquired prior to 1<sup>st</sup>. January 1935;
- if it is other land, it was acquired more than 25 years before disposal;
- the character of the land has materially changed;
- the disposal comprises a development site of two or more former landholdings;
- the disposal is, effectively, “*de minimis*”;
- the land is required for another public sector purpose with ministerial approval.

Trusts are advised to consult their solicitor to determine if the Rules apply, and if so, consultation should be sought in relation to:

- establishing the identity of the former owner or successor;
- assessing the terms of the offer and method of fixing price;
- giving the former owner two months to agree basic terms and a further six weeks to agree the price (with appropriate extensions);

If there is no agreement, the land is offered on the open market.

The guidance refers to the requirement that under Section 66 of the Planning and Compensation Act 1991, where land acquired by, or under threat of, compulsory purchase after 25 September 1991 subsequently has the benefit of alternative planning permission within ten years of acquisition, the original owner should be reimbursed the added value.

A Trust is normally obliged to act as if the right-to-buy legislation contained in the Housing Act 1985 applies where a tenant occupies a surplus residential property.

## Comments

The Estatecode provides a fairly full account, with reference to the requirements to offer surplus land back to former owners under the Rules.

**(b) NHS Property Transactions (Part C: Procedures) – November 1997**

**Application of and procedure in disposal guidance**

The NHS Sale of Property Procedures from November 1997 states that Government should not hold land for its own sake and therefore should dispose of surplus land as soon as possible, subject to the need to realise “best return”. This achievement of best return is considered more important than expediency of the sale. Both suitable marketing and the best available planning permission are pre-supposed. The guidelines are wary of over-loading the market, and do require a professional valuation prior to sale. Private sector valuers or in-house staff are acceptable for this purpose unless the property is particularly unusual, is over £3 million, or where sale to a commercial organisation is involved.

Holding bodies are required to regularly review their property holdings to identify surplus property. In certain circumstances, a holding body should consider if the Rules apply to the disposal of compulsorily acquired land. In these circumstances, confirmation from the appointed Legal Adviser must be sought on the terms upon which the property should be offered back.

**Comments**

Limited value as a guide to procedures under the Rules

**5. Privatised Utilities**

We have been given an extract from the Ofwat Guidance Note for water companies on the disposal of land, issued in April 1996. The General Authorisations issued by the Secretary of State under section 156 of the Water Industry Act 1991 require that land should be disposed of for “Best Price”, which is defined as the best price reasonably obtainable but having regard to “the consideration and other value of any kind”, so that a restrictive covenant of value to the vendor might be taken into account.

Requirements similar to the Crichel Down Rules apply but only to disposals of land acquired under an “approved” CPO rather than just under the threat of CPO provisions.

We have not been given any disposals guidance by other organisations.

**6. Local Authorities**

**(a) The Commission for Local Administration in England**

**Local Government Ombudsman (Disposal of Land – Guidance on Good Practice 5)**

**Application of disposal guidance**

The Ombudsman recognises that clear procedures are not in place for the disposal of land and as a result of complaints received has published guidance on good practice, recommended to all Local Authorities. The Ombudsman does not recommend a specific method of marketing.

**Procedures in disposal guidance**

The guidance states (para14) that any proposal to dispose at less than “best terms reasonably available” (an incorrect reference) requires consent of a committee or sub-committee and, unless the disposal is of a short lease, will require the consent of the Secretary of State for the Environment. Councils are recommended to have regard to

the Crichel Down Rules issued by DoE on 30 October 1992. Part IV of the Land Compensation Act 1961 applies if land is not returned to the former owner/successor, whereby the former owner/successor is reimbursed where the value of land is enhanced by planning permission given within 10 years after any acquisition after 25<sup>th</sup> September 1991.

The consent of the Secretary of State for the Environment is to be obtained, if land is to be disposed of at less than the best available price.

The consideration of the Rules in the disposal guidelines largely mirrors the Rules with regard to:

- blight;
- change in material character;
- former owner may mean long leaseholder with greater than 21 years term unexpired;
- exemptions from the Rules;
- tenant's pre-emptive rights;
- the procedures for tracing former owners;
- the offering procedures where the address of former owners is both known and not known;
- disposals to former owners under these circumstances is to be at current market value as determined by the disposing department's valuer; and
- special procedures for when boundaries of agriculture land have been obliterated.

### **Comments**

The document is a comprehensive guide to disposals, set out in a clear and informative manner. A good reference is made to the requirements introduced by the Rules, and specific reference to the Rules.

## **(b) Royal Borough of Kingston upon Thames – Statement of Practice for the Disposal of Land**

### **Application of and procedures in disposal guidance**

A Committee will determine whether or not to dispose of particular land and the disposals procedure, with the Council normally inviting competitive bids. The property is to be valued by the District Valuer and/or a specialist valuer. The Council regards itself as having a legal duty to sell surplus land for the best available price. Where the Council is disposing of land which has been acquired by use of compulsory purchase, the Strategic Committee will decide whether it wishes to follow the Rules.

### **Comments**

The guidance is self reliant, very brief and general, with the only limited mention of the Rules.

## **(c) Doncaster Borough Council – Land Disposal Protocol**

### **Application of and procedures in disposal guidance**

Surplus land will normally be disposed of by way of competitive tender and open advertising on the market (private treaty, tendering or auction), although these methods

may not always necessarily be the most appropriate. Nevertheless, the disposals guidance indicates that there must be a robust, transparent process leading to this decision and planning potential must be established prior to disposal. The Council must obtain “best consideration”. Land disposals carried out under the provisions of General Disposal Consents are covered by a separate protocol. The Rules are not noted.

#### **Comments**

Very brief procedural guide, with no mention of the Rules.

#### **(d) City of Liverpool – Procedural Notes for the Disposal of Property**

##### **Application of and procedures in disposal guidance**

Surplus land will normally be disposed of by way of competitive tender and open advertising on the market (private treaty, tendering or auction), although these methods are not always necessarily considered to be appropriate. Where a property is compulsorily acquired and is being sold in its original condition, without having been put to the purpose for which it was acquired, the Council considers that it is under an obligation to first offer it at full market value to the original owner – under the Crichel Down Rules. A reference is to be made to the “manager” for further details on the application of the Rules.

#### **Comments**

The Council has taken the decision to apply the Rules in relevant disposals and alerts the disposal team of the need to refer such a disposal to the “Manager”.

#### **(e) Shropshire County Council - Procedure Manual, June 1997**

##### **Procedures in disposal guidance**

It is the valuer’s responsibility to consider whether there is any obligation to offer the property back to the original vendor. The valuer is referred to the Local Government Ombudsman Report - “Disposal of Land, Guidance on Good Practice”

#### **Comments**

The disposals guidance refers to the Rules by reference to the Local Government Ombudsman report. Reference to the Rules is scant.

#### **(f) London Borough of Hounslow – Procedures for Disposal of Land and Property**

##### **Application of and procedures in disposal guidance**

The disposals guidance is formally included in Annex 3 of Standing Orders. Each Chief Officer has a duty to regularly review the use of land under their control and to indicate the presence of any surplus land. The procedures stipulate the necessity of compliance with s123 of the Local Government Act 1972 (best consideration). Any land must be properly declared as surplus and must be presented to Committee with an attached recommendation as to the best method of disposal.

Except where the disposal is to be by negotiation with one party only or by auction, disposals must be advertised in one or more local newspaper and in a property or land

related journal. Should auction be the selected method of disposal, the auctioneers will enter the property into the auction brochure for circulation.

The Council should sell for best available price and consent from the Secretary of State for the Environment is required where this is not the case.

Whilst there is no note to such effect, the document does appear to be in draft stage, as, at various stages throughout the document the words "Borough Solicitor to comment please" appear in brackets.

### **Comments**

Whilst best consideration is required and guidelines are provided for advertising surplus property for sale, no note is made of the Rules, either in the text (section 2) or in the disposal procedure checklist (section 6). The principles of the Rules are given scant regard.