

FALKIRK COUNCIL

Subject: PORTFOLIO MANAGEMENT PLAN UPDATE: DISPOSAL PROCESS
Meeting: POLICY & RESOURCES COMMITTEE
Date: 6TH SEPTEMBER 2011
Author: DIRECTOR OF DEVELOPMENT SERVICES

1.0 INTRODUCTION

- 1.1 The purpose of this report is to provide Members with an update on the rationale, approach and progress with the Portfolio Management Plan (PMP) disposal process.

2.0 BACKGROUND

- 2.1 At the meeting of the Council's Economic Development Committee on 29th November 2005, the relevant report detailed the result of the review of the Council's business property portfolio in the context of the wider business property market. It made recommendations on the best use of the Council's assets, including the proposal to establish a PMP. The recommendations were accepted and, following referral, the report was approved by the Policy & Resources Committee at its meeting on 10th January 2006.
- 2.2 The PMP is a key component of the Council's economic development strategy which recognises the importance of ensuring a continuing supply of 'fit for purpose' business properties to allow businesses to grow, attract new investment and contribute to creating job opportunities in the area.
- 2.3 The Council's non-operational property portfolio complements the provision made by other private sector interests in the property market. It includes 970 properties including shops, offices and factories and accommodates over 500 businesses employing around 4,000 people. It is recognised that this portfolio has contributed significantly to the economy of the area, but requires continuing re-investment to maintain its impact in the local economy.
- 2.4 The purpose of the PMP is to sustain and enhance a viable property portfolio through a phased and controlled disposal of existing assets and re-investment of the proceeds in developing modern, fit for purpose business property. Given the nature of the approach, this requires to be done by means of a phased development programme which develops modern business premises, offices and industrial units in various locations in the Council area. The new rental income generated from these new developments will facilitate the phased disposal of the Council's landlord's interest in pre-determined lots of assets from the portfolio thereby making the PMP revenue neutral. The portfolio maintains a stream of revenue income for the Council of c£4.8m annually.

3.0 PMP DISPOSAL PROCESS

- 3.1 A report detailing the optimal disposal procedure for the PMP was considered by Economic Development Committee on 20th June 2006. This was the result of detailed consideration by a cross-service corporate working group in consultation with the then Convener and Depute Convener of the Economic Development Committee.

3.2 The disposal process adopted in 2006 involves placing each lot on the open market thereby maximizing exposure through advertising and setting a closing date for offers. In this way each disposal will readily demonstrate best consideration (price) and ensure fairness by avoiding exclusion of any interested party through a consistent, open and transparent marketing process. The disposals enable opportunities for interested parties, including existing tenants, to acquire property:-

- for use by their business,
- as an investment through retention as lettable space,
- in some instances, for refurbishment/redevelopment of vacant or redundant premises.

The disposal method applies the Council's approved Asset Disposal procedure with the exception that all disposals are referred to Committee for decision. This reflected Members' wish to consider the individual circumstances of each sale and the bids on their individual merits.

3.3 As part of the development process of the PMP, specialist property advisers (Rydens) were asked to consider all options for disposal of properties. One of the options considered was to offer the opportunity to sell in the first instance to sitting tenants at values to be established by the District Valuer.

3.4 This approach has been raised more recently in respect of a number of proposed disposals and at the Policy & Resources Committee in August 2011 it was agreed that a further report on the disposal process should be prepared.

3.5 Consideration has been given to the advice received from Rydens, the Council's more recent experience in implementing the PMP and practice in Councils such as Stirling. As a result, the arguments in favour and against the option of offers (and potentially sales) being made in the first instance to sitting tenants can be summarised as follows:-

Sales Offers to Sitting Tenants – Arguments in favour

- Provides individual investment opportunities for existing businesses e.g. personal pension plans.
- Provides ownership opportunity for existing businesses to invest in their own property

Sales Offers to Sitting Tenants – Arguments against

- Reduces funds available to the Council to provide new business space in the area as anticipated in the Business Property Strategy.
- Fragments the Council's portfolio resulting in diminishing rental returns to the Council in the medium to long term.
- Mixed ownerships are unattractive to investors, and a detrimental effect on the asset value of the Council's property holding will result.
- Fragmented ownership would create additional difficulties and erode current economies of scale in management and maintenance.
- Encourages small companies to increase the extent of borrowings rather than investing in growth of their business.

- 3.6 A further key factor relevant to this issue is the significant financial pressure currently facing the Council and the need for it to maximise receipts to support the PMP. The loss of the opportunity to fully test the market with a prospective sale reduces its ability to secure offers that might be available to it, thus achieving best price and, therefore best value for the Council. This in turn impacts on the funds available for re-investment in the portfolio.
- 3.6 On this basis a policy of enabling sitting tenants first refusal on its properties would have the potential to create significant management difficulties for the Council and would not be the optimal strategy in terms of meeting the objectives of the PMP as it would diminish the level of funds available for re-investment.
- 3.7 It is also worth recognising that leasing commercial property continues to be a preferred business model for many businesses who consider the financial burden of acquisition not consistent with their business growth objectives. In preparation for sales the Council is frequently in contact with its tenants and has the capacity to extend the lease to permit the business further security.
- 3.6 The success of the reinvestment programme relies on the effectiveness of the planned and phased disposal programme. It is critical that the Council maximises its capital receipts through these disposals in order to fully deliver the reinvestment plan as programmed. This is also necessary to ensure the impact on the revenue budget and capital programme remains neutral as planned.

4.0 LEGAL IMPLICATIONS

- 4.1 There are a number of legal implications relating to the terms and conditions of leases and the Council's procedures for asset disposal that have to be addressed in the PMP.

(a) Lease Terms & Conditions

Tenants are granted rights to exclusive possession of property over an agreed period through a lease agreement. This details the respective responsibilities and obligations of the landlord and tenant and sets out the processes for implementation. A change of landlord will not alter the tenant's situation under the lease as the existing lease gives them the same protection as when the Council was the landlord. The tenant's position should not therefore be diminished or constrained by virtue of a change of landlord.

(b) Disposal Procedures

The legislation relating to disposal of assets is as follows:-

(i) Local Government (Scotland) Act 1973: Section 74

This gives local authorities the power to dispose of land and property assets for "best consideration (price)". Any disposals lower than this required consent by Scottish Ministers.

(ii) Local Government (Scotland) Act 2003

This sets out the Council's statutory duties under Best Value. Section 11 amends Section 74 of the 1973 Act and sets out that Scottish Ministers may by regulations, provide for circumstances which local authorities can dispose of land at less than "best consideration that can be reasonably obtained."

(iii) The Disposal of Land by Local Authorities (Scotland) Regulations 2010

These regulations came into force on 1st June 2010 and set out the procedure and purposes for which a local authority might dispose of land for less than best consideration. In taking such a decision regard has to be given to meeting the Council's statutory duties under best value. These include:-

- Making the best use of public resources, including land and property;
- Being open and transparent in transactions;
- Ensuring sound financial controls are in place;
- Assessing the full financial consequences of decisions at an appropriate level before decisions are taken or commitments entered into;
- Demonstrating responsiveness to the needs of all communities, citizens, customers and other stake holders, where relevant.

These regulations permit the Council to dispose of its interest at less than best consideration as long as either (a) the consideration is less than the threshold amount (currently £10,000) or the price is at least 75% of the best consideration that can reasonably be obtained or (b) it has appraised and compared the costs and other disbenefits and the benefits of the proposal and has determined that the following circumstances have been met:-

- That the disposal at less than full consideration is reasonable; and
- That it will contribute economic development or regeneration, health, social well being or environmental well being. If this is not the case, then Scottish Ministers consent would need to be obtained.

In assessing the benefits and disbenefits of disposal of land at less than full value, the guidance indicates that authorities should be able to demonstrate that there has been a rigorous evaluation and also need to be mindful of any potential state aid implications.

- 4.2 It may be the case that disposal to a sitting tenant (supported by an assessment of value by the District Valuer) without a requirement to apply for consent of the Scottish Ministers could be justified in terms of the 2010 Regulations depending on the circumstances. However, as set out in 3.6 above this approach would not guarantee that best price is being obtained. It is therefore considered that the current disposal process addresses the Council's statutory and best value obligations and provides the opportunity for the Council to consider each disposal and relative bid on their individual merits.
- 4.3 Importantly, following consideration of the options and issues involved, the current, agreed PMP disposal procedures provide the opportunity for sitting tenants to bid for their leased property on the open market in a fair, open and transparent way. In the event the Council is minded to dispose of a property to an 'under bidder' then the provisions of the 2010 Land Disposal Regulations will require to be satisfied and a report in such terms presented to the Committee.

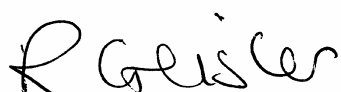
5.0 CONCLUSION

- 5.1 The PMP is a strategic initiative which requires to maximise funds for reinvestment and the disposals are the means to achieving this. The disposal process as previously recommended and agreed in 2006 is considered to be the optimal strategy to deliver the PMP's goal of providing modern business premises to accommodate the requirements of new and existing companies looking to locate in the Falkirk area now and in the future.

5.2 Notwithstanding any commercial benefits for an individual business or tenant to be able to own its property it is considered that these are far outweighed by the benefits to the local economy, community and Council by seeing the PMP re-investment programme delivered on the principles of best value as applied through the current disposal process.

6.0 RECOMMENDATION

6.1 It is recommended that Committee agrees that the PMP disposal procedure should continue to be delivered, as detailed in section 3.2 of this report.



.....
Director of Development Services

30th August 2011.

Contact Officer: John Smith. Ext: 0979.

LIST OF BACKGROUND PAPERS

1. Portfolio Management Plan.

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