

Oadby and Wigston Borough Council

Land and Buildings Disposal Policy

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Land & Buildings Disposal Policy

1.0 Introduction

- 1.1 Unlike private property owners, local authorities are subject to constraints when they come to dispose of land or buildings in their ownership. Some of these constraints are enshrined in law; others arise because of a general expectation that local authorities should be seen to act fairly when disposing of land and ensure the best outcome for their residents.
- 1.2 Changing requirements and regular review of property assets will at times lead to them being deemed surplus. In addition, there may be circumstances in which a disposal is considered the best way to achieve one or more objectives of the Council. The purpose of this policy is to provide a framework for the disposal of such property assets.
- 1.3 In order to comply with legislation and best practice it is essential that the procedures adopted for land disposal are directed to obtaining the best terms reasonably available:
- a) Allowing all interested parties an equal opportunity to lease or purchase, and;
 - b) Avoiding partiality or bias

2.0 Legal Framework

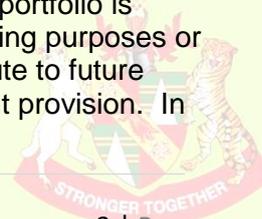
- 2.1 The Council may dispose of surplus land and property having regard to the provisions in section 123 of the Local Government Act 1972 (**Appendix A**) and the General Disposal Consent 2003 (**Appendix B**). This legislation ensures that property is disposed of at the best price obtainable subject to certain exceptions.

3.0 What is a disposal?

- 3.1 For the purposes of this policy, a disposal of property is considered to be a disposal if it consists of
- a) A freehold transfer; or
 - b) The grant of an interest in Council owned land and/or buildings (i.e. a licence or a lease)

4.0 Reasons for the Council holding property

- 4.1 Delivery of public services and property assets are intrinsically linked: The reasons for the Council holding property are:-
- a) For the purpose of direct service delivery (such as parks and gardens)
 - b) To support service delivery (for example administrative offices and depots)
 - c) To support the Council's wider policy objectives. This part of the portfolio is varied: Many assets have been made available for social or sporting purposes or are retained for a range of reasons such as a potential to contribute to future regeneration schemes or provide workspace for local employment provision. In



addition, the portfolio provides a valuable revenue income which in turn helps to support the Council in delivering important services to its residents.

4.2 The strategic property aim is to ensure that OWBC land and building assets are efficiently managed, maintained, redeveloped, acquired and disposed of in a consistent, strategic manner that supports corporate objectives and service delivery.

5.0 **Identification of surplus and under used property**

5.1 Property will be identified as surplus if it does not fulfil any of the reasons or objectives for the council holding property assets as set out above.

5.2 It is the responsibility of each service, through its annual Service Business planning, to identify any property or part thereof, that is under used or surplus to their individual service delivery requirements. Following the identification of surplus property, or part thereof, it should be referred to the Corporate Assets Team to consider any other potential uses for the property, including operational use by an alternative service.

5.3 Where a surplus asset is not deemed as having an alternative potential use, a recommendation to the Senior Leadership Team will be made to establish the property as surplus for disposal.

5.3 As well as identification by a service area, surplus land and property may be identified by the following methods:

- Asset Challenge Review
- Following a direct approach from an interested party These methods are explored further below.

6.0 **Asset Challenge Review**

6.1 The Council owns a wide range of assets within its property portfolio. These are a valuable resource and one which should be managed in an efficient and effective way in line with the Council's strategic property aim. If the resource is not managed well, there is potential for wasting revenue on operating and maintaining assets that are either ineffective or inefficient. Equally there is a capital value locked into assets which if the asset is no longer required, could be realised, and capital liabilities that could be avoided.

6.2 Where assets are still required, then the wrong asset in the wrong location can make a difference to the efficiency of services delivered and impact negatively on customer access to those services. If property assets are not well maintained, this affects the customer experience and can impact negatively on the Council's reputation in the community.

6.3 The Council should undertake a regular asset challenge process which enables the Council to understand what assets they own, what these cost, what benefit is derived from them and whether there are opportunities that can be exploited from the asset base.

7.0 **Direct approaches to acquire property interests from the Council**

7.1 The Council regularly receives enquiries from third parties wishing to acquire an interest in Council owned property. This can range from running an event on or in a Council asset, to acquiring a leasehold or freehold interest.



7.2 There are application processes in place for these enquiries. Application forms are available online or can be obtained from the Corporate Assets Team . There is a draft 'Frequently asked Questions and Answers' page for our website at **Appendix G** which provides further details in relation to the process. Events are managed by the Communications Team. As part of the Council's digitalisation programme, it is anticipated that online applications will be the method of submission in the future.

7.3 Some types of applications carry a small administration fee and a schedule is set out below:-

Purchase of freehold or lease	£150
Temporary use of council land up to 28 days	£75
Easement over land	£50
Events application	
Small event (up to 499 attendees)	£45
Medium event (500-999 attendees)	£75
Large event (1000-4999 attendees)	£100
Major event (5000+)Details on request	

7.4 The fees are a contribution towards the cost of administering the applications and are non-refundable unless the enquiry leads to the open marketing of the property.

7.5 Utility companies have legal rights to acquire wayleaves or easements over land and are processed on a case by case basis.

8.0 **Property Disposal Responsibilities**

8.1 All proposed freehold and leasehold property disposals are managed by the Corporate Assets Team.

8.2 The Corporate Assets Team will advise on the appropriate method of disposal (**Appendix D**) and follow the relevant property disposal procedures. These procedures are all based on the assumption that the Corporate Assets Team ensure that market value/ the best price achievable (whether by way of freehold or leasehold) is attained.

8.3 The table below outlines the financial thresholds for decisions relating to the disposal of land and buildings as detailed in the Council's Constitution

Capital Receipt Value	
Where the value of the transaction exceeds £30,000	Policy Finance and Development Committee
Annual Rent	
Where throughout the term the annual rental will exceed £20,000	Policy Finance and Development Committee



Where the values fall below the above thresholds then the decision making power is delegated to the Strategic Director (subject to provision of a monthly list of such acquisitions and disposals to the Chair of the Policy, Finance and Development Committee).

8.5 Minor Disposals

8.5.1 A minor disposal generally arises when an application is received from adjacent or neighbouring owner(s) to purchase the freehold or leasehold interest (in excess of seven years) of a small or inconsequential area of land in the Council's ownership where the land

- a. Is surplus to requirements;
- b. Has no development value;
- c. No open market opportunity; and
- d. A market value of less than £10,000.

8.5.2 It is permissible in these cases to open 'confined' negotiations with the adjacent or neighbouring owner to achieve the most advantageous financial result or for reasons of good estate management; e.g. if the land is 'landlocked' or is difficult or expensive to maintain. These owners are considered 'special purchasers'. A special purchaser is a particular buyer for whom a particular asset has special value because of advantages arising from its ownership that would not be available to other buyers in a market.

8.5.3 There may also be circumstances where it is in the Council's interest to initiate a minor disposal. However, departure from open marketing should only be considered in the circumstances as outlined in this section and on the advice of the Corporate Assets Team.

8.6 Major Disposals

8.6.1 A major disposal is any disposal not covered by the minor disposal definition above. The Corporate Assets team will advise on the appropriate method of disposal.

8.7 Member Involvement

8.7.1 Members should not be involved in negotiations on land and property transactions with third parties. Member involvement in the discussion of initial scheme proposals (e.g. the assessment of schemes at expression of interest or formal tender stage) will occasionally be necessary but this should only be in the format of proper meeting and presentations organised in consultation with the relevant Committee Chair. Where a third party attempts to involve a Member in negotiations, the Member shall refer the same to the Monitoring Officer or to such other officer as the Monitoring Officer may direct, and have no further part in the transactions concerned.

9.0 Disposing of a property assets for less than best consideration

9.1 The Council may dispose of surplus land and property having regard to the provisions in section 123 of the Local Government Act 1972 (**Appendix A**) and the General Disposal Consent 2003 (**Appendix B**). This legislation ensures that property is disposed of (otherwise than by way of a short tenancy,) at the best price obtainable. As a first principal, an asset identified as being surplus for disposal will be marketed openly.

- 9.2 The Council may sell an interest in property at less than best price where it is considered that the purpose of the disposal will achieve the promotion or improvement of the economic, social or environmental well-being for the area and/or local residents.
- 9.3 Valuation advice should be reported to set out the unrestricted (best price obtainable) and restricted values, together with the value of conditions. This will ensure that the monetary value to the authority of any voluntary conditions can be taken account. Control over the sale of land and property at an under value is important because of the possible impact on the capital programme if capital receipts are lower than they would otherwise be if the land was sold at best consideration.
- 9.4 The undervalue must be £2,000,000 or less, and the land must not be held for planning purposes, otherwise the Secretary of State's specific consent is needed. However, even where the Secretary of State consents to a disposal at less than the best consideration that can reasonably be obtained, the disposal must still comply with Subsidy Control rules.
- 9.5 While this exception may be made, it is the Council's policy that all disposals achieve best consideration (market value). Only in very exceptional circumstances will the Council consider the use of its powers under the General Disposal Consent 2003. In all cases where disposal is proposed on terms at a less than best consideration basis, then delegation to Officers shall not apply and approval will be sought from members of the Policy Finance and Development Committee or Council as appropriate. This is to ensure that the legal requirement to ensure that the Council is satisfied that the "wellbeing test" is met and that the amount of "under value" is tested by the Council's valuers.
- 9.6 Any freehold disposal made below market value is subject to the Council having a first call on the property should the asset become surplus to the transferee/purchaser's requirements and a decision taken to dispose of the premises. This is based on the Council paying no more than the original transfer amount.
- 9.7 Should the Council wish to waive its right to buy back the asset, a clawback overage provision will protect the Council's original interest should the site be sold on the open market and permission granted for a higher value use. Such provision will be made for a 25 year period and a 50% share in the increase in the value of the land from the transfer price to the value with the benefit of planning permission. The trigger dates will be the date of the sale of the land with the benefit of planning permission.
- 9.8 The most likely circumstances in which the Council will consider a sale or lease at less than best value are:-
- i. Where the disposal will meet the strategic aspirations of the Council. For example, will enable the Council to acquire housing allocations.
 - ii. Where the freehold interest of an asset is to be transferred or a long lease granted to a social enterprise i.e. a business which has social, charitable or community based objectives that help people or communities and where there is a clearly demonstrable community gain or benefit.



- 9.9 A social enterprise may be a Voluntary or Community Sector organisation such as a registered charity, a community interest company or a charitable incorporated organisation, a not for profit company or a co-operative who must meet the criteria set out in the Social Enterprise and Charities Checklist at (**Appendix F**).
- 9.9 Community gain or benefit will be measured using a combination of measures which may include some but not all of the following factors:
- i. A reduction in revenue expenditure by the Council by way of granting a full repairing lease.
 - ii. Income to the Council arising from profit share agreements where the asset to be disposed of operates all or part of it on a commercial basis e.g. a Community Centre/pavilion that has scope to be hired for private events such as weddings and parties etc.
 - iii. The continued provision of a service which the Council would otherwise cease to offer which remains accessible to all
 - iv. The ability of the Social Enterprise or Charity to access funding which is not available to the council for the continued provision of services or the provision of new services.
 - v. The further development of a service to increase size, accessibility, interest and scope. Clear parameters would need to be agreed in any property changes.

Subsidy Control Rules

10.0 When a local authority disposes of land at less than best consideration, it provides a subsidy to the purchaser. The nature and amount of subsidy must comply with the rules in relation to Subsidy Control, particularly if there is no element of competition in the sale process. Failure to comply with the state aid rules will mean that the subsidy is unlawful, and may result in the benefit being recovered (with interest) from the facility.

10.1 Subsidy Control definitions are as set out in the UK-EU Trade and Co-operation Act defines as a subsidy as *financial assistance which;*

3.4.1 arises from the resources of the Parties including:

(a) a direct or contingent transfer of funds such as direct grants, loans or other loan guarantees;

(b) the forgoing of revenue that is otherwise due; or

(c) the provision of goods or services, or the purchase of goods or services;

3.4.2 confers an economic advantage on one or more economic operators;

3.4.3 is specific insofar as it benefits, as a matter of law or fact, certain economic actors over others in relation to the production of certain goods or services; and

3.4.4 has or could have, an effect on trade or investment between the Parties.

3.5 An economic actor is an entity or group of entities constituting a single economic entity, regardless of its legal status that is engaged in economic activity by offering goods or services on a market.

10.1 In order to avoid triggering the subsidy control rules when disposing of publicly owned property, it is necessary to ensure that the purchaser pays a market price.

11.0 **Open Space**

11.1 The Council will not normally dispose of any core recreational open spaces by way of freehold interests.

11.2 The Council will consult its relevant services, such as Planning Policy and Corporate Assets and the Community and Wellbeing Team to ensure that disposal of an open space asset would not prevent or put at risk other plans or strategies.

11.3 The Council will consider applications for the disposal of 'incidental open space' and areas of landscaping or parts of these – particularly where it will improve the management of the land benefiting the wider public, will reduce unacceptable and significant impacts on a neighbouring property resulting from the misuse of the open space and/or clears up anomalies of past land sales, acquisitions and transfers.

11.4 The legal requirements of the Council to advertise proposed disposal of public open space and consider objections must all be complied with. Open Space is defined as any land "laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground". The Council is obliged to give notice of the intention to dispose by placing a public notice in the local newspaper for two consecutive weeks. Any objections must be considered. Applicants will be requested to meet the costs of advertising the proposed transfer. All potential purchasers will have to meet the costs of advertising the proposed sale.

11.5 The Council will not agree disposals where it judges that the personal safety for users of the remainder of nearby open space will be detrimentally affected e.g. where a narrow alleyway is created. Neither will the Council contemplate sales which lead to the wholesale loss of, or detract from the visual quality of the surrounding area. It may apply covenants on sales to retain the open nature of landscaped areas and/or to require the provision of certain standards of new boundary fencing, walling or delineation.

11.6 Consideration of any detrimental impact of such disposals on neighbouring properties not financially involved in nor benefiting from the sale will also be given and this may be grounds for the Council refusing an application to acquire an interest in the asset.

12.0 **Events on Council Owned Land**

12.1 Events can play an important part in Oadby and Wigston's cultural offer making a major contribution to community cohesion and well-being, as well as making a positive contribution to the economic well-being of the area.

12.2 The hire of Council land for events is managed, and licences issued by, the Corporate Assets Team.



- 12.3 Temporary Event Notices or Premises license may also require serving for certain events to permit licensable activities such as regulated entertainment or the sale of alcohol. These applications are processed and served by the Licensing Team.

13.0 **Property Disposal Procedure**

- 13.1 Once a property is deemed surplus for disposal by the Senior Leadership Team, the Corporate Assets Team will determine the appropriate method of disposal. While there are minor variations relating to the differing types of disposal method, the following principles generally apply to all freehold sales of property:-

Pre-Marketing

1. Internal consultation – To give internal departments a further opportunity to provide any comment or express an interest in use of the asset within a time limit of 21 days. This will ensure that the disposal will not prevent or put at risk other plans or strategies. The consultation includes circulation to relevant ward members.
2. Legal consultation – To report fully on the Council's title and any rights or obligations which might affect it. Where it is intended to include covenants or conditions, legal advice should be obtained prior to negotiations.
3. Former Owner – Consider if there is an obligation under the Crichel Down Rules to offer the land back to a former owner. A summary of these rules and procedures is at **Appendix C**.
4. Where development potential has been identified, pre-application advice will be sought from the Development Control Team to establish clarity around potential uses, density of development etc
5. Where the property has been registered as an asset of community value under the Localism Act 2011 Right to Bid legislation, the Council's Planning Policy Team must be advised by way of a completed Section 95 Notice. Following receipt of this notice there will be a statutory interim moratorium period and possibly a full moratorium period, during which the property will not be disposed of.
6. Consideration of method of disposal – See **Appendix D** which considers the options available. **Appendix E** provides guidance aimed at minimising or addressing the difficulties presented by late or revised bids.

Preparation for marketing (Based on in-house marketing)

1. Pre-marketing inspection by the Corporate Assets Team if property includes a building. Condition survey and energy performance certificate to be obtained. Health and safety related works will be considered.
2. Marketing inspection by Corporate Assets Team. To include inspection for valuation report and to acquire information for marketing literature.
3. VAT position established (Finance).



4. Marketing literature prepared. Sales/letting details and press release.
5. For sale or to let board erected where relevant.
6. At the discretion of the Corporate Assets Manager, external agents may be appointed to undertake the marketing on the Council's behalf where deemed appropriate.

Marketing

1. Marketing literature, as a minimum, forwarded to:-

- Relevant ward members
- Council website page
- Enquiries Log relevant potential buyers/tenants

This list is not exhaustive, and the Corporate Assets Team will determine other appropriate recipients on a case by case basis to ensure as broad exposure as possible.

2. Press release sent to local newspapers. Message to be posted on Twitter and Facebook. Adverts placed in relevant media e.g. Local newspaper
3. Negotiation of terms (except where disposed by auction or formal tender)
4. Where bids are assessed by way of an informal or formal tender process, officers undertaking assessment of those bids sign Declaration of Interest Canvassing Confidentiality form.
5. Relevant anti-money laundering checks undertaken
6. Where the purchaser is a social enterprise or charity, Social Enterprise and Charities checks undertaken as detailed in **Appendix F**.
7. Heads of terms for a purchase agreed (subject to contract) and signed by potential purchaser.
8. Relevant authority acquired to proceed.
9. Decision to be reported retrospectively to the next meeting of the Policy Finance and Development Committee.
10. Website/ Marketing Boards updated – 'under offer'
11. Legal Team instructed by Corporate Assets Team to prepare relevant legal documentation.

Sale complete

1. Post completion tasks undertaken. These include:-



- Website updated – marketing literature removed
- Business Rates advised
- Insurance officer advised
- Asset register and GISMO software updated
- Issue of press release (where relevant)

12.6 Based on the Disposal Policy framework, officers work within procedure guidelines which include those specifically adapted for the types of disposal set out below. Where these are not in place at the time of adoption of the Policy, they will be established within 12 months.

- Disposal marketed
- Disposal not marketed
- Lease marketed
- Lease not marketed
- Easements
- Wayleave requests
- Temporary Licence
- Concession marketed
- Concession not marketed
- Events



Appendix A

s.123 Local Government Act 1972 (as amended)¹

- (1) Subject to the following provisions of this section, a principal council may dispose of land held by them in any manner they wish.

- (2) Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.
 - (2A) A principal council may not dispose under subsection (1) above of any land consisting or forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them.

 - (2B) Where by virtue of subsection (2A) above a council dispose of land which is held—
 - (a) for the purpose of section 164 of the Public Health Act 1875 (pleasure grounds); or
 - (b) in accordance with section 10 of the Open Spaces Act 1906 (duty of local authority to maintain open spaces and burial grounds),

the land shall by virtue of the disposal be freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with the said section 164 or, as the case may be, the said section 10.

- (3)—(6) (Repealed)

- (7) For the purposes of this section a disposal of land is a disposal by way of a short tenancy if it consists—
 - (a) of the grant of a term not exceeding seven years, or
 - (b) of the assignment of a term which at the date of the assignment has not more than seven years to run, and in this section “public trust land” has the meaning assigned to it by section 122(6) above.

¹ <http://www.legislation.gov.uk/ukpga/1972/70/section/123>



Appendix B

The Local Government Act 1972: General Disposal Consent (England) 2003²

The First Secretary of State ("the Secretary of State"), in exercise of the powers conferred by sections 123(2), 127(2) and 128(1) of the Local Government Act 1972, hereby gives consent to a disposal of land² otherwise than by way of a short tenancy³ by a local authority in England in the circumstances specified in paragraph 2 below.

The specified circumstances are:

The local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one of 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;

The promotion or improvement of economic well-being;

The promotion or improvement of social well-being;

The promotion or improvement of environmental well-being; and

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 (two million pounds).

Interpretation and savings

In this instrument –

“local authority” means:

- i. London borough council
- ii. A county council
- iii. A district council

iv) a parish council and parish trustees acting with the consent of a parish meeting; v) a National Park authority; vi) a Metropolitan Borough Council vii) a joint authority established under Part IV of the Local Government Act 1985; viii) a police authority established under section 3 of the Police Act 1996; ix) the Metropolitan Police Authority; x) the London Fire and Emergency Planning Authority; xi) the Broads Authority; xii) the Council of the Isles of Scilly;

and any other person to whom, by virtue of statute, section 123(2) or section 127(2) of the Local Government Act 1972 applies;

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7690/462483.pdf



"unrestricted value" means the best price reasonably obtainable for the property on terms that are intended to maximise the consideration, assessed in accordance with the procedures set out in the Technical Appendix.

(2) Nothing in this instrument shall be construed as giving consent to a disposal for any purpose for which the consent of the Secretary of State is required by virtue of section 25(1) of the Local Government Act 1988, section 133(1) of the Housing Act 1988, section 32(2) or section 43(1) of the Housing Act 1985, or otherwise as having effect as a consent for any purposes other than those of Part 7 of the Local Government Act 1972.

Citation and revocation

4. (1) This instrument may be cited as the Local Government Act 1972 General Disposal Consent (England) 2003 and shall come into effect on 4 August 2003.

(2) The Local Government Act 1972 General Disposal Consents 1998 are hereby revoked insofar as they apply to England.

Signed by authority of the First Secretary of State

Lisette Simcock

30 July 2003 Divisional Manager

Plans, International, Compensation and Assessment Division

Technical Appendix

Valuations For The Purpose Of Determining Whether Proposed Land Disposals Under The Terms Of The Local Government Act 1972 Fall Within The Provisions Of The General Disposal Consent 2003

The Valuation Report

1. An application to the Secretary of State for a specific consent to dispose of land under the terms of Part 7 of the Local Government Act 1972 for less than the best consideration reasonably obtainable must be supported by a report prepared and signed by a qualified valuer (a member of the RICS), providing the following information.

Valuations

2. The report should set out the unrestricted and restricted values together with the value of conditions. Where any of these is nil this should be expressly stated. The valuer should also describe the assumptions made. These might include, for example, existing or alternative uses that might be permitted by the local planning authority, the level of demand and the terms of the transaction. The effect on value of the existence of a purchaser with a special interest (a special purchaser) should be described.

3. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State where the difference between the unrestricted value of the land to be



disposed of and the consideration accepted is £2,000,000 or less. The purpose of requiring the restricted value and the value of conditions to be reported as well as the unrestricted value is to ensure that the monetary value to the authority of any voluntary conditions can be taken into account when applications for specific consent are considered by the Secretary of State.

4. The valuer should take into account the requirements of the RICS Appraisal and Valuation Standards (Fifth Edition), ("the Red Book"), including UK Guidance Note 54. All values should be assessed in capital, not rental, terms; and where a lease is to be granted, or is assumed by the valuer to be granted, the valuer should express the value of the consideration as a capital sum.

Unrestricted value

5. The unrestricted value is the best price reasonably obtainable for the property and should be expressed in capital terms. It is the market value of the land as currently defined by the RICS Red Book (Practice Statement 3.2)⁵, except that it should take into account any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest (a "special purchaser"). When assessing unrestricted value, the valuer must ignore the reduction in value caused by any voluntary condition imposed by the authority. In other words, unrestricted value is the amount that would be paid for the property if the voluntary condition were not imposed (or it is the value of the property subject to a lease without the restriction).

6. In general terms, unrestricted value is intended to be the amount which would be received for the disposal of the property where the principal aim was to maximise the value of the receipt. Apart from the inclusion of bids from a purchaser with a special interest it is defined in the same way as market value. For example, the valuer should take account of whatever uses might be permitted by the local planning authority insofar as these would be reflected by the market rather than having regard only to the use or uses intended by the parties to the proposed disposal.

7. The valuer should assume that the freehold disposal is made, or the lease is granted, on terms that are intended to maximise the consideration. For example, where unrestricted value is based on the hypothetical grant of a lease at a rack rent, or a ground rent with or without a premium, the valuer should assume that the lease would contain those covenants that a prudent landlord would normally include. The valuer should also assume that the lease would not include any unusual or onerous covenants that would reduce the consideration, unless these had to be included as a matter of law.

8. In the case of a proposed disposal of a leasehold interest, or where the valuer has assumed that a lease would be granted, the unrestricted value should be assessed by valuing the authority's interest after the lease has been granted plus any premium payable for its grant. This will usually be the value of the authority's interest subject to the proposed or assumed lease. In other words, it will be the value of the right to receive the rent and other payments under the lease plus the value of the reversion when the lease expires.

9. Where an authority has invited tenders and is comparing bids, the unrestricted value is normally the highest bid. But where, on the advice of the authority's professionally qualified valuer, the authority considers that the highest submitted tender is unrealistically high, or is too low, the unrestricted value may be assessed by the valuer.



Restricted value

- 10.** The restricted value is the market value of the property having regard to the terms of the proposed transaction. It is defined in the same way as unrestricted value except that it should take into account the effect on value of any voluntary condition(s).
- 11.** Where the authority has invited tenders and is comparing bids, the restricted value is normally the amount offered by the authority's preferred transferee. In other cases it is normally the proposed purchase price.
- 12.** In cases where the proposed consideration is more or less than the restricted value both figures need to be given.

Voluntary conditions

- 13.** A voluntary condition is any term or condition of the proposed transaction which the authority chooses to impose. It does not include any term or condition which the authority is obliged to impose, (for example, as a matter of statute), or which runs with the land. Nor does it include any term or condition relating to a matter which is a discretionary rather than a statutory duty of the authority.
- 14.** The value of voluntary conditions is the total of the capital values of voluntary conditions imposed by the authority as terms of the disposal or under agreements linked to the disposal that produce a direct or indirect benefit to the authority which can be assessed in monetary terms. It is not the reduction in value (if any) caused by the imposition of voluntary conditions and any adverse effect these may have on value should not be included in this figure.
- 15.** The proposed disposal, or an agreement linked with it, may give rise to non-property benefits to the authority. For example, these might include operational savings or income generated as a result of the transaction where the authority has an associated statutory duty. The monetary value of these benefits to the authority should be included in the value of voluntary conditions.
- 16.** Where the status in law of a voluntary condition is unclear, the authority may need to seek legal advice as to whether the condition is such that its value to the authority can form part, or all, of the consideration. Conversely, there may be cases where, in law, the condition can form part, or all, of the consideration but it has no quantifiable value to the authority.
- 17.** Where the valuer is not qualified to assess the value of any benefits (for example, of share options) the report should make clear the extent to which the valuer accepts liability for the figures. Where the valuer does not accept full responsibility the report should make it clear by whom the remainder of the figures have been assessed, and copies of any valuations or advice received from accountants or other professional advisers should be annexed.
- 18.** All the values given should be in capital, not rental, terms; and the values of individual conditions as well as the total should be provided. Where there are no conditions, or their value is nil, this should be stated.



Valuation of Options

19. A discount may occur in connection with the consideration for either the grant of an option or the exercise of an option, or both. Where the consideration is less than the best price that can reasonably be obtained, (or where the valuer considers that if the option were to be exercised its terms would require the authority to accept less than the best consideration that can reasonably be obtained), the valuations described in paragraphs 20 and 21 below must be provided in support of an application for disposal consent.

Payment for the grant of an option

20. In explaining the basis for calculating the consideration for the grant of an option, the valuer's report needs to include the following information, based on the most likely date for the exercise of the option:

- a)** the unrestricted value of the option to be granted;
- b)** the proposed cash consideration for the option to be granted (which may be nominal or nil); and
- c)** the value to the authority of any terms or conditions which, in the valuer's opinion, form part of the consideration for the option to be granted.

The grant of an option will then be at an undervalue where the unrestricted value at (a) exceeds the proposed cash consideration at (b) plus the value of any conditions at (c) (ie: where $a > (b+c)$).

Consideration for the exercise of an option

21. In explaining the basis for calculating the consideration for the interest to be disposed of under an option, the valuer's report should include the following information, based on the most likely date for the exercise of the option:

- a)** the unrestricted value of the interest to be disposed of under the option, disregarding the effect of the option;
- b)** the proposed cash consideration for the interest to be disposed of under the option (which may have been specified in the terms and conditions for the granting of the option); and
- c)** the value to the authority of any terms or conditions which, in the valuer's opinion, form part of the consideration for the interest to be disposed of under the option.

The disposal of an interest pursuant to an option will then be at an undervalue where the unrestricted value of the interest at (a) exceeds the proposed cash consideration at (b) plus the value of any conditions at (c) (ie: where $a > (b+c)$).

Development Land

22. In cases where there is no detailed scheme, the valuer should make reasonable assumptions about the form of the development.



Negative Development Value

23. Where the value of the completed scheme is less than the development cost, (for example, where there is low demand or high costs associated with land reclamation or decontamination), the valuer should assess the unrestricted value by making reasonable assumptions about such matters as alternative uses that might be permitted by the local planning authority and the level of demand. Where the proposed scheme is the most profitable but still produces a negative development value the unrestricted value will be nil and therefore a disposal at nil consideration will not be at an undervalue. But where land with a negative development value has a positive value for some other use the disposal would be at an undervalue.

General Effect Of Grants On Values

24. The valuer should consider whether the value of the site is in any way affected by the prospect of grant and take this into account in the valuation. If the valuation is based on assumptions that disregard the effect of grant then this should be stated in the valuation report. When assessing a value for a use other than that for which a grant has been approved, the valuer should consider the likelihood of any such use achieving planning consent.

1 For the purposes of the 1972 and 1990 Acts 'open space' is defined in section 336(1) of the latter Act.

2 By section 270, land includes any interest in land, and any easement or right in, to or over land.

3 By sections 123(7) and 127(5), a short tenancy is a tenancy, which is granted for seven years or less, or the need consent, see sections 123(2) and 127(2) of the 1972 Act.
assignment of a term, which has not more than seven years to run. Disposals by way of a short tenancy do not

4 RICS Appraisal and Valuation Standards (Fifth Edition), UK Guidance Note 5: 'Local authority disposals at an undervalue' published 1 May 2003

5 [see above]



Appendix C

Former owners' rights (Crichel Down rules)

The Crichel down rules require the Council to offer land or property that has become surplus to its requirements back to the original owner under certain circumstances.

The rules apply to land or property that was originally acquired compulsorily or under threat of compulsion.

The rules do not apply to:

- Land that was up for sale at the time of the acquisition
- Agricultural land acquired prior to 1 January 1935
- Agricultural land acquired on and after 30 October 1992 which becomes surplus and available for disposal more than 25 years after acquisition
- Non-agricultural land and property acquired more than 25 years before disposal
- Land and property whose character has changed during the period of ownership, e.g. by development or extensive alteration (the cost of reinstatement will be a factor in determining this issue)
- Disposals comprising a development site of two or more former land holdings or part of a site that has been changed and where a sale in parts would not achieve best value
- Disposals that are effectively de minimis
- Various circumstances, with specific ministerial approval, where the land is still required for some other public sector purpose

The Corporate Assets Manager, in consultation with the legal department shall determine whether the Crichel Down rules apply.

If the Crichel Down rules do apply, the Council shall:

- Establish the identity and location of the former owner or successor
- Assess the terms of the offer and method of fixing the price
- Give the former owner two months to agree the basic terms and a further six weeks to agree the price (with such extensions as appropriate) - if agreement is not reached within the timescale, the land or property may be sold on the open market

Special consideration will apply where best value can only be determined by extensive planning work or exposure to the marketplace.



Appendix D

Disposal Methods

There are four principal methods of disposal available and are outlined within this appendix.

1. **Private Treaty** – After a reasonable period of exposure to the market, negotiations are carried out between the seller and prospective buyers (or their respective agents) privately and in comparative secrecy, normally without any limit on the time within which they must be completed before contracts are exchanged. In the event that two or more interested buyers are identified the Council may consider moving on to the Informal Tender method (see method 4 below).

Advantages:

- allows a flexible approach;
- time pressures are seldom imposed on either the seller or buyer; and
- it is widely understood and accepted by the general public.

Disadvantage:

- the proceedings cannot always overcome suspicions of unfair dealings, and it is therefore a method to be used with caution.
- there is no firm contract at the point of offer and acceptance.

2. **Formal Tender** – Requires a great deal of preparations, as the tender document forms the contract for sale. A full appraisal of the transaction needs to be carried out, including a valuation which may be used to provide a guide price in order to have a baseline against which to assess the tenders when they are returned.

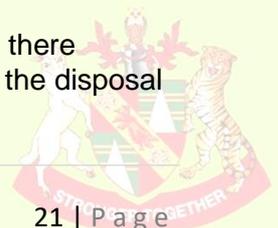
Advantages:

- The disposal can be concluded quickly where it is unconditional;
- The Council does not need to accept any tender if the offer is not satisfactory;
□ The tender procedure should guarantee complete fairness; and
- As bids are not public, tenderers should put forward their best offer.

Disadvantages:

- Potential purchasers are often put off by the procedure whereby they commit themselves contractually upon making any financial offer:
- There is little for discussion about the scheme itself, and this method is too robust and inflexible to take account of any conditional offers eg to be made subject to planning.

In view of the inflexibility and disadvantages of the formal tender procedure there should, in normal circumstances, be a presumption against this method for the disposal of property.



In the event of a disposal by formal tender Financial Instructions should be followed.

3. **Auction** - Public auctions are best suited to disposals where it is reasonable to expect keen interest from prospective purchasers, where it is difficult to establish a clear idea of value, and where there is an ambition to bring a clear end date to on-going ownership

Sale by auction requires preparation of all contractual details beforehand in order that a binding contract may be effected immediately a bid is accepted.

Advantages:

- Certainty: contracts are exchanged on the fall of the hammer;
- Open process of competitive bidding may lead to a price in excess of that by private treaty;
- Regional/national marketing by the auction house.

Disadvantages:

- the seller has no control over who buys;
- funds to meet the sale price must be available within a specified period, and this may put off purchasers who need to raise finance;
- potential purchasers have to consider the transaction during the marketing period, with no opportunity to discuss alternative ways to structure the deal;
- the winning bid need only be marginally more than the second highest bid, and need not represent the maximum the purchaser would have been willing to pay;

4. **Informal Tender** – Informal tendering is a process whereby offers are invited, usually in the form of expressions of interest, with or without a firm closing date.

Advantages:

- the most advantageous terms for the Council can be formulated even in very complex cases;
- the Council does not need to accept any tender if the offer is not satisfactory;
- as bids are not public, tenderers should put forward their best offer. (Though not necessarily going to achieve best price because in an auction situation people are sometimes prepared to bid more than they had envisaged, particularly when they see others prepared to bid at that level)
- most useful as a tool for resolving competing interests following private treaty marketing.
- Is useful where the Council is seeking other benefits to a disposal in addition to the price or rent level proposed eg seeking a community benefit or specific type of use for the asset

Disadvantages:

- lacks the certainty of the Formal Tender procedure,



- can be frustrating since post-tender negotiations can be protracted and may not be successful; and
- the requirement to negotiate raises some of the disadvantages of a sale by private treaty.



Appendix E

Dealing with late or revised bids

A difficult situation arises when the Council receives a higher offer after another offer has been accepted “subject to contract”. Such difficulties are less likely to occur if exchange of contract takes place quickly after the decision has been made to whom to sell the property. When accepting an offer the Council’s position should be made clear, in writing, that in the event of any higher offer being received before a contract is exchanged it may be obliged to consider it.

There are very good reasons for laying down strict rules of compliance with the procedures, particularly time-scales. This is to ensure that all interested parties are treated equally and that the Council operates in an efficient and cost effective manner by reducing uncertainty and delay. Above all, the principle that parties should not benefit from the tactic of an intentional late bid is paramount. Nevertheless, there may be, at times, genuine late bids and where the proposed disposal involves a substantial capital receipt the Council must be able to make decisions that avoid foregoing significant increases in sums achievable.

Whilst it may be appropriate to maintain a policy of disregarding any late bids in a tender exercise, the Council may find itself missing the opportunity to secure best consideration where a late bid substantially exceeds bids received on time. Indeed, case law suggests that Councils can be found to fall short of achieving best consideration if rival bids are not investigated.

Where a higher offer is received after one has been accepted, the applicant should be advised that an earlier offer has been accepted, subject to contract. Unless there is a particular reason why the higher offer should be accepted, e.g. an ability to proceed immediately when the original bidder was not able to do so, then the first applicant (whose offer has been accepted) should, at least, be given the opportunity of matching the higher offer.

Dealing with Revised Bids

The Council may be faced with the successful bidder from an informal auction seeking to substitute a lower bid. This process might also be repeated as the successful bidder in effect explores to find the level of the next bid below his or her own believing that the Council will be prepared to accept any offer above that next bid. The general obligation to obtain the best price which can reasonably be obtained for the land may mean that these bids have to be considered.



Appendix F

Social Enterprise and Charities Checklist

Where the Council is disposing of property to a social enterprise or charity, it has a duty of care to both its residents and to the organisation to ensure, in so far as it can, that the organisation has the capacity and skill sets required to care for the asset.

The proposed purchaser or tenant should therefore be assessed against the following criteria:-

- a. A Voluntary and Community Sector organisation must be a legal entity which:
 - is non-governmental - not part of the statutory sector;
 - is non-profit distributing - it must reinvest any surpluses to further its social aims/ community benefits;
 - has community benefit objectives
- b. Be appropriately constituted, for example, a registered charity, a community interest company or a charitable incorporated organisation, a not for profit company or a co-operative. The applicant's constitution should allow for the management/ownership of buildings and/or provision of services
- c. Demonstrate good governance by operating through open and accountable cooperative processes, with adequate monitoring, evaluation and financial management systems
- d. Demonstrate management experience and/or expertise
- e. Demonstrate that the organisation is sustainable with the provision of the organisation's most recent set of accounts where available
- f. Demonstrate a track record of delivering services, or in the case of a new organisation a track record of key individuals and a robust business case
- g. The organisation has a clear purpose and understanding of the activities it wishes to deliver
- h. Can demonstrate it has the skills and capacity within, or available to, its managing body to effectively maintain and manage the asset. (Where significant works are to be undertaken to a property, the details and CV of the overseeing project manager/ clerk of works should be provided).
- i. Where property is to be leased - Provide a management proposal that includes a specific plan on health and safety issues and compliance with legislation/statutory requirements arising from ownership or management of the building and/or running a service.



Appendix G

Questions and Answers: Purchasing Council property & acquiring other interests in Council owned land

This document contains common questions and answers about purchasing Council property and provides information on other interests, such as applications for:

1. Leasing Council owned land;
2. Obtaining wayleaves over Council owned land;
3. Obtaining easements over Council owned land;
4. Operating concessions on Council owned land;
5. Obtaining licences to occupy Council owned land;
6. Varying or extinguishing covenants on land formerly owned by the Council;
7. Obtaining access agreements over Council owned land;
8. Siting builders compounds on Council owned land; and
9. Temporary use of Council owned land

What do I do if I want to purchase Council owned property or wish to apply to the Council regarding other Council owned land and property matters?

Submit an application form. Forms are available from the Council's website (details at the end of this document). Once completed, the application form should be returned to Corporate Assets Team, together with the non-refundable administration fee.

What fee do I submit with my application?

Fee 1 (£150) will be payable in respect of all applications other than those below.

Or

If your application is for **temporary consent to use Council land for less than 28 days**, please submit your application with **Fee 2 (£75.00) and the appropriate license fee**. Examples of temporary uses include erection of scaffolding, placement of skips and access for works.

Or



Fee 3 (£50) Application for an easement or renewal of an existing concession .

Or

Fee 4 For hire of land to run an event

Small event (up to 499 attendees)	£45
Medium event (500-999 attendees)	£75
Large event (1000-4999 attendees)	£100
Major event (5000+)	Details on request

Please note: that the Council reserves the right to refuse any application.

All fees are non-refundable unless the enquiry leads to the open marketing of the property.

How do I find out if the Council owns a piece of land?

Check with the Land Registry.

Planning Enquiries

If your request to purchase land also involves changing the use of that land (for example, from open space to private garden), then it's recommended that you seek advice from the Council's Planning Service before you submit your application by emailing https://www.oadby-wigston.gov.uk/pages/planning_control

What if I can't provide a plan showing the area I want?

If you are unable to provide a plan or sketch plan, the Council can provide an Ordnance Survey map, subject to a fee charge.

What will happen once I have sent in my application?

Your application will be passed to Corporate Assets Team and who will consult with the relevant Council departments.

Decision Making

The process for deciding whether to accept your application is governed by the Council's constitution and depends on the nature and value of the transaction. The following is a summary of the most frequently encountered decision making processes following relevant consultation:



Capital Receipt Value	
Where the value of the transaction exceeds £30,000	Policy Finance and Development Committee
Annual Rent	
Where throughout the term the annual rental will exceed £20,000	Policy Finance and Development Committee

Where the values fall below the above thresholds then the decision making power is delegated to the Strategic Director

You will then be advised in writing of the decision.

This part of the process will take approximately 12 weeks, but can take longer.

If the decision is one that must be made by the Policy Finance and Development Committee it may take up to a further 6 weeks.

Please note that information regarding your application may be made available to this public meeting unless it contains sensitive information that is considered exempt (as defined in Part 1 of Schedule 12A to the Local Government Act, 1972).

Who/What is a Ward Member?

Each Ward in the Borough of Oadby and Wigston has up to 3 elected Councillors who are Ward Members. To find out who your ward member is, please visit our website page <https://moderngov.oadby-wigston.gov.uk/mgFindMember.aspx>

What happens once a decision is made?

If the decision is to refuse your application, you will be advised in writing.

If the decision is to approve your application, the Corporate Assets Team will then make contact with you to agree terms and conditions. Officers may also make a site visit in the course of the negotiations.

Additional information may be required from you such as insurance documents or relevant licences if you are applying for (or renewing) a concession.

Once all the terms and conditions have been agreed with you, the Council's Legal Services team will be instructed, by the Corporate Assets Team, to prepare the legal documents.

At this stage you may want to contact your own solicitor.



If my application is refused, can I appeal?

There is no appeals procedure. However, if you feel that you have additional information, or justification to support your application that has not already been considered, or if you amend your application in some way, the Council may be able to process your application again, based on the new information.

Please note that you may be charged a further administration fee if your revised application involves repeating the consultation process.

Do I have to use a solicitor?

It's not a legal requirement but is advisable to ensure protection of your own interests. The Council's Legal Services team cannot advise or assist you as they are employed to protect the Council's interests in the transaction.

What do solicitors do?

You should talk to your solicitor directly about the services he/she offers, but generally it will involve consideration of the draft contract and undertaking a local land charges search (and other searches).

In the sale of a property, once the contract terms are agreed, the contract can be signed and formally exchanged. At the point of exchange of contracts you are likely to have to pay a deposit to the Council through your solicitor; usually this is 10% of the sale price.

The signed contract will include a completion date. This is the date when the land/property becomes yours, subject to the Council receiving payment of the completion monies.

For other transactions, such as leases and concessions, a start date for the contract will be agreed and the legal document executed by each party.

What else happens between exchange of contracts and the completion stage of the sale of property?

Your solicitor will prepare the Transfer. This is the document that will enable you to be recorded as the new legal owner of the property at HM Land Registry. The Transfer will be sent to the Council's Legal Services team who will arrange for it to be sealed on behalf of the Council, in readiness for completion. On the day of completion, on receipt of the completion monies, the Transfer will be dated and then forwarded to your solicitor. The Corporate Assets Team will liaise with you on the release of any keys.

If I want to have an update with regard to my purchase of the property interest, who should I ask?



Once the Council's Legal Services team has been instructed, you should contact your own solicitor regarding progress, or the Estates Team.

All this seems very complicated and to take a long time. Is there a quicker system for approval of applications?

Unfortunately not. The Council has legal obligations in the sale of land/property and other land transactions.

When will I need to insure the land/property?

Your solicitor will advise you. If you are acquiring the freehold of a property, it should be from the date of exchange of contracts, as the Council's insurance policy will not cover it from that time.

For other property transaction types, you will need to refer to the specific terms of your legal agreement.

Do I need to do anything after completion?

Completion on a freehold purchase marks the end of the process so far as the Council is concerned but there are still some matters for you and your solicitor to deal with before the property can be properly regarded as being yours, including submission of a Stamp Duty Land Transaction Return to HM Revenue & Customs, payment of Stamp Duty Land Tax (if appropriate) and registration of the Transfer at the Land Registry.

For other property transactions, you will need to refer to the specific terms of your legal agreement.

Important points that you should be aware of:

- 1) Public open space:** If you wish to purchase or lease land which is held as open space, the Local Government Act 1972 requires the Council to publicise its disposal in a local newspaper for two consecutive weeks and to consider any objections received. You will have to pay for the cost of the public notice and will be given a quotation for the cost at the time. You will be requested to pay these costs before the Council will request publication of these notices. If the Council receive any objections to the disposal, these will have to be considered before a decision is made as to whether or not the Council will proceed with the disposal.
- 2) Open market sale:** The Council is, with certain exceptions, obliged by law under the Local Government Act 1972, to sell land for the best price reasonably obtainable. This means that in some cases if, following consultation, it is considered that the land you have asked to purchase could be of interest to other parties or could be sold for development land, the Council must advertise it for sale on the open market. In such a case you will be sent sales details once prepared and will be able to make an offer for the land along with any other interested party. Please note that in such cases, your administration fee **will** be refundable.



- 3) **Administration fee:** Before the Council can start work on your application, you will need to pay the appropriate non-refundable administration fee. It is payable to offset some of the costs involved in processing your application, but it does not cover the full cost. Payment of the fee **will not** guarantee that your application is approved and it is entirely separate to the valuation of the land.

This fee is reviewed each year and effective from 1 April. There are no exemptions.

- 4) **Planning consent:** Planning consent may be needed for change of use or development of the land, or for other matters such as fencing and boundary treatment. You are responsible for checking if planning consent is required and you should make your own enquiries about this aspect of your proposals with the Planning Service.

It is your responsibility to ensure that you obtain any required consents. Should you submit a planning application to include Council owned land, you must serve the appropriate statutory notice to the Council's Corporate Assets Team. Please note that the Council's role as a land owner is completely separate from that of Planning Authority. Therefore, although you may be granted planning consent, this does not guarantee that your application to the Council, as landowner, will be approved.

- 5) **Variation to restrictive covenants:** You may need to seek consent from the Council, as former landowner, to a variation of a restrictive covenant affecting your title to land. This consent should be sought well in advance of any plans you may have to (re)develop etc. your land.

- 6) **Other Fees:** Once a sale has been agreed, you will be required to pay the Council's surveyors fees and the Council's legal fees, before the Council's Legal Services team prepare any documentation. For guidance please refer to the fee list attached to this document.



Fee Charges from September 22 – 31 March 2023

Non-refundable administration fees (to consider an application)

Item Fee	(Excluding VAT)	Total (Including VAT)
Fee 1 (All applications except those attracting Fee 2 or Fee 3.	£125.00	£150.00
Fee 2 (Temporary consent - Plus license fee as below)	£62.50	£75.00
License Fee up to 12 sq m 1 week	£ 41.67	£50.00
License Fee up to 24 sq m 1 week	£ 83.33	£100.00
License Fee up to 36 sq m 1 week	£ 125.00	£150.00
License fees for larger areas will be charged based on 12 sq m increments at £50.00		
Fee 3 (Easement or Renewal of an existing concession)	£41.67	£50.00
Fee 4 (Event Hire)		
Small event (up to 499 attendees)	£37.50	£45.00
Medium event (500-999 attendees)	£62.50	£75.00
Large event (1000-4999 attendees)	£83.33	£100
Major event (5000+)		Details on request



- **Other non-refundable fees payable** (if application is approved, but before legal documentation is prepared)

Surveyor's fees	From £200.00 plus VAT
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Legal fees	£100.00 per hour and disbursements
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Surveyors and solicitors fees are based on the nature of the transaction, land value, rent/license fee payable and/or on the complexity of the transaction. In most instances, they will not apply to those transactions requiring a temporary license only. Disbursements will include obtaining title information from the Land Registry.

- **Cost of statutory publication of proposed disposals of open space** (Please refer to the earlier sections of this document for clarification as to when this will apply).

Publication costs	£500.00*
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**This is an approximate guide. This fee is set by the newspaper and is beyond the Council's control. A quote will be provided. Payment must be received before the notices can be published and will be non-refundable.*

Fee charges for event hire are not included in this document.

