

### Draft

## Policy for small land transactions (HRA)

### 1. Scope of Policy

- 1.1. This Policy is aimed at providing guidance to Members and officers in relation to requests by individuals to purchase or lease small areas of land and other land transactions (for example easements and removal of a restriction covenant) on land held within the Housing Revenue Account (HRA). It sets out the criteria that will be applied in assessing applications, the charging framework involved, and the process. For ease this policy refers to all transactions as sales or purchases, but this intention is that it applies to all transactions, including temporary permissions.
- 1.2. The policy applies to requests by individuals to purchase small areas of land held within the HRA. It does not cover requests to purchase larger areas of land with development potential, or requests for transfer of ownership to communities which is covered within the Council's Transfer of Community Assets Policy.
- 1.3. For the purposes of this policy an area of land will not be considered to be a Small Land Sale if it has the potential for social housing development; if the size, shape and area of the land would allow the development of one or more homes; or the land has the potential to open up an additional piece of land (i.e. a ransom strip), and the size, shape, area of the additional piece of land opened up would allow the development of one or more homes.
- 1.4. Any request to purchase a piece of land which it is felt could fall into one of the categories identified in paragraph 1.3 above will be referred to the Head of Housing for consideration. This may include garages or land on garage sites.

1.5. This policy does not apply to land that is within the curtilage of properties that are being sold through the right to buy scheme, or within the curtilage of properties that are being sold under shared ownership schemes.

1.6. The Asset Management Section will hold and maintain a database of requests to purchase Small Land Sales. Information held in the database will be controlled in compliance with the General Data Protection Legislation.

## **2. Legal Context**

2.1. This policy has been developed within the context of the following legislation:

2.2. The general power of disposal (Section 123 of the Local Government Act 1972) gives a local authority the power to dispose of land held by it in any manner it wishes provided that the local authority achieves the best consideration that can reasonably be obtained except where the disposal is for a short tenancy (the grant of a term not exceeding seven years or the assignment of a term which has not more than seven years to run) or the local authority has the consent of the Secretary of State. The Secretary of State has issued a general consent for disposals of land under section 123 for less than best consideration. This allows a local authority to dispose of land for less than best consideration if it considers that the disposal will contribute to the promotion or improvement of the economic, social or environmental well-being of its area and the extent of the undervalue is no more than £2 million.

2.3. Best consideration can be achieved by:

- Marketing the property;
- Obtaining an appropriate independent valuation; or
- Both of the above

2.4. In order to discharge the duty under section 123(2) there is no absolute requirement to market the land being disposed of, or to obtain an

independent valuation. For the purposes of this policy the Council will accept a valuation to discharge the duty.

2.5. The Department for Communities and Local Government has issued the General Housing Consents 2013. The consents, which came into force on 11 March 2013:

- Set out the situations where the specific consent of the Secretary of State is not required before a local authority disposes of council housing land and associated assets.
- Extend the freedom of local authorities in relation to the granting of leases and the disposal of reversionary interests.

### **3. Criteria for assessing requests to buy Small Land Sites**

3.1. Housing Land, including land that forms the gardens of council houses, is “public property” and is not usually for sale to benefit private individuals. Unlike private and commercial landowners, who are free to buy and sell land at whatever price they choose, a local authority is in the position of a trustee in relation to the land that it holds on behalf of the community. Therefore, it has a statutory duty to sell land at the best price reasonably obtainable.

3.2. Applications from private individuals to buy small land sites will normally be refused unless:

- There is a broader community benefit to the disposal, for example a rationalisation of small parcels of land, that either rarely used or often misused, or
- There are management issues in relation to the parcel of land concerned – for example, they are difficult or very costly to maintain or there are issues regarding the use of the land for anti-social behaviour, or
- There are extenuating circumstances in relation to the applicant requesting the purchase of the land – for example, there are health grounds in relation to the applicant and the sale of the land would improve their quality of life and would not adversely affect the quality of life of others in the neighbourhood.

- 3.3. In all these cases, evidence would be required to support and justify the application to buy. This may include information from professionals, as well as information from the Council's own records and information from neighbouring properties.
- 3.4. Before any sale is approved the local community will be consulted on the proposal to dispose of the land. This will include consulting with immediate neighbours, including current tenants, District Ward Councillors and the relevant Parish or Town Council. This will usually be written communication, where the Council explains the proposal and the rationale for sale and requests feedback and comments from the consultees.
- 3.5. Officers would also consider whether the sale would have implications for long-term strategic uses for the land in question. For example, to allow access for future development of adjacent sites or where the site may form part of a land assembly project to allow a larger development. In such cases permission to purchase will usually be refused (see paragraph 1.3 above).
- 3.6. Small Land Sales will include restrictive covenants that limit the future use of the land. Usually this will be as garden land. The Council will not consider lifting this covenant unless either there has been a change in circumstances and one of the exceptions listed in 3.1 (above) is met, or the applicant pays to the Council the uplift in land value if the land had been treated as development land. For avoidance of doubt, the value of this uplift (for example, the difference between the value as garden land compared to the value as development land) will be determined by a suitably qualified RICS surveyor and will apply on the date the 'uplift survey' is completed, rather than the difference in original value. The applicant will be charged for the costs incurred by the Council in gaining this valuation.
- 3.7. As the overriding principle is that there is no obligation to sell HRA land, this should be communicated to the customer to avoid unnecessary staff

administration or unrealistic expectations. Reasons for refusing to sell a piece of land may include but are not limited to:

- There is no community benefit from the sale
- Issues relating to either public access or access for services (for example, grounds maintenance);
- The land may have potential for future development.
- The land is of value to the local community.

This list is not exhaustive.

3.8. There needs to be a clear rationale for disposing of any HRA asset, and any disposal should be based on full market value. This must be covered in the officer report prior to sign off.

3.9. The Council will charge fees to recover the costs of all services and officer time involved in processing applications. We will publish a list of standard fees alongside the procedure for dealing with such requests. No application will be progressed until the Council receives a completed expression of interest form, and payment of the initial fees.

## 4. Procedures

- 4.1. Initial queries will be dealt with by Asset Management who will inform the applicant of potential costs, including legal costs and explain the length of time to deal with the application. At this point it will be made clear that the Council will potentially make a series of charges based on the charging schedule.
- 4.2. If the applicant wishes to pursue their land transaction request, they must complete an expression of interest form, together with the relevant administrative fee.
- 4.3. On receipt of the completed expression of interest form and payment, the Land Officer will undertake a preliminary desktop analysis. This will involve assessing the application against the criteria set out within the policy, consulting with the housing officer and discussed with the Line Manager. At this point, if the request is to be refused, the applicant will be notified in writing providing reasons for refusal or they will be informed that the application can proceed and the likely costs and timescales involved.
- 4.4. The applicant will be notified of the preliminary decision within 28 days of receipt of the expression of interest.
- 4.5. If the applicant wishes to proceed following a positive outcome from the expression of interest, they must confirm this in writing by completing a full application to the Council accompanied by the appropriate non-refundable fee.
- 4.6. The Land Officer will undertake further investigation which will include consultation with neighbours and the local ward member(s). Other agencies to be consulted at this time include:
  - Highways (County Council)
  - Pathways and Rights of Way

- Economic Development.
- Housing Staff.
- Parish Council

4.7. A site visit will always be required, the cost of this will be included within the fees. If there is any concern about land ownership, the Land Officer will check this with Legal Services. The customer may also want to make their own enquires which will be at their own expense.

4.8. Following the consultation and investigatory works, the Council aims to inform the decision in writing within a further 28 days.

4.9. Applications that are refused will be provided with an explanation of the reasons for refusal, except in cases where such information is commercially sensitive, or the provision of information would breach confidentiality. Complaints will be dealt with under the Council's Complaints Procedure.

4.10. If an application is refused, any new application from the same person will be regarded as a new application and they will be required to pay all council fees prior to any new application being considered.

4.11. Where the decision to proceed is agreed, a third payment will be required from the applicant to undertake a land valuation and any legal fees.

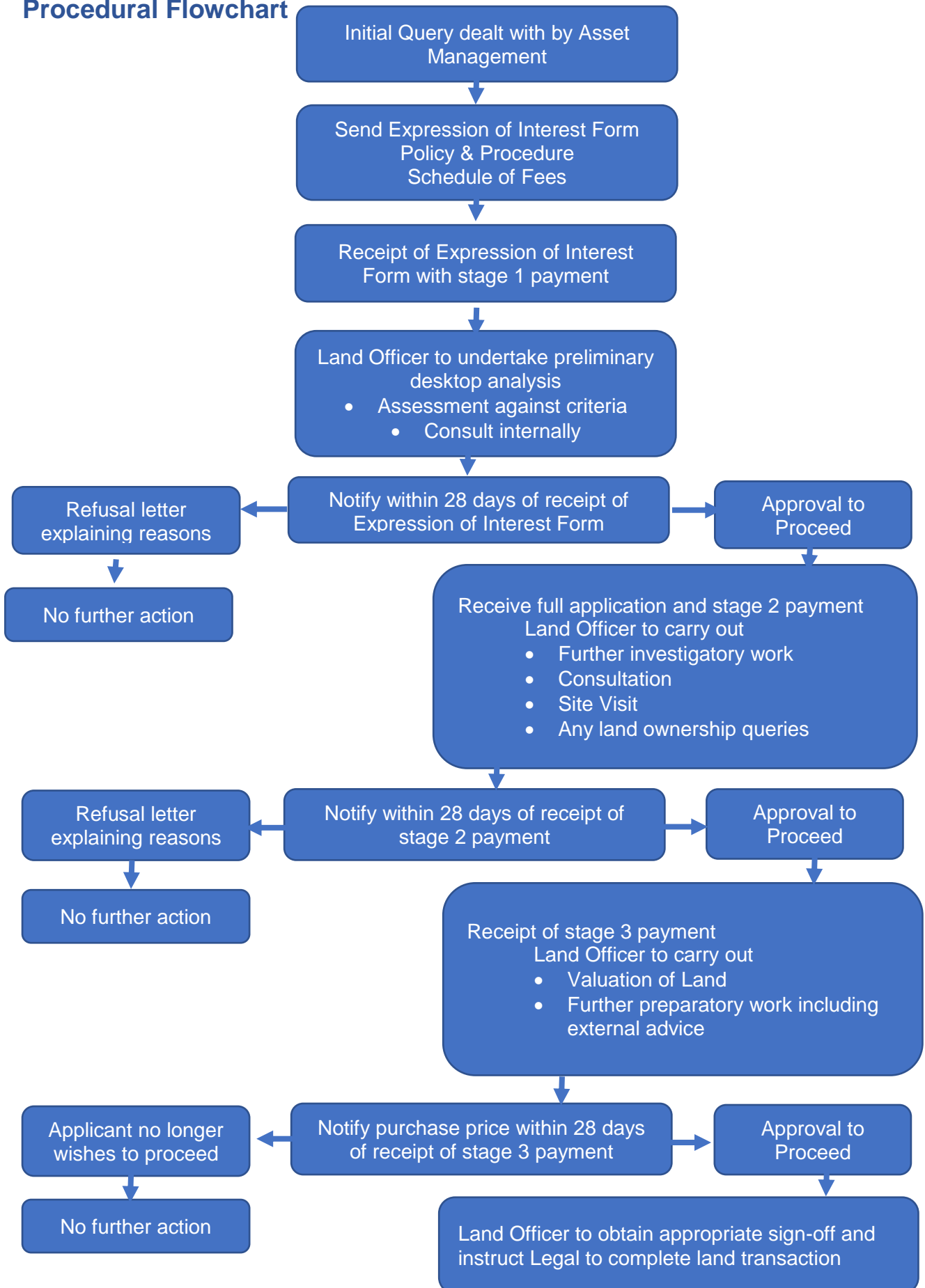
4.12. The Land Officer will use a suitably qualified RICS surveyor appointed by the Council to value the land for sale. The cost of the valuation will be included within the fee charged.

4.13. Legal Services will be engaged to act on behalf of the Council and will prepare the necessary title information pack.

4.14. Small Land Sales will include restrictive covenants that limit the future use of the land.

- 4.15. Proposals to sell land up to the value of £10,000 shall be signed by the Lands Officer and authorised by a Service Manager in the Housing Department. These shall be collated and reported to the Head of Housing and Lead Member for Housing each quarter for information.
- 4.16. Proposals to sell land of a greater value should be authorised by the Head of Housing (or in their absence a member of Leadership Team) and the Cabinet Member with responsibility for Housing (or in their absence another member of Cabinet).
- 4.17. The Land Officer will inform the applicant that they will remain responsible for meeting any requirements for planning permission in relation to any land sold, including paying any fees required in relation to planning enquiries and planning applications.
- 4.18. The Land Officer will also remind applicants that they must undertake their own investigations to assess whether the ground is suitable for the intended use. As part of this, applicants are advised to seek their own independent professional advice. The Council will not contribute to the cost of this advice.
- 4.19. Following signed approval by the responsible officer (see paragraphs 4.15 and 4.16 above) and confirmation that the applicant wishes to proceed based on the valuation, the Lands Officer will instruct Legal to complete the transaction.

## Procedural Flowchart



## Schedule of Fees

Payment Stage	Detail	Amount
Stage 1	Preliminary Desktop Analysis (to be accompanied with expressions of interest form)	£25.00
Stage 2	Further investigatory work (to be accompanied by full application)	£250.00
Stage 3	Valuation of land and further preparatory work including external advice	Approx £1,140+ VAT (current cost to be confirmed at Stage 1)
Stage 4	Sale of land and associated legal and transactional costs including applicable tax	Purchase price dependent on valuation + Legal and transactional costs = up to £700
Note: any separate legal costs incurred by the applicant or costs associated with any planning permission sought by the applicant will be additional and separate to the land transaction.		