Perranzabuloe Parish Council

Management of Property Portfolio and Disposal of Council Land

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1. Introduction

This policy outlines the principles and procedures governing the management of the property portfolio owned by Perranzabuloe Parish Council (PPC). The effective management of the property portfolio is crucial for ensuring PPC's assets are utilised efficiently for the benefit of the community.

2. The primary objectives of managing the property portfolio are as follows:

a. Optimise the use of assets for the benefit of the community. This strategy aims to offset PPC costs and maintain the precept at a level deemed acceptable by PPC and the community it serves.
b. Ensure proper maintenance and upkeep of properties.
c. Incorporate the principles of biodiversity conservation, the circular economy, and environmental protection in the management of the property portfolio.
d. To improve biodiversity with the aim of achieving PPC's target to be 100% carbon neutral by 2030.
e. Comply with all relevant legislation and regulations.
f. Safeguard the financial interests of PPC.

3. Acquisition of Property

a. All property acquisitions shall be in line with PPC's strategic objectives and approved by a majority vote of PPC members at a Full Council meeting.
b. A thorough due diligence process, including legal and financial assessments, shall be conducted before acquiring any new property.

4. Property Management and Upkeep

a. A specialist Property Manager is contracted to give advice on PPC's property portfolio, including property inspections, lease negotiation and breaches. It also has a Grounds Team who carry out regular inspections of public spaces and the following properties: Parish Council Offices, 8 Boscawen Road, Goonhavern Toilets and Cligga Industrial Estate. Maintenance schedules shall be established for all properties to ensure their longevity and functionality.
b. PPC shall allocate sufficient funds in the annual budget for property maintenance.

5. Biodiversity and Environmental Stewardship

a. The enhancement of local ecosystems will be a factor in the management of property and landholdings.

b. Where feasible, green infrastructure, such as planting native species, creating wildlife corridors, and restoring natural habitats, will be incorporated into any property planning and management.
c. **Circular Economy Principles**: Disposal and repurposing of assets will prioritise reuse, recycling and reducing waste, ensuring minimal environmental impact. Procurement and management of properties and materials will consider life cycle impacts to promote sustainability.
d. **Environmental Best Practices**: All property developments, renovations and disposals shall comply with applicable environmental regulations and aim to exceed minimum standards wherever possible. Decision making regarding property and land management will include, where feasible, environmental impact assessments to identify opportunities for enhancement and mitigate risks.
e. **Community and Stakeholder Engagement**: Collaboration with local communities and stakeholders will ensure that environmental and biodiversity initiatives align with broader social and ecological goals.

6. Disposal of Land

a. PPC acknowledges the need to review the way in which it manages its land and property portfolio in the future. It also acknowledges the need to use its assets more effectively and an outcome of that process could result in a smaller property portfolio. However, PPC will work with the Property Manager to explore income generation opportunities for its property by way of leases and shared occupation or co-location of services.

It is Government policy that local authorities should dispose of surplus and under-used land and property wherever possible. PPC has a fairly wide discretion to dispose of its assets (such as land or buildings) in any manner it wishes. When disposing of assets, PPC is subject to statutory provisions, in particular to the overriding duty under s127 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal. This duty is subject to certain exceptions that are set out in the Local Government Act 1972 General Disposal Consent (England) 2003

In all cases, disposal at less than best consideration is subject to the condition that the undervalue does not exceed £2,000,000 (two million pounds). This Policy is produced as a guide only and will need to be considered against PPCs strategic objectives and key results. Disposals can be varied and complex and often responsive to unique circumstances or situation which prevail at the time. It is therefore essential that PPC takes a measured approach which should be reflected in an allocation of sufficient time and resources to enable relevant information to be obtained, especially as there will be a need for procedural advice from specialists such as surveyors,

valuers, and solicitors for legal advice. Having the requisite documentation and information in place will ensure that PPC is able to make an informed decision on any land/property disposal matter.

7. The Surplus Test

Land/property will be deemed surplus to PPC's requirements where:

a. It makes no contribution to the delivery of PPC's services or strategic objectives.
b. An alternative site has been identified which would be more cost effective in delivering PPC's services or strategic objectives.
c. It has no potential for strategic or regeneration/redevelopment purposes in the near future.
d. It will not contribute to the provision of a sustainable pattern of development.
e. It makes no contribution to protecting and enhancing the natural, built, and historic environment, including making no contribution to helping to improve biodiversity.

8. The "Under Used" Test

Land/property will be deemed to be under-used if:

a. All or part of the site is vacant and is likely to remain vacant for the foreseeable future.
b. The income being generated from the site is consistently below that which could be achieved from:
    (i) Disposing of the site and investing the income.
    (ii) An alternative use.
    (iii) Intensifying the existing use
c. Only part of the site is used for service delivery, and this could be delivered from an alternative site.
d. It makes no contribution to protecting and enhancing the natural, built, and historic environment, including making no contribution to helping improve biodiversity. In the case of open spaces, amenity areas and similar sites, the under-used test should also consider the "community value" of the asset, which would include visual amenity and not be limited solely to income generation or whether the site is vacant etc.

The disposal of land will be considered only in exceptional circumstances and in line with relevant legislation. The Local Government Act 1972 (Section 123) and subsequent amendments shall be followed when disposing of any land.

9. Open Space (including parks, playing fields and informal open spaces of "public value" whether or not there is public access to it)

Assets in this category are valuable community resources, to be enjoyed by the wider community. Open space also enhances the quality of urban life, the character of residential areas, the environment, and the visual amenity of an area etc. There will be a general presumption against declaring these assets as surplus/under-used unless:

a. alternative provision of equivalent community benefit is made in the locality.
b. the area in question no longer provides a valued opportunity for sport, recreation, or leisure.
c. there is an excess of provision considering the long-term recreation and amenity value of such provision.
d. sport, recreation, and leisure facilities can be retained and enhanced through the redevelopment of a small part of the site.
e. there is over provision in the area.
f. the asset is required for the regeneration of the area.

PPC is required by law to advertise the disposal of land designated as "public open space" in a local newspaper for two consecutive weeks and to consider any objections received. No final decision about the disposal will be made until any objections have been considered by Full Council, as the response may be material to the decision. Public response may also be an important factor in any determination by the Secretary of State of an application by PPC for specific consent to the disposal.

There will be a general presumption against disposal of local green space. However, this presumption does not rule out consideration of informal areas of green space on a case-by-case basis and particularly where they may unlock development potential that harmonises with the Local Plan, NDP or similar future replacement planning document(s).

10. Assets of Community Value

Every town, village, community, and neighbourhood have buildings or amenities that play a vital role in the function of people and place. These can include village halls, libraries, post offices, village shops and pubs etc.

The Localism Act 2011 introduced the Local Right to Bid. An asset of community value can be nominated by any constituted community group to Cornwall Council as the principal authority. Assets can then be listed if the authority considers the asset furthers social well-being or the social interest of the community. Social interests can include "cultural, recreational, sporting interests" etc.

Cornwall Council maintain a list of assets of community value. https://www.cornwall.gov.uk/people-and-communities/2022-cornwall-devolution-deal/community-right-to-bid/

Should a PPC asset be nominated and listed by Cornwall Council, PPC will need to follow the relevant process as detailed in the Community Right to Bid legislation. Any moratorium period is triggered as and when PPC notifies Cornwall Council that the asset is for sale and should there be a community interest in any asset. The moratorium period must expire before an open market disposal can be achieved.

A disposal to a community group might offer the best solution for the community and this model can be explored if PPC considers bids are viable and sustainable in the long-term. A disposal to a community group can occur during the moratorium period.

Should a moratorium be triggered, PPC would be under no obligation to dispose of the asset to any community group and it would not preclude any active marketing of the property by PPC.

Further information is available from Cornwall Council – Community Right to bid refers.

11. Budgetary pressure

PPC may find itself in a situation not of its own making which through budgetary pressure may force PPC to consider its services and property portfolio at its annual budget meeting.

An example of this can be central to Government intervention through changes to policy as experienced in 2013 following the Localisation of Council Tax.

12. Disposal of Property

PPC can and may from time-to-time dispose of buildings. A disposal includes not only an outright sale of the freehold, but also the grant of a lease or assignment of a term of a lease or an exchange of land. Section 127(1) of the Local Government Act 1972 provides that a council may dispose of any land held by them in any manner they wish. However, Section 172(1) of the Act provides that land (including buildings) may not be disposed for consideration less than the best that can reasonably be obtained. “Best consideration means achieving a maximum value from the disposal, not just maximum price.

Section 128 of the Local Government Act allows the Secretary of State to make a general consent in respect of certain land transactions by local authorities. Such consent has been made in the form of the Local Government Act 1972 General Disposal Consent (England) 2003. This enables disposal of properties at an undervalue where:

a. the promotion or improvement of economic wellbeing
b. the promotion or improvement of social wellbeing
c. the promotion or improvement of environmental wellbeing

Where PPC does not seek to obtain the best that can be reasonably obtained, it should consider the following as a minimum:

a. does the project meet with any of the criteria set out above and in line with the Local Government Act 1972 General Disposal Consent (England) 2003.
b. obtaining a current market valuation for the building based on:
c. open market disposal; and
d. disposal to account for any sitting tenant(s)/flying freehold etc.

The above will be on a case-by-case basis as each disposal will have its own unique circumstances.

a. VAT must be paid by the purchaser and specialist advice should be sought by PPC's Responsible Finance Officer for the treatment of VAT on the sale where an option to tax has been made.
b. Land registry
c. A Schedule of Dilapidation/Statement of Condition being carried out unless legal advice indicates that a schedule or statement is not required and that "caveat emptor" is reasonable.
d. An appropriate coverage mechanism being considered, and which reflects the agreed sale price for the building (VAT) treatment of selling a building at below market valuation(s).

Should PPC opt to dispose of a building for the best price that can reasonably be obtained, there are several options that could be considered. The first crucial step is to obtain a full market valuation from an independent RICS accredited surveyor/valuer.

Practical summary points to note when approaching property transactions include the following:

a. Carry out a full appraisal of the proposal and the terms offered or wanted.
b. What are the terms?
c. Is the statutory power to dispose clear?
d. Remember that disposal includes easements and leases but not licences.

e. There are special rules for disposal by local authorities acting as Charities (s117 of the Charities Act 2011).
f. PPC should be looking for best price when buying and selling.
g. Are the necessary statutory powers available?
h. Take professional valuation and legal advice.
i. Ensure that decision making is appropriate and documented and that appropriate authorities are in place. Note the importance of delegated authority.
j. Transfer/lease must be executed as a deed under PPC's common seal or with two signature of councillors.
k. Who is paying what fees?
l. Insurance and changes to insurance schedule, asset and risk registers.
m. There is a project plan including a timetable in place and that an officer has been appointed to lead.
n. That the Responsible Finance Officer is properly equipped and authorised to act as the single point of contact with solicitors etc.
o. Adequate budget is approved to cover consideration, professional fees, fees for searches and the Land Registry.
p. Ensure proper reporting mechanisms are in place.
q. Do not underestimate costs or timescales.
r. Do not underestimate the significant work dealing with CPSE (Commercial Property Standard Enquiry).
s. Managing the process – note the difference between agreeing terms and handling the legal process.

13. Leases

Disposal under the Local Government Act 1972 deals with all types of disposal (Freehold, leasehold, and short tenancy agreements).

The grant of a lease, whether out of freehold or leasehold interest, is a part of disposal.

The disposal of PPC's land and property could therefore be progressed in a number of ways and does not necessarily have to result in a freehold sale.

(i) Permanent grant of rights over land – i.e., easement in fee simple.
(ii) Leasehold disposal
Leasehold interest can be agreed for any time period. A leasehold interest of 7 or more years must be registered as an interest in land with the Land Registry.

An independent RICS chartered surveyor/valuer should be engaged to provide PPC with a market rental valuation for any land or property.

Heads of Terms can be discussed and agreed with prospective tenants on a “subject to contract basis”.

Authority to enter those discussions should be approved by the relevant Committee which can include an “in principle” basis.

A suitably qualified and independent solicitor should be engaged on behalf of PPC to formulate a draft lease for issue to prospective tenants. A fixed fee approach might be more cost effective than utilising an hourly rate for legal work.

Any lease will need the relevant and minuted authority from PPC before any members/officers can sign any lease documentation, including easements, wayleaves etc.

The obligation to achieve best value contained in Section 123 and 127 of the Local Government Act 1972 does not apply to disposals of land by way of a short tenancy i.e.

a. The grant of a term not exceeding 7 years; or
b. The assignment of a term which has not more than seven years to run.

Practical points to note when approaching leases include the following:

a. Parties – to whom
b. Capacities – note Charities
c. Term and break clauses
d. Rent and rent reviews
e. Permitted user
f. Repairing obligations – common parts and unlet parts
g. Alienation – subletting
h. Insuring obligations
i. Forfeiture – bankruptcy and non-use
j. Schedule of Condition
k. CPSE 1, 3, 7 – planning permissions, guarantees, insurances, asbestos report, fire risk assessment, EPC
l. Superior landlord’s consent
m. Costs
n. Registration

14. Valuations

Although there is no prescribed route to achieve the best price reasonably obtainable, there may be circumstances in which a sale to the market is the only way to achieve it as opposed to one particular sale at a price according to an independent valuation.

Before disposing of any interest in land for a price which may be less than the best consideration reasonably obtainable, officers will ensure that a market valuation of that interest is obtained.

This valuation will also assist with identifying the likely amount of the undervalue.

This will apply even for disposals by means of a formal tender, sealed bids, or auction, and irrespective of whether PPC considers it necessary to make an application to seek the Secretary of State's specific consent. By following this procedure, PPC will be able to demonstrate that it has adopted a consistent approach to decisions about land disposals by carrying out the same step by step valuation process on each occasion.

Supporting documents will provide evidence, should the need arise, that PPC has acted reasonably and with due regard to current legislation.

15. Public Auction

A sale of land/property by open auction available to anyone. The sale will be publicly advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer. Reasons justifying sale by this method and how the reserve price is determined must be recorded in writing.

16. Formal Tender

A sale of land/property by a process of public advert and tenders submitted by a given date. This is a suitable mechanism where there are identified development proposals. A fair and transparent tender process will need to be adopted.

17. Exchange of Land

A transaction involving the exchange of PPC owned land with another landowner. The land acquired by PPC will meet at least one of its strategic objectives and will be "equal" in commercial worth to the land exchanged whether from the value of the land itself or where a payment is made in addition to the land exchanged.

18. Informal Negotiated Tender

A transaction involving a public advert that requests informal offers or bids that meet a given specification or set of objectives agreed by PPC. PPC may then negotiate further or explore more detailed terms with one or more individuals who submitted the most advantageous bid or bids.

19. Consideration Based on Merit

Each asset disposal is treated on its own merits and nothing in this policy will bind PPC to a particular course of action in respect of a disposal. Alternative methods of disposal not specifically mentioned in this policy may be used where appropriate, subject to the necessary authority from PPC.

This policy: sets out the procedure to be adopted in connection with the disposal of:

(a) Surplus and under-used assets and ensures that requests to purchase PPC owned assets are dealt with in a fair and consistent manner and that any person who may have an interest in making an offer to purchase, could do so in circumstances no less favourable than anybody else.
(b) Distinguishes requests for small areas of land that may be considered for sale by private treaty and larger areas with development potential that should be sold on the open market.

Although this policy will normally be followed, there will be occasions where the procedure may need to be changed, particularly for larger, more complex land/property sales.

In reviewing the future of any asset, PPC will assess all the options, to be sure that it obtains best value.

Options include using the asset in a different way, disposing of it on the open market or transferring it to a voluntary or community organisation at less than best consideration to achieve wider social benefits.

Community organisations operate on a business model, often using volunteer effort, community intelligence about local needs and sources of funding not available at local authorities.

They can run a community asset as a social enterprise. The business plan for the community asset transfer should demonstrate financial viability.

20. Public Consultation

In cases where land disposal may have a significant impact on the community, PPC will conduct a public consultation to gather feedback and address concerns.

The results of the public consultation will be considered before making a final decision.

21. Timing

The timing of any marketing/disposals will need to be considered against the background of the current market conditions, potential for the site value to increase in the future, whether there is a need to raise capital receipts and current planning policies.

It may be more advantageous to auction properties in the summer months and an assessment will be made on a case-by-case basis.

22. Rights of Way and Other Easements

It is important to establish the nature of any easements benefitting the land/property, so that any that are missing can be addressed, if possible. As well as access rights, the property may benefit from rights to run services over adjoining land, rights to light, rights of support or other property specific rights. It is also useful to check whether the land/property is subject to any rights which might adversely affect the proposed disposal and subsequent development, for example, public or private rights of way or rights of support.

23. Ransom Strip

A ransom strip is an area of land which is owned by someone other than PPC. If access is only possible via a ransom strip, then the person with title to that strip will be instrumental to unlocking the development potential of the land and that may involve payment to the ransom strip owner, either in return for a formal right of way or transfer of ownership of the strip.

Legal advice should be sought regarding any conventional approach to valuing ransom strips as it has been known for negotiation with the ransom owner to include a model based on one third of the uplift in value of the land/property released by unlocking it for development.

However, any agreement will ultimately depend on market conditions and the specifics of the land/property and its locality.

It will generally be sensible to resolve ransom strip issues prior to offering the property to the open market. It is crucial if the property is to achieve full value on the open market that it has adequate access rights. If development is anticipated, then access may need to be by a different route than that used historically, where possible, i.e., either because of a physical aspect, a defect with the existing access, for planning purposes or as a consequence of intensification of use.

A review should be carried out to establish whether any ransom strips are present.

24. Links with Other Policies

This policy aims to provide PPC and its Members and Officers with the guiding principles and parameters for factors associated with any disposal of land or property. This policy links to PPC's Financial Regulations.

25. Transparency

All decisions related to the property portfolio, including acquisitions and disposals, shall be documented, and made available to the public.

PPC will maintain transparency by providing regular updates on the property portfolio in public meetings, subject to the Public Bodies (Admission to Meetings) Act 1960 which states that if the nature of business to be transacted is sensitive (e.g., contracts, commercially sensitive information), press and public will be excluded and instructed to withdraw from the discussion.

26. Review

This policy will be reviewed annually to ensure its relevance and effectiveness. Amendments will be made as necessary to reflect changes in legislation or PPC's strategic objectives.

27. Freedom of Information

In accordance with the Freedom of Information Act 2000, this document will be posted on PPC's website www.perranzabuloe-pc.gov.uk and copies of this document will be available for inspection on deposit in the Parish Office.