

AGENDA ITEM 2 (i)

FALKIRK COUNCIL

**Subject: PORTFOLIO MANAGEMENT PLAN: DISPOSAL PROCESS
SUPPLEMENTARY REPORT**
Meeting: FALKIRK COUNCIL
Date: 5th OCTOBER 2011
Author: DIRECTOR OF DEVELOPMENT SERVICES

1.0 INTRODUCTION

- 1.1 This is a supplementary report to a report on the Portfolio Management Plan Update: Disposal Process presented at Policy & Resources Committee on 6th September and referred to Full Council. Members asked for further information regarding a proposal that certain properties could be offered for sale initially to sitting tenants where this might prove beneficial to the economic development and social wellbeing of the area.

2.0 BACKGROUND

- 2.1 The Portfolio Management Plan (PMP) seeks to sustain and enhance a viable property portfolio for economic development through a phased disposal of existing assets to the investment market, and re-investment of the proceeds in developing new business property. In this regard the previous report emphasised that the Council's policy enables it to maximise the level of receipts gained for reinvestment in new business stock.
- 2.2 To date 8 PMP properties have been sold or are in the process of being sold in line with the disposal process as previously agreed. Out of these 4 were tenanted and offers were received from 2 sitting tenants, one offer met the asking price and was successful the other was below the asking price and 33% lower than the top offer. As a result of the PMP to date:-

- A £1.4m, 8,500ft² office pavilion was completed at Wholeflats, Grangemouth. This unit is occupied as the headquarters of Oran Environmental Services.
- A £750,000, 6,000ft² workspace development was completed at Central Park, Larbert, providing five units for local small businesses.
- A second phase, £360,000 scheme is underway at Central Park, providing two 1,500ft² units.
- Reinvestment by the private sector has taken place at Cow Wynd and Grahams Road, providing new/upgraded retail and residential units.

Additionally, as a consequence of these sales, £588,949 has been made available for reinvestment.

3.0 PMP DISPOSAL PROCESS

3.1 The Council's current disposal process is considered to provide the optimal strategy to deliver the goals of the PMP while protecting the interests of sitting tenants through the terms of their lease. This approach allows for flexibility in the following ways:-

- Sitting tenants have the opportunity to extend their lease prior to disposal to safeguard their rights as tenant.
- The packaging of properties into discrete lots, many specific to individual premises, allows for the interests of sitting tenants to be served, in that these tenants can bid for their premises when placed on the market.
- Outwith the disposal timetable, any sitting tenant who has a proposal for investment in a development that will provide additional economic benefits can approach the Council to request that disposal be initiated at values determined by the District Valuer.

3.2 Should the Council be minded, an approach which offered sitting tenants first refusal in the disposal of a property would only be appropriate in situations where:-

- (a) The property is stand-alone and its sale would not fragment the Council's interests.
- (b) Disposal of the property would not result in any ongoing management or maintenance issues for other interested parties
- (c) Disposal would not significantly prejudice the prospect of a sale of the property for investment purposes.
- (d) A good business case is made by the tenant, showing clear economic and/or social benefits to justify this approach.

3.3 Notwithstanding the terms of paragraph 3.1 above, were Council minded to pursue an approach which would see offers made to the sitting tenants of certain properties as outlined in paragraph 3.2, an alternative disposal mechanism that could be followed would involve:-

- A list of properties considered appropriate for disposal to sitting tenants is submitted to Committee. The tenants of these properties will be notified of this intention.
- The tenants will be asked if they would be interested in purchasing the property. If not they will be asked if they would like to extend the existing lease to increase their security of tenure.

- Tenants interested in acquiring the property will be asked to provide a statement of their financial plans and of the economic and social benefits related to the purchase detailing e.g. any expansion plans, new jobs to be created, investment and funding arrangements. The statement will help ensure that the proposals are sufficiently robust and deliverable..
- If no response is received or if the tenant declines, the property will be put on the open market.
- The information supplied by the tenant will be assessed by the Council and, where appropriate, Falkirk for Business. If the business case presented by the tenant does not meet the necessary criteria in demonstrating clear additional benefits, the property should be placed on the open market.
- The purchase price will be determined by way of an independent valuation undertaken by the District Valuer taking into account all material valuation considerations.
- Purchasers will be required to pay all reasonable legal and administration costs involved in the transaction.

3.4 It is important that the PMP can progress disposals in a streamlined manner. Under the current process, each disposal is presented to Policy & Resources Committee for approval. The proposals described above create an additional stage in the disposal process. Where the disposal list has been agreed and the values obtained are under the current delegated thresholds, it is suggested these should proceed for disposal under normal delegated procedures without recourse to Committee for individual transactions. A report on the outcome of these transactions would be conveyed annually to the Committee.

4.0 IMPLICATIONS

4.1 Financial

The Council's existing policy enables it to maximise receipts for reinvestment in its portfolio. In a revised policy, offering first refusal to sitting tenants, the property is not being exposed to the market and there is a risk that the Council will not maximise the capital receipt that might be achieved. However the option conveyed at paragraph 3.4 does enable tenants the opportunity to demonstrate their intention to expand and create (or in certain circumstances, safeguard) jobs which will benefit the area's economy. This along with the purchase price being assessed by the District Valuer would enable the Council to demonstrate that best consideration (best price) requirements are being met.

4.2 Legal

It is recommended that any revision to the Council's approach to disposals be made available only to future PMP sales. Subject to ensuring that a robust process is maintained, it is considered that the method described in paragraph 3.4 should comply with the Council's legal requirements. However it is recommended that any marketing exercise for properties that has already borne offers should be seen through to their conclusion. Terminating a current exercise and proceeding with the tenant or another party, even if they were matching the highest offer could leave the Council exposed to a challenge, potentially via judicial review.

4.3 Risk

The Council is an active and significant player in the Falkirk business property market. In addition to its obligations to secure best consideration, it must maintain its reputation for fairness and consistency in dealing with all parties. It is important to recognise that there is a risk that once the property is sold the purchaser will not go ahead with the plans as proposed. By seeking information on the purchaser's financial plans this risk is mitigated. Were a change in policy to be adopted there may be unknown purchasers who are not given the opportunity to proceed with their investment as a consequence of choosing to proceed with a sitting tenant.

5.0 **CONCLUSION**

- 5.1 The concerns regarding the imperative to secure best consideration in the disposal of its assets were set out extensively in the previous report and it is important to stress that our current policy is considered the optimal approach. Notwithstanding this, the Council has sought to consider if a more flexible method is available which balances practical financial, economic and social considerations. If adopted, the alternative method set out in this report offers some level of flexibility to deal with proposed sales to a number of sitting tenants off market on the basis that the disposal will assist the development of the business and benefit the economic development and social wellbeing of the area. This method provides the Council with the necessary justifications to sell off market to a sitting tenant taking the advice of the District Valuer to establish a price. In the case of existing disposals it is recommended that, due to the prospect of challenge, these should be determined using the existing policy.

6.0 RECOMMENDATIONS

6.1 It is recommended that Members are asked:-

- (i) to recognise that the existing policy is considered to be the optimal disposal strategy to deliver the PMP's goals and meet best consideration requirements;**
- (ii) however, if they are minded to seek a more flexible approach, that they consider for adoption the alternative disposal process as described in paragraph 3.3 in future marketing activity.**

6.2 Should the alternative option be approved it is recommended that a list of properties considered appropriate for prospective sales to sitting tenants be brought to the Policy & Resources Committee for approval; and

6.3 To note that, following legal advice, disposals where offers have already been received should be considered under the existing disposal process.



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Director of Development Services

27th September 2011.

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LIST OF BACKGROUND PAPERS

1. Portfolio Management Plan.

Any one wishing to inspect the background papers listed should telephone 01324 590979 and ask for John Smith.