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# AMPS Policies and Procedures

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**This document provides guidance for council officers, council members and the public on various property-related policies, procedures, and protocols.**

**These have been prepared on behalf of the council by the Asset Management & Property Services department (AMPS) to support our Strategic Asset Management Plan and will be regularly reviewed.**

**September 2024**



**Elmbridge**  
Borough Council

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## 1. Acquisition of Property - Process and Policy

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All council property purchases have been through a robust appraisal process including a business case to evaluate risk and financial impact prior to completion. Dependent on value, approval to purchase our properties were made by Cabinet (subject to budget approval of Council if required in accordance with the Budget and Policy Framework). Any borrowing has been in accordance with the Prudential code which requires that borrowing is affordable, sustainable and provides value for money. Investments are required to demonstrate a return more than the cost of capital and other associated costs insofar as can reasonably be predicted.

Our Asset Management Plan 2019-2024 detailed the key considerations including risks, property criteria, and funding for acquisition of investment assets.

In line with our Asset Management Strategy 2024-2030, due to the change in market conditions and borrowing restrictions, the council will not be actively acquiring new investment assets for the short to medium term unless presented with an exceptional or strategic opportunity to do so. The following is a general guide in these circumstances.

This statement does not apply to housing assets – the council has increased its housing stock over the last three years to support homelessness in the borough and to decrease the reliance on nightly paid accommodation. These assets are held as operational stock.

### Procedure

When the Council considers acquiring land or property that materially affects the Council's Asset base, the Asset Management Team must handle and negotiate the acquisition. All valuations will be conducted or verified by a qualified member of the Royal Institution of Chartered Surveyors with relevant local market knowledge and the skills and understanding necessary to undertake the valuation competently.

### Acquisition Process

All acquisitions must adhere to the rules of professional bodies, statutes, and case law. Each step must comply with Public Sector and Local Government Legislation, Statutory Instruments, Government Circulars, and existing Council procedures, policies, and the Constitution.

When a property is identified as a potential investment, the Property Acquisition

Protocol is followed. Asset Management and Property Services (AMPS) will discuss the details with the Council Management Board and conduct an acquisition appraisal, in consultation with relevant Heads of Service and Portfolio Holders. Recommendations from the appraisal will be presented to the Portfolio Holder Leisure, Culture and Commercial Strategy for consideration. Meanwhile, AMPS officers will negotiate the terms and conditions and keep the board informed throughout the process. Once an agreement is reached, officers will prepare a report for Cabinet to seek approval to proceed. If approved by the Cabinet (and full Council, if required under the constitution). Legal Services will be instructed to formalise the acquisition. Finance and Legal officers will assist Asset Management until the process is complete.

## **Market Research**

Once the need to acquire property is identified, relevant services will conduct market research. The AMPS team will determine if suitable land or property is available.

If multiple suitable properties are found, a thorough comparison will be made to identify the best option based on:

- Price.
- Property condition (a full survey is required before completion).
- Availability (timing).
- Nature of tenure.
- Locational advantages (for strategic acquisitions).
- Return on investment (for revenue-generating assets).
- Purchase costs

## **Financial Appraisal**

When a suitable property is identified, a financial appraisal will be conducted to assess the budgetary and financial implications of acquiring the property at the asking price. The Strategic Director of Services and Head of Finance will provide advice to AMPS throughout this process. The financial appraisal will consider various factors.

- Capital cost of the acquisition
- Potential short and long-term revenue from the property.
- Availability of external funding.
- Possibility of a joint venture.
- Asset management costs, including maintenance, refurbishment, demolition

(if necessary), ongoing maintenance, life cycle costs, national non-domestic rates, and insurance.

- Overall impact on the Council's budget.

## **Independent Valuation**

Regardless of site size/complexity, independent valuation advice will always be sought from an RICS Registered Valuer to inform and support the negotiation and agreed purchase price.

## **Post Purchase**

With the addition of a new asset to the council's portfolio, AMPS officers will organise the invoicing, insurance, business rates and any statutory compliance requirements. Any issues highlighted within the property condition survey will be included within a 10 year planned maintenance programme, and any associated costs will be added to the annual budgets and/or capital expenditure programme.

## **'One-off' Housing Purchases as Operational Assets**

AMPS have been instructed by Housing following a 'needs-driven' review to purchase a number of residential properties on behalf of the council. This is to provide housing within the borough for displaced or homeless residents, including refugees. The budget for this ongoing programme includes the Enabling Fund (made up of section 106 contributions), capital receipts and central Government funding through a variety of initiatives. The purpose is primarily to remove the reliance on expensive nightly paid accommodation.

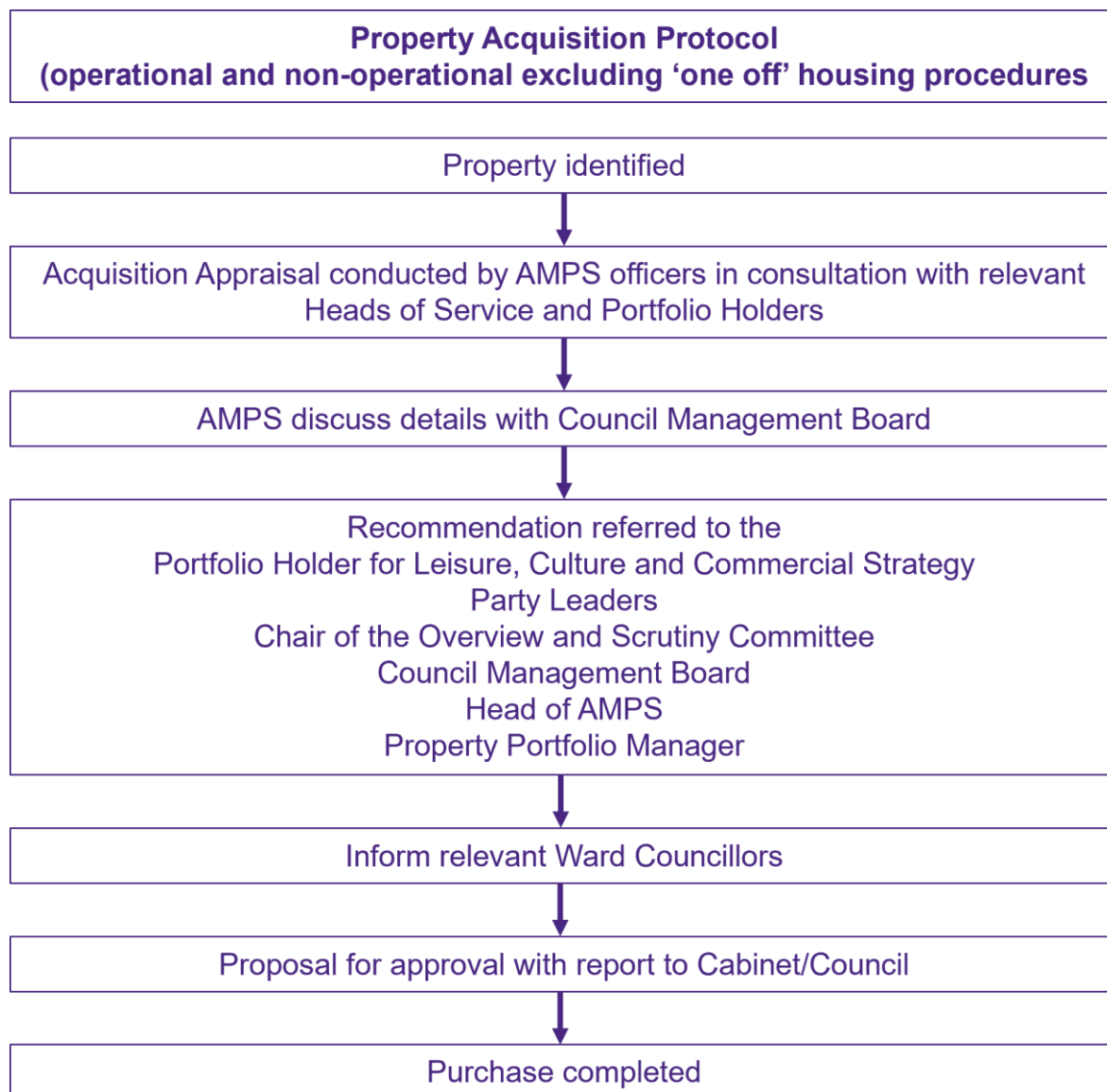
## **Process for housing purchases**

The programme of acquisition has been carried out on a different basis to our investment and non-residential operational acquisitions. Housing Services instruct AMPS officers who carry out a market search to identify suitable assets. The authorisation for the funding for this purpose is already in place and pre-approved by Cabinet and full Council: this has been done to speed up the purchase process. Authority to approve individual purchases has been delegated to the Strategic Director for Services.

## **Post Purchase**

Following acquisition, as with other property acquisition, a planned maintenance

programme will be drawn up by AMPS, informed by condition surveys to include budgeted maintenance and repairs. This will also ensure that any works required to bring the properties up to Decent Homes Standards are undertaken prior to letting. The responsibility for leasing and rent collection is overseen by Housing, with void works to maintain the Decent Home Standards falling to the relevant Registered Provider acting as managing agent.



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## 2. Allotments Policy

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The Council currently owns 13 allotments throughout the Borough. Further details are available on the Council's website.

Our Allotment charging policy has historically been to charge an annual base rent of £50 or £100 depending on the size of the allotment, or 10% of the gross income, whichever is the higher. This policy has been revised to provide transparency, certainty for the allotment society and to ease the accounting liability. As such, all rents will be fixed for the first five years, at a level which reflects 10 % of the average of the preceding three-year gross income. This rent will be reviewed every five years in line with inflation. Any renewals will be on a 25-year lease.

The operation of our allotments is overseen by the council's Greenspaces department. AMPS will assist with property and lease issues.



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## 3. Assets of Community Value (ACVs)

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The Localism Act 2011 ('the Act') was introduced to shift power from central government to local authorities and communities. It aimed to give communities more control over local decisions and services, fostering greater local engagement and accountability. One of the key provisions of the Act is the Community Right to Bid, which allows communities to nominate buildings or land as Assets of Community Value (ACV).

If an asset is nominated, the Act aims to give the local community early warning of any intention to sell such assets and to enable them to delay sales by six months to provide time for them to put together a bid to buy the asset.

The proposals do not require the landowner to dispose of the asset to a community group nor force any sale but are intended to facilitate the transfer into community ownership of property assets felt to have local social value.

The land can be listed if it is proven that a principal use of the asset furthers the social wellbeing or social interests of the local community and is likely to do so in the future.

The Act does not place any restriction on what an owner can do with their property, once listed, for the duration it remains in their ownership. Listing will not, for instance, prevent the lawful implementation of a planning permission – but it will provide community groups with the reasonable opportunity of bidding to buy the land on the open market if the owner wishes to sell.

The Assets of Community Value (England) Regulations 2012 provides the detailed framework for the ACV scheme. Under these regulations, local authorities are required to maintain a list of assets of community value and manage the nomination and listing process.

### Procedure for handling nominations

#### 1. Purpose

This policy outlines the procedures for handling nominations of Assets of Community Value within the council's jurisdiction, ensuring compliance with the Localism Act 2011 and the Assets of Community Value (England) Regulations 2012.

#### 2. Definitions

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- **Asset of Community Value (ACV):** A building or land whose main use furthers the social wellbeing or social interests of the local community and could continue to do so.
- **Community Right to Bid:** A right for communities to nominate assets to be listed as ACVs and to bid for these assets if they are put up for sale.

### 3. Eligibility to Nominate

Nominations can be made by:

- Parish councils.
- Neighbourhood forums.
- Unincorporated groups with at least 21 members who are registered to vote in the local area.
- Charities, community interest companies, or other not-for-profit organizations with a local connection.

### 4. Nomination Process

1. **Submission of Nomination:**
  - Nominations must be submitted using the council's ACV nomination form.
  - The form should include details about the nominating group, the asset, and how the asset meets the criteria for listing.
2. **Acknowledgement:**
  - The council will acknowledge receipt of the nomination within 5 working days.
3. **Assessment:**
  - AMPS officers will assess the nomination against the criteria set out in the Localism Act 2011 and the ACV Regulations, in conjunction with the council's legal department.
  - This includes verifying the eligibility of the nominating group and the asset's contribution to the community's social wellbeing or interests.
4. **Decision:**
  - The Strategic Director for Services has delegated authority, in consultation with the Portfolio Holder for Leisure, Culture and Commercial Strategy, to make a decision based on recommendations of officers. This will be within 8 weeks of receipt of the nomination.
  - If the nomination is successful, the asset will be added to the list of ACVs.
  - If unsuccessful, the council will provide reasons for the decision.
5. **Notification:**
  - The council will notify the nominating group, the owner of the asset, and other relevant parties of the decision.
  - The decision will also be published on the council's website.

## 5. Review and Appeal

- **Review:** The owner of the asset can request a review of the council's decision to list the asset. The review will be conducted by a senior officer not involved in the original decision; this will usually be the council's Chief Executive Officer.
- **Appeal:** If the owner is dissatisfied with the review outcome, they can appeal to the First-tier Tribunal.

## 6. Moratorium Periods

- **Interim Moratorium:** If the owner intends to sell the asset, they must notify the council. A 6-week interim moratorium period will begin, during which community groups can express interest in bidding.
- **Full Moratorium:** If a community group expresses interest, a full moratorium period of 6 months will apply, allowing the group time to prepare a bid.

## 7. Compensation

Owners of listed assets may be entitled to compensation for loss or expense incurred as a result of the asset being listed or during the moratorium period. Claims for compensation must be made to the council within 13 weeks of the loss or expense being incurred. The claims must state the amount of compensation requested with supporting evidence. The Council is required to give the claimant written reasons for its decisions.

## Effect of Listing as an Asset of Community Value

The impact of land being listed (as an ACV) is felt when the owner wishes to dispose of the land (by either a sale of the freehold or a lease of over 25 years).

- The owner has an obligation to inform the Local Authority of their intentions and are not able to dispose of the land until an interim six-week moratorium period has ended without any community interest group making a written request to be treated as a potential bidder in relation to the land.
- In the event that a written request is made by a community group within the six-week period, the owner is prohibited from disposing of the land (save in certain specific circumstances) for a further four and a half months. Any disposal by an owner during this period (apart from a few exceptions listed in s.95 (5) of the Act) is prohibited.
- It should be noted that the Local Authority is under no duty to facilitate or participate in any discussions with the landowner and the community group or parish council to obtain the land.

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## 4. Community Asset Transfer Policy

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The Voluntary and Community Sector (VCS) encompasses all voluntary and community organizations, including charities, community associations, and social enterprises. Voluntary organizations operate without profit motives, are non-statutory, and run by unpaid individuals (though voluntary management committees/trustees may employ paid staff). They are sometimes also referred to as the 'Voluntary Community and Faith Sector' (VCFS) or simply the 'Third Sector'.

### **Purpose of the Policy**

Community Asset Transfers (CATs) aim to empower local communities, foster independence, ensure financial stability, and create lasting positive changes in neighbourhoods. This policy outlines Elmbridge Borough Council's approach to asset transfers to the VCS, providing a framework to manage these transfers and promote their long-term success.

### **Policy Statement on Community Asset Transfer**

The council is committed to encouraging thriving communities by empowering community organizations to address local needs. The Council plans to use some of its land and property assets to create positive changes and benefits for local communities through partnerships with community and voluntary organizations. Not all properties or organizations will be suitable for asset transfer, and the Council will continue to support various initiatives to build strong, sustainable communities.

### **National Policy Context**

The 2006 Local Government White Paper introduced a new approach to managing public assets and delivering services, allowing councils to collaborate more freely with other public sector providers, third sector organizations, and local citizens. The 2007 Quirk Review further promoted community asset management and ownership. The Localism Act (2011) devolved decision-making to the neighborhood level, supporting community rights like the "Community Right to Challenge" and "Community Right to Bid." These policies encourage local authorities to transform land and buildings into vibrant community spaces.

### **Legal Framework and Enabling Powers:**

Section 123 of the Local Government Act 1972 requires that all disposals (freehold or leasehold) be at the best consideration reasonably obtainable. The 2003 General

Disposal Consent Order widened council's ability to dispose of assets at less than market value if it promotes the economic, social, and environmental well-being of the area, provided the undervalue does not exceed £2,000,000.

### **Potential Benefits of Community Asset Transfer**

- Supports the Council's corporate aims and objectives.
- Improves relationships with the local community.
- Provides facilities and services that better meet local needs.
- Potential savings in revenue and capital spending for the Council.
- Better management of buildings.
- Access to funding streams not available to local authorities.
- Acts as a catalyst for local area regeneration.
- Increases community ownership and pride in facilities.
- Enhances the economic and environmental well-being of the area.
- Empowers local communities.
- Devolves decision-making to the neighbourhood level.
- Encourages community participation in activities.

### **Potential Risks of Community Asset Transfer**

- Potential loss of revenue or future opportunities for the Council.
- Risk that the asset will not be used in the public interest or inclusively.
- Differing expectations between the Council and the community organization.
- Competing applications from different community organizations.
- Community organizations may lack the experience or financial means to manage the asset.
- Loss of Council control over the asset's future.
- The Council may need the asset for future requirements.

### **Minimizing Risks and Ensuring Success**

To minimize risks and ensure successful asset transfers, the Council will form an internal working group with officers from Asset Management & Property Services, Leisure, Community Services, Legal, and Finance. This group will assess potential transfers and manage risks, overseen by the Strategic Director – Services and the relevant Portfolio Holder.

The council commits to clear and transparent decision-making for asset transfers to the VCS by:

- Raising awareness through outreach and publicity to encourage VCSs to consider asset transfers.
- Advising VCSs to avoid costly feasibility or business planning until an 'in principle' decision is made by the Council.

In assessing asset transfer proposals, the Council will weigh the benefits and risks of various options, such as:

- Taking no further action.
- Considering higher receipts from commercial disposals for greater expenditure on other services.
- Evaluating the benefits of transferring the asset to a VCS and the wider community.

### Rules for Prospective Asset Transfers

1. **Expression of Interest:** Interested voluntary organisations must produce an Expression of Interest document with support from the Head of Community Support Services and the Voluntary Sector Support Officer.
2. **Alignment with EBC Aims:** Any proposed asset transfer must align with Elmbridge Borough Council's (EBC) aims and policies and aim to create the widest public value.
3. **Types of Assets:** Proposed assets can include both land and buildings.
4. **Surplus Declaration:** Assets will be declared surplus to requirements unless the transfer is part of a strategic decision to achieve broader regeneration objectives or community ownership of new service centers or hubs.
5. **Incorporation and Social Benefit:** The VCS must be incorporated and constituted for social benefit. Where possible, legal structures should include restrictive covenants to ensure the asset remains for community benefit.
6. **Legal Agreements:** EBC will provide legal agreements to enable the VCS to manage and develop the property as a long-term asset while ensuring it remains a community asset.
7. **Long-Leasehold Arrangements:** EBC generally prefers long-leasehold arrangements (e.g., 99-year lease) for asset transfers.
8. **Community Support and Business Plan:** VCSs must demonstrate community support for their proposals, provide a robust business plan, and show high organizational capacity relevant to the asset and enterprise scale.
9. **Capacity to Manage:** EBC will only consider asset transfers where the VCS has shown the capacity to manage the building appropriately. However, EBC recognizes that organizations may develop this capacity and will provide opportunities if commitment and potential are demonstrated.

10. **Discount Levels:** Discount levels from market value will be based on the property's nature, a robust assessment of the VCS's business plan, financial viability, and the extent of community benefit.
  11. **Community Benefit Statement:** Asset transfer recipients must produce a community benefit statement every six months or annually, though this will not constitute a Service Level Agreement.
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1. **Investment in Assets:** EBC may invest in an asset before transfer to ensure it is fit for purpose, with preference given to VCSs that can use external investment.
  2. **Ongoing Support:** EBC will provide ongoing organizational support to the VCS post-transfer (subject to resources) and recognizes that the partnership extends beyond the point of transfer.

## Handling Multiple Interested Parties

When multiple parties are interested in an asset, EBC will encourage collaboration. If collaboration is not possible, a competitive process will be used to decide the outcome, and the successful organization will become the Council's preferred partner.

## Criteria for Judging Asset Transfers

Asset transfers to the VCS will aim to create the widest public value and will be judged on the following criteria:

- **Community Benefits:** The nature of potential community benefits.
- **Local Interests:** How the interests of local people will be better served, including community involvement and capacity building.
- **Organizational Capacity:** How the transfer will enhance the VCS's capacity and encourage greater sustainability.
- **Business Plan and Viability:** The proposed business plan and financial viability of the VCS's plans for the premises.
- **Regeneration Potential:** Potential for social, environmental, and economic regeneration, including community enterprise development.
- **Service Improvements:** Improvements to or creation of new local services/activities.
- **Efficiency Gains:** Support of EBC's efficiency gains and co-location of service providers.



## Decision-Making Process

The decision to transfer an asset will not set a precedent. Each transfer will be judged on its own merits, and the details will be subject to individual negotiation. The decision for any asset transfer will be considered by the Corporate Management Board (CMB), Cabinet, and full Council.

## Community Lettings

The Council's policy is to adopt the principles advocated in the Royal Institution of Chartered Surveyors (RICS) report 'Whose Property Is It Anyway?' and the findings of the Quirk review. This policy has been supplemented by the contents and principles established by the Localism Act.

The Council recognises the importance of providing support to voluntary organisations that provide services to the community compatible with the Council's wider objectives. Traditionally this support has taken the form of 'below market' rental levels on Council properties. Each case will be looked at individually along with the level of grant aid which the council provides to the relevant voluntary organisation, but risks associated with this approach should be considered carefully and the appropriate legal measures put in place to ensure all parties are protected.

The Council's preference will be to let properties on proper commercial lease terms and open market rents on an "arm's length basis", and where appropriate, to replace the hidden rental subsidy with an overt grant subsidy, with appropriate fully offsetting adjustments to budgets. This will also make the Council's overall support to the voluntary sector more visible and transparent.

Despite this preference, the Council acknowledges the need to be flexible and innovative in terms of leasing and ownership options to provide solutions best fitted to individual needs.

The Council will maintain a record of all community and social lettings to ensure transparency. They will also ensure that relevant Service Level Agreements (SLAs) are in situ in respect of grant aiding any voluntary sector organisation which occupies council buildings and these will need to be regularly reviewed in line with the licenses/leases that they are given by the authority to ensure that there is delivery of the service that meets the requirements of EBC and ensuring at the same time they are meeting the requirements of the SLA and the grant funding and can remain in occupation of the asset.



## Procedures for Assessing Asset Transfer Proposals

### 1. Expression of Interest

A one-page summary sheet will be produced by the Voluntary Organisation and provided to AMPS. This document will outline the key components of the project before the business plan is drawn up.

It will enable the Council to have a high -level summary of the robustness of the business case in advance of a more detailed business being developed.

### 2. Elements of a Business Case

The Business Case for Asset Transfer made by the VCS is the single most important document to inform the decision about whether to proceed.

At a minimum, it must contain the following items set out below (although VCSs should feel free to structure the business plan in any way they feel best):

Business Plan Element	Detail
Summary	Who you are, what you want to do, how you intend to do it, (usually written last)
About your organisation	Track record, current plans, partnerships and people, governance, legal structure
Summary of the project	Project Objectives  Proposed programme for delivery  Proposed impact/benefits of the project  Proposals for management and operation of the asset (staff, volunteers) and the capital construction phase when relevant
Market	Need – what local needs will the project be responding to (who will be the beneficiaries)? How many will benefit within a year (e.g. community groups, local people)?  Supply – who else is delivering similar activities in the same area? Is this potential for collaboration or competition and

Business Plan Element	Detail
	<p>how will you respond to this?</p> <p>Demand – who will purchase the services/products that you provide?</p> <p>Pricing – what is the rationale for pricing (for services, renting space etc.)?</p>
Promotion	<p>What is your marketing strategy? What methods will you choose (online, direct to customer etc.) and who will you target? Who will do it (in house or external)?</p>
Resources	<p>Financial projections</p> <p>Should include cashflow for first year</p> <p>Should include budget program</p> <p>Should include examination of profit and loss and capital expenditure (if capital is required to redevelop the building sources secured or identified should be stated)</p> <p>Explanatory notes – explaining rational for projections and assumptions made. This should include assumptions about timings and level of commitment for both income and expenditure</p>
Risk assessment/ management/ mitigation	<p>Identification of the different risks associated with the project and a description of the implications of those risks occurring.</p> <p>Risks should be evaluated in two ways</p> <p>– the likelihood that the risk item will occur and the level of impact if the risk item does occur.</p> <p>A description of the strategy to prevent the risk items from occurring, or coping with them if they do, should also be provided</p>

The organisation will also be expected to submit copies of governing documents, any evidence of external advice provided, expressions of support from partners/customers, copies of accounts (where available).

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## 5. Development and Regeneration Policy

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In certain cases, the Council will hold property interests in anticipation of some wider benefit to be secured through re-development, sometimes for long periods.

These property interests will be maintained in a secure and safe condition. Where possible, holding costs will be defrayed by securing temporary rental or license fees.

The continued holding of these properties usually has an opportunity cost and this is not generally justified where the redevelopment potential is small or remote. Continued justification will need to be substantiated on the basis of specific development proposals and estimated timescales, holding cost and return assumptions.

It will be appropriate for a Planning brief to be prepared for any land capable of redevelopment to identify the most advantageous use and nature of the redevelopment and should have the objective of stimulating further regeneration in the locality or stated in the council's local plan.

An evaluation should be carried out in each case, as appropriate, to identify whether additional land should be acquired to enhance the impact and viability of any redevelopment.

Where the land forms part of a larger redevelopment scheme in private ownership the property can be offered to the owner by private treaty at an appropriate price reflecting beneficial value and subject to positive planning covenants producing additional benefits for the Council. It may be appropriate in certain circumstances for various forms of joint ventures or joint promotion agreements to be considered.

The Council seeks to achieve regeneration and beneficial change by leadership of redevelopment and stimulation of diversity and quality in employment, service and residential accommodation, to be accomplished through a combination of land ownership and planning powers including using compulsory purchase powers and relevant processes.

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## 6. Dilapidations

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The council will undertake interim and terminal dilapidations schedules where appropriate to do so. The costs of preparation and service will be advised at the time of preparation and will be recovered where it is permitted to under the terms of the lease/license.

The council will comply with the Dilapidations Protocol 2012 of Property Litigation Association and will use its best endeavours to mitigate any claim for damages and costs.

## 7. Disposal of Surplus or Underused Property – Policy and Process

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This policy outlines the principles and procedures governing the disposal of mainly surplus or under-used property or land owned by the council. It ensures that disposals are executed in a transparent, equitable, and efficient manner, optimising value for the council and community while adhering to legal and regulatory mandates.

While this document aims to clarify the Council's land disposal procedures, each case will be assessed individually, and the Council is not bound to a specific method. Alternative disposal methods may be used with proper authorisation.

Disposals are overseen by the council's Asset Management and Property Services department (AMPS) following relevant consultations.

Decisions taken by officers under delegated powers are documented (including appropriate authorisations) and records maintained and (unless commercially sensitive) published on the council's website. These decisions are taken in consultation as appropriate with the relevant councillors in accordance with the Constitution.

### Objectives

- To ensure that disposals are conducted in a manner that secures the best consideration reasonably obtainable.
- To support the strategic objectives of the local authority, encompassing economic, social, and environmental well-being.
- To comply with relevant legislation and guidance.

### Scope

This policy is applicable to all property disposals, including land and buildings, owned by Elmbridge Borough Council. Our operational buildings will be assessed differently to our investment properties, as these are held for different purposes. However, many of the principles will remain the same for all assets.

## Legal Framework

### Local Government Act 1972 – ‘Best Consideration’

Section 123 of the Local Government Act 1972 grants the Council broad powers to dispose of property, requiring the best consideration reasonably obtainable. This does not apply to short-term tenancies under seven years.

Exceptions to this duty are outlined in the General Disposal Consent (England) 2003, allowing disposals at less than best consideration (under-value) with Secretary of State consent if the under-value is £2 million or less. Section 3 of the Local Government Act 2000 allows disposals at undervalue for community benefits within this limit.

The Council must ensure the best consideration for all disposals including under value disposals, considering restrictions, professional advice, and potential planning changes.

The Council must seek appropriate legal or professional advice, following prudent commercial practices and obtaining a valuer’s opinion on expected consideration, under-value amount, and disposal method.

Best consideration does not always mean the highest offer.

The General Disposal Consent (England) 2003 permits disposals at less than best consideration if it promotes economic, social, or environmental well-being and the undervalue does not exceed £2 million.

### Housing Act 1985 (as amended)

Section 32 of the Housing Act 1985 grants local authorities the power to dispose of land and dwellings held for housing purposes. Consent from the Secretary of State is required unless the disposal falls under the General Housing Consents 2013 and any following updates.

Disposals should be at market value, though discounts may apply to eligible applicants.

### Local Government Act 1988

4.10 Section 25 allows local authorities to provide Registered Social Landlords (RSLs) with financial assistance or land for housing development. Secretary of State consent is required unless covered by the General Consents under Section 25.

## Other Statutory Provisions

Depending on the land's status, various statutory provisions may influence the Council's disposal procedures: note the current (2024) government's advice on green belt land is being updated.

- **s233 Town and Country Planning Act 1990:** Governs the disposal of land held for planning purposes, requiring best consideration. The General Disposal Consent (England) 2003 does not apply, and specific consent from the Secretary of State is needed for undervalue disposals.
- **Green Belt (London and Home Counties) Act 1938:** Requires Secretary of State consent to dispose of green belt land.
- **S123 (2a) Local Government Act 1972:** Mandates advertising the disposal of land that is or forms part of an open space.
- **Charities Act 2011:** The Council, as trustee of charitable lands, must follow specific disposal requirements and obtain approval from the Executive Shareholder and Trustee Committee, adhering to the Charities Act and Charity Commission directions.
- **s233 (2) Town and Country Planning Act 1990:** Requires Secretary of State consent to dispose of common land, potentially involving land exchange.
- **Allotment Acts 1908 to 1950:** Requires Secretary of State consent for disposal of allotment land for non-allotment use.
- **Thames Basin Heaths Special Protection Areas (SPA):** Land designated as Suitable Alternative Natural Green Spaces (SANGS) can only be disposed of for continued use as SANGS, in line with Habitats Regulations and associated planning permissions.
- **Localism Act 2011:** Includes provisions for assets of community value, enabling communities to bid for properties deemed to have community significance.

## Non-Statutory Provisions

The Crichton Down Rules are non-statutory guidelines in the UK that govern the disposal of surplus government land. The rules ensure that surplus government land acquired by, or under the threat of, compulsory purchase is offered back to the former owners, their successors, or sitting tenants before being offered to the general market. Local authorities are recommended to follow these rules when disposing of surplus land. This means that if a council decides to sell land that was acquired compulsorily, they should first offer it back to the original owners or their successors. The council has not to date exercised compulsory purchase rules but would be required to follow these guidelines if these circumstances ever arose.

## Principles of Disposal

- **Best Consideration:** Disposals should achieve the highest financial return unless justified by other considerations (see below section 6.5)
- **Transparency and Accountability:** The disposal process should be open and transparent, with clear documentation and decision-making processes.
- **Community Benefit:** Consideration should be given to the potential community benefits of the disposal, including opportunities for local groups and social enterprises (this is relevant to operational portfolio rather than investment assets which are held for income purposes only).
- **Sustainability:** Disposals should support the local authority's sustainability goals, including environmental and social sustainability.

### Meaning of 'Disposal'

For the purposes of this Policy, a disposal means any freehold disposal, by sale or exchange, of Council owned land/property (including buildings) and any disposal by the granting of a lease or license for a period greater than 7 years. Leases of 7 years or less or assignment of a term which has not more than 7 years to run are not covered by this Policy, as they are exempt from the statutory requirement to obtain best consideration.

Disposal takes place at the time of completion and not exchange.

### Meaning of 'Best Consideration'

'Best consideration' means achieving maximum 'value' from the disposal, not just maximum price. Disposal at less than market value must contribute to the 'promotion or improvement of the economic, social or environmental wellbeing of the area'.

Unlike private and commercial landowners, a local authority is in the position of a trustee in relation to the land that it holds on behalf of the community and generally has a statutory duty to sell land at the best price reasonably obtainable. The Council will only be able to demonstrate that it achieved the best consideration by obtaining an appropriate valuation of the land and outlining the reasons for disposal at less than the market value.

## Procedures

### Means to identify Surplus Property suitable for disposal

- Following a review of the property portfolio to identify surplus assets.
- Following a direct approach regarding a specific property.



- Where management of the land/property is considered suitable for community ownership or has been determined as an 'asset of community value'.

Following identification of potential surplus land council officers will engage with relevant stakeholders to determine the necessity for retention or disposal.

### Criteria for Determining Surplus Assets

An asset may be considered surplus if it meets one or more of the following criteria:

- **Operational Redundancy:** The asset is no longer required for the delivery of council services or functions.
- **Underutilisation:** The asset is significantly underutilised and there is no foreseeable increase in its use.
- **Strategic Misalignment:** The asset does not align with the council's strategic or corporate objectives or long-term plans.
- **Economic Viability:** The costs of maintaining or operating the asset exceed the benefits derived from its use.

### Criteria for Determining 'Under-Used' Assets

- **Void** - part of the site is vacant and is likely to remain vacant for the foreseeable future.
- **Loss of income** - the income being generated from the site is consistently below that which could be achieved from:
  - disposing of the site and investing the income.
  - an alternative use.
  - intensifying the existing use.

When an under-used asset is generating income, a cost/benefit analysis must be conducted in consultation with the Strategic Director of Services and the Head of Finance to determine the feasibility of the proposed project.

**Partial use** - only part of the site is used for service delivery and this could be delivered from an alternative site.

### Valuation

- Officers will obtain an independent valuation to ascertain the market value of the property. This will provide guidance on sale price, which should usually be tested by the marketing process.
- This should consider any factors that may affect the value, such as planning restrictions or environmental conditions, site assessment and potential uses.

## Methods of Disposal

**Private Treaty:** This involves negotiating the sale of land with one or a few buyers at a mutually agreed price, typically but not always following a marketing exercise. A binding legal agreement is formed upon the exchange of contracts between the Council and the buyer.

- A private sale without marketing the land may be justified where for example:
  - (a) the land to be disposed of is relatively small and an adjoining or closely located landowner is the only potential or likely purchaser.
  - (b) the Council's corporate objectives and best consideration can best be achieved by a sale to a particular purchaser.
  - (c) the purchaser has a particular interest in purchasing the land or a particular association with the land.
  - (d) the nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained.
  - (e) the Council's land is part of a larger area of land that is proposed for development, redevelopment or regeneration and the nature and complexity of the proposed development of the overall site is such that the Council's corporate objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area.

**Formal Tender:** Land is sold through a public advertisement process, with tenders submitted by a specified date. A binding legal agreement is established when the Council accepts a tender.

- A formal tender sale of land is suitable when:
  - (a) The land ownership is straightforward; and
  - (b) The Council requires the successful tenderer to meet specific, pre-defined obligations, such as developing the land for industrial units for lease, conserving a listed building, or, in the case of lettings, entering into an operational management agreement alongside a lease.
- Formal tenders are not suitable when land ownership is complex or when development proposals are not clearly defined or cannot be detailed before the tender process.

- In a formal tender process, a legally binding relationship is established when the Council accepts a tender in writing. Therefore, it is crucial that all aspects of the disposal are detailed in the tender documents. These documents should include a contract for sale or lease, completed with the tenderer's details, tender price, and signed by the tenderer, to be submitted unconditionally to the Council.
- Selling land by formal tender requires a detailed specification, outlining the land for sale, requirements for the tenderer, and any obligations to be met. The Council may request best and final bids if multiple tenders score closely in the evaluation.
- The Council will advertise publicly for expressions of interest in the property/site and will publicise the selection criteria for evaluating tenders. Selected tenderers will then be invited to submit their bids according to the outlined tender procedure.

**Informal or Negotiated Tender:** Land is sold after a public advertisement invites informal offers or bids, subject to contract, that meet certain criteria.

- An informal or negotiated tender differs from a formal tender in that neither the Council nor the successful bidder is legally bound to enter into a contract for the land's disposal. This process allows the Council to select a preferred bidder and negotiate detailed terms or proposals with them.
- As part of this process, the Council may still request best and final offers for a sale or informal development proposals that meet a given specification or request for proposals. This approach is particularly useful for large or complex development or regeneration sites, where proposals need to be developed in collaboration with the preferred bidder to meet the Council's objectives and achieve the best possible consideration.
- This method is suitable for sales with uncertainties, especially regarding Planning, and allows for conditional contracts, including clauses for additional payments upon the grant of planning permission at various future stages.
- A binding legal agreement is only formed upon the exchange of contracts for sale or lease, or the signing of a development agreement.
- The evaluation of bids may include a qualitative assessment as part of a scoring mechanism to determine the preferred bidder, with the evaluation criteria set out at the time of advertisement.
- The Council will publicly advertise for bids on the property/site and will publicize the selection criteria for evaluating these bids

**Public Auction:** Land is sold through an open auction, accessible to all interested parties. The sale is publicly advertised in advance, and a binding legal agreement is created when the auctioneer accepts a bid.

**Exchange of Land:** This involves exchanging Council-owned land with another landowner. Disposal by exchange of land will be appropriate when it is advantageous to the Council and other parties to exchange land in their ownerships and will achieve best consideration for the Council. The land acquired by the Council must meet at least one of its corporate objectives and be of equal value to the exchanged land, or the transaction will include a balancing payment known as an “equality of exchange.” In such circumstances the Council will always obtain an independent valuation to verify that ‘best consideration’ will be obtained.

**Community Asset Transfer:** Transfer of property to community groups or social enterprises at less than market value, where it provides significant community benefits. *See separate policy and procedure document dealing specifically with Community Asset Transfers.*

### **Approval Process**

- AMPS officers will prepare a disposal report outlining the proposed method, valuation, and expected outcomes.
- Approval will be obtained from the relevant committee or delegated authority within the council in line with our constitution.

### **Legal and Financial Considerations**

- Legal advice will be sought in all instances to ensure compliance with all legal requirements, including obtaining necessary consents.
- Consultation with the council’s Section 151 officer will be undertaken to consider any financial implications, including potential liabilities and costs associated with the disposal.

### **Post-Disposal Review**

- To ensure our processes are agile and up to date, officers will undertake a review the disposal process and outcomes to ensure objectives were met.
- If appropriate officers will document any lessons learned and incorporate them into future disposals.
- This policy will be updated accordingly.

## Disposal of different asset types

### Open Space

This includes parks, playing fields, and informal open spaces (excluding amenity land on Council housing estates) that are considered of 'public value,' regardless of public access. These assets are valuable community resources meant for the enjoyment of the wider community. Open spaces enhance urban life quality, residential area character, and the environment. Generally, these assets will not be declared surplus or under-used unless:

1. Alternative provision or equivalent community benefit is provided locally.
2. The area no longer offers valued opportunities for sport, recreation, or leisure.
3. There is an excess of provision, considering long-term recreation and amenity value.
4. Sport, recreation, and leisure facilities can be retained and improved through partial site redevelopment.
5. The asset is needed for regeneration of the wider area.

(a) The Council must legally advertise the disposal of 'public open space' land in a local newspaper for two consecutive weeks and consider any objections received. No final decision will be made until the Cabinet reviews these objections, as they may influence the decision. Public response may also be crucial in the Secretary of State's determination of the Council's application for specific disposal consent.

(b) If the Council seeks advice on development potential or knows the land will be used differently upon purchase, it should note that Core Strategy Policy will require the protection and enhancement of existing open spaces.

There is a general presumption against disposing of land designated as 'Protected Local Green Space' through either the Local Plan or a Neighbourhood Plan.

Unlike private and commercial landowners, a local authority acts as a trustee for the community land it holds and has a statutory duty to sell land at the best price reasonably obtainable. The Council can only demonstrate it achieved the best consideration by obtaining an appropriate land valuation.

### Disposal of Amenity Land

The Council, in its capacity as custodians of public land in the Borough of Elmbridge has an obligation to protect and retain public amenity open spaces. Open space is provided for the benefit of the public as a whole and its disposal to private individuals, groups/associations, or businesses for their exclusive use is not

consistent with this principle. There is a presumption against disposal of public open space for private personal use, groups/associations or businesses, unless there are exceptional circumstances to do so, usually a broader community benefit.

The Council will consider disposal of public open space on a case-by-case basis, depending on the exceptional circumstances where the application is in the opinion of the Property Portfolio Manager, Green Spaces Manager, Cabinet, Ward Councillors and relevant Portfolio Holders, usually for Resources and Leisure.

- a. Public access to (or views of) the open space is severely restricted and as such the land has little benefit to the public;
- b. The open space has little biodiversity, hydrology, shading or air quality value.
- c. The use of or management of the open space is giving rise to a serious nuisance to adjoining property owners, e.g. where the land intrudes into the logical boundary of a dwelling, or where balls can be kicked against a flank wall.
- d. The open space is needed to adapt a particular property or provide access to a particular property occupied by an individual with specific requirements as a result of severe disabilities or other health problems.
- e. The cost of managing the open space is prohibitive when set against the public benefits of retaining the land as open space, i.e. irregular boundaries result in the need for manual rather than mechanical maintenance.
- f. The open space is required to provide an access to enable a housing site to be accessed for development.
- g. The open space is required to provide access to allow off street parking to be provided where this would benefit highway safety.

The above list is not exhaustive, and all applications will be considered on their individual merits.

Certain rights, environmental, or economic conditions may prevent the sale of amenity land. For example:

1. The land has rights of way over it.
2. The land is a landscaping feature of the local environment or designated public open space.

3. Selling the land would incur additional costs for the Council (e.g., relocating lamp posts or telephone cables) unless the applicant agrees to cover these costs in advance.
4. The land is earmarked for future regeneration or development by the Council.
5. A review following a purchase request identifies future regeneration or development opportunities for the Council.
6. Selling the land may hinder future development by the Council.
7. There are management or other issues that would inconvenience the Council if the land were sold.

When the Council deems that amenity land has development potential and decides to sell it, the valuation will reflect this. An overage clause may be applied, and/or restrictive covenants placed on any future development. The Council may engage a developer through a development agreement to develop the site on its behalf, possibly granting a lease of the entire site with the developer receiving a fee based on the development value.

Disposals of amenity land will typically be by private treaty. However, if the Council believes the land may interest others besides the applicant, it may be sold on the open market.

### **Process for Evaluating Applications to Dispose of Public Open Space**

The Estates and Greenspaces teams will apply this policy upon receiving an application, allowing only those with exceptional circumstances.

Applicants must confirm the land is owned by the Borough Council via a Land Registry search and submit this with their application, supporting evidence, and an administration fee. Additional fees may include disposal, valuation, and legal fees.

The Property Portfolio Manager will consult with stakeholders and ward councillors within 8 weeks of receiving the application to determine if exceptional circumstances exist and if disposal is necessary.

If disposal is supported, the Council will notify the applicant and neighbours, and advertise the intention to dispose of the land in the local press for two consecutive weeks, allowing 21 days for public objections.

Applicants must cover all advertising costs, regardless of the disposal outcome.

If disposal is not agreed, the Property Portfolio Manager will inform the applicant and suggest alternative solutions, such as improved maintenance, nuisance reduction, or temporary licences/leases.

## **Terms and Conditions for Disposal**

Disposal terms will be set by the Property Portfolio Manager in consultation with relevant stakeholders and will include covenants to ensure the land is used as agreed.

Conditions include:

- No structures without Council approval.
- No fences/hedges over 1 metre without planning consent.
- No commercial operations.
- Planning permission for change of use may be required.
- Transfer of liabilities and maintenance of open access.

These conditions aim to maintain land amenity, comply with planning regulations, and protect the environment.

Disposal price will be set by an Independent Valuer, with all costs borne by the purchaser. The Council seeks the best financial value, treating proceeds under £10,000 as revenue income and above as capital receipts.

If disposal is refused, a licence or lease may be granted with similar conditions.

## **Disposal of Investment Properties**

Investment properties held by the council are subject to specific considerations due to their nature and purpose. These properties were either purchased specifically to provide rental income or have been re-classified as investment properties due to change in circumstances/operational usage. There is no legal obligation to retain a commercial property investment, therefore a council is entitled to take steps to dispose of it if the costs of holding the asset are no longer economically viable.

In these instances, the council will take a fully commercial approach to disposal and the decision-making process, based on a cost benefit analysis. The process will be along the following lines:



**1) Strategic Review**

- Conduct periodic strategic reviews of the investment property portfolio to assess performance and alignment with the council's investment strategy.
- Identify properties that no longer meet the investment criteria or strategic objectives.

**2) Valuation and Market Analysis**

- Obtain an independent valuation to determine the current market value of the investment property.
- Conduct a market analysis to understand trends and demand for similar properties.

**3) Approval and Governance**

- Prepare a detailed disposal report, including valuation, market analysis, and recommended disposal method.
- Obtain approval from the relevant committee or delegated authority, ensuring alignment with the council's investment strategy and financial objectives.

**4) Legal and Compliance**

- Ensure all legal requirements are met, including obtaining necessary consents and adhering to relevant regulations.
- Address any financial implications, such as potential tax liabilities or costs associated with the disposal.

**5) Monitoring and Reporting**

- Monitor the disposal process to ensure compliance with the approved strategy and objectives.
- Report on the outcomes of the disposal, including financial performance and any lessons learned, to the relevant committee.

## Disposal of Allotments

Where land has been purchased or appropriated by the Council for use as statutory allotments, the Council cannot, without the consent of the Secretary of State, sell, appropriate, use or dispose of the land for any purpose other than use for allotments. The Council will consider the disposal of an allotment against the following criteria, having regard to the Secretary of State's guidance on allotment disposal:

1. The allotment in question is not necessary and is surplus to requirement;
2. The number of people on the waiting list has been effectively taken into account.
3. The Council has actively promoted and publicised the availability of other sites and has consulted the National Allotment Society; and
4. The implications of disposal for other relevant policies e.g. the Local Plan and Neighbourhood Plan policies have been considered.

## Disposal of Assets of Community Value

The council does not currently hold any property or land which has been listed as an Asset of Community Value. If this situation changed, and the council wished to make a 'relevant disposal' of the asset, this would be done in line with the relevant statute. *See our separate policy relating to Assets of Community Value.*

## Disposals for Residential Use

The policy reaffirms the council's commitment to providing additional affordable housing by disposing of its land and assets for this purpose. It generally presumes that all surplus sites suitable for residential use in planning terms will be allocated for 100% affordable housing unless an exception is made. Exceptions will be due to factors such as:

- Poor proximity to transport routes
- Unusual site conditions
- Financial viability constraints
- Previous formal identification for another purpose

On larger sites, the Council, in wishing to promote sustainable communities, may wish to support the development of mixed-tenure schemes, comprising both market and affordable housing. That said, 100% affordable housing schemes, can, by providing a mix of social rented and intermediate tenures and property sizes, meet the needs of different income groups and household types and provide a balanced community.

Consultation with the council's Housing Services department will provide guidance on the above.

Where invitations to tender are restricted to Registered Providers for the purposes of providing 100% affordable housing and do not attract an acceptable offer, then the site may be offered to other parties, with the restriction of achieving 100% affordable housing having been lifted.

## 8. Encroachments, Trespass and Unauthorised Access Policy and Procedure

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The Council aims to implement a standard course of action for the guidance of officers in cases of encroachment, trespass, and unauthorised access onto Council land.

Due to the nature and circumstance of each case, this policy can only serve as a general guide. Each case will depend on its facts and officers will need to exercise their discretion in applying this guidance to the specific instance.

Encroachment, trespass, and unauthorised access to Council-owned land pose ongoing challenges within the Borough. The Council manages a significant amount of land, including open spaces, recreation grounds, and commons. When encroachment occurs and meets criteria for prescriptive rights or adverse possession, the Council may lose ownership or control over the land and diminution.

The key issues are set out as follows:

### **Admission and Resolution:**

In most cases, neighbouring owners admit encroachment. The land is either restored to Council control, licensed to the owner, or sold if surplus.

Section 123 of the Local Government Act 1972 guides best-value decisions.

### **Disputes and Legal Action:**

Some owners dispute or ignore Council claims and continue encroaching. Legal Services issue removal notices with deadlines and potential sanctions.

“Self-help” involves contractors removing encroachments, but threats to safety may lead to withdrawal.

### **Policy and Consistency:**

Policies to regularise practices support a consistent approach and strengthen the Council’s legal position and address complaints.

Proper management of assets includes recovery, licensing, or disposal of affected assets.

**Costs and Income:**

Removal costs of fencing are invoiced to the offending party, but minor costs may be borne by the Council.

In some cases, selling or leasing land generates income for the Council's capital receipts.

**EBC Encroachment Policy- on Council Land**

Many encroachments are unintentional or accidental – for example a homeowner could replace an old garden fence in a slightly different location, to accommodate a large tree. We aim to take proportionate action for encroachments, although in all cases the position should be formally recorded to protect both parties.

Upon receiving notification of an encroachment onto Council land, officers will investigate to establish basic facts. This includes determining which land portfolio the use directly affects, the duration of the encroachment, and whether recovering the land is crucial for continued service delivery or to protect the Council's property rights.

In all cases where an encroachment is recognised on Council land, EBC will notify the offending party or parties in writing, indicating that an encroachment, trespass, or unauthorised access has occurred.

The subsequent actions depend on the severity of the case:

**No Further Action (Trivial Instances):**

This option is suitable only for such use on a very small scale, e.g. if a boundary fence/hedge is encroaching by a matter of a few inches on Council land. The encroached-on land will be lost to the Council in practical terms, but if the land is part of the Council's registered title, the onus is on the encroacher (if he wishes) to regularise the position with H M Land Registry by seeking amendment of the title.

Additionally, the Council's Geographical Information System (GIS) will need updating to reflect this change.

**Unlawful Use Beyond Trivial:**

If the encroachment is more significant, the Council considers options:

1. Seek to license or lease:  
Legal advice is sought before granting a license or lease. All legal and surveyor costs are borne by the encroacher and installation of signs or

notices:

2. Signs or notices are installed on the affected land. These confirm the Council's current permission but also emphasise that permission may be revoked at any time, preventing the establishment of a prescriptive right.

### **Land No Longer Required:**

When the Council no longer needs the encroached land:

### **Disposal:**

The Council seeks to sell or dispose of the land for the best price reasonably achievable. Legal advice is sought before entering any agreements, and surveyor costs are borne by the encroacher.

### **Recovery of Land Required:**

If recovery of the land by the Council is required and voluntary compliance has not been achieved with the other parties, the following options include

#### **Apply self-help to recover the land**

This option is considered where the Council has clear legal entitlement:

A risk assessment is carried out and contractors can be directed to remove the encroachment where the works can be carried out peacefully. with costs incurred by the contractors are borne by the other party. Reasonable notice be given. Self-help is feasible only if the process can be carried out peacefully.

### **Court Proceedings**

If self-help fails or is not approved, legal action (court proceedings) is considered. Urgent injunctions may be sought in cases where health and safety are at risk.

### **Exceptional Circumstances (Change of Ownership):**

The Council reserves the right to pursue alternative actions in unique cases of "exceptional circumstances" consistent with its rights and policies as landowner.

Licenses granted to owners are personal and cannot be transferred if the property is sold to a third party. Sellers and buyers are obligated to apply for a new license before completing the sale, but the Council is not obligated to agree to a new license.

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## 9. Landlord's Consent

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All requests for consent from the Council should be submitted in writing with supporting information to the Property Portfolio Manager.

Requests will be dealt with in a reasonable time period and replied to in writing confirming if consent will be granted, or alternatively stating grounds for refusal of consent. Consent will not be granted until the completion of a formal license where required.

The Council will outline scale fees if applicable for providing consent and the process of providing formal consent.

The Council will have regard to principles of good estate management practice in considering any application, and will consider financial, non-financial matters and the impact on the remainder of the Council's landholdings, existing and adjacent tenants, and or impact on the Community, Environment and economic prosperity of the area.

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## 10. Overhanging Tree Policy

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EBC may be contacted by residents regarding trees overhanging their property from EBC land.

**The policy steps are as follows:**

1. In the first instance, the enquiry is referred to the council's Tree Officers.
2. AMPS officers ensure the tree is within EBC ownership
3. If the tree / branches represent a Health & Safety risk, the Tree Officer will arrange for the tree works to be undertaken and will liaise with the resident directly.
4. If the tree or branches do not represent a Health & Safety risk, EBC will not undertake any associated works.

The resident will be permitted under Common Law rights to cut the branches back to the boundary, subject to certain provisions which will be covered under the Tree Officers' response letter. For example, the resident must only undertake the works from their side of the boundary (i.e. not on EBC's side) and any arisings must be removed and disposed of by the resident at their own cost.

Lastly and for clarity, the Council will under no circumstances take direct payment from a resident for undertaking works on the resident's behalf, nor can the Council recommend any arboricultural contractors.

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## 11. Repair and Maintenance

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The council prefers to let property on a full repairing and insuring basis, and therefore where a property is occupied by a third party, the tenant will be responsible for repair and maintenance of the assets in accordance with the express provisions of the lease/license, and requirements under statute.

The council will ensure that its operational properties are maintained in accordance with corporate standards. A poor physical condition can contribute to an atmosphere of decay in the immediate area whereas properties that are well maintained and secure can sustain or elevate the tone of the neighbourhood. The council recognises that responsible ownership and occupation of property includes acting as a good neighbour by maintaining it in good condition. It also recognises that insufficient expenditure on maintenance and management is normally reflected in a proportionately greater erosion of value

Where appropriate and in accordance with the lease terms an Interim schedule of dilapidations will be served and if the tenant cannot rectify the breach, and it is serious enough that the tenant is putting the council at risk consideration will be given to terminating the lease and taking back the property subject to consultation with ward councilors and the Portfolio Holder.



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## 12. Procurement

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In accordance with our policies, we adhere to the procurement strategy and where relevant and appropriate Framework agreements are used to deliver best value and service. Further information relating to EBC's procurement strategy can be found on the website and within the council's Constitution.

AMPS will provide clarity, management and motivation as required by the Procurement Policy in delivering best value.

## 13. Restrictive Covenants

The Council will seek to not breach covenants placed by third parties on its land where still enforceable but will seek to negotiate its modification or removal where appropriate to do so.

In relation to covenants the Council has imposed, it will seek to enforce such covenants where it is rational, sensible and proportional to do so.

In circumstances when covenants are no longer required, the Council will seek payment for its release or partial release where lawful to do so and in accordance with policy and fee/ charging schedules to be prepared and agreed.

The principles of such fee and charging schedules are as follows:

<b>Right to Buy Covenants – Administration Fee</b>
Qualified Covenants for extensions and minor alterations – Small fixed charge plus Administration Fee
Qualified Covenants for separate units of accommodation – Enhanced fixed charge plus Administration Fee
Absolute Covenants for extensions and minor alterations – Small fixed charge plus Administration Fee
Absolute Covenants for separate units of accommodation – Charge based on up to 50% of increased value

On occasion, there are requests to release restrictive covenants on land now owned by Paragon Housing. These are passed to Paragon to deal with directly. The Council are entitled to a pre-agreed share of the fee secured by Paragon for the release of such prescriptive covenants.

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## 14. Service Charges

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Wherever practicable, the Council will endeavour to re-charge “landlords outgoings” in the running and maintenance buildings let to occupying tenants.

Service charge accounts will be levied based on “on account” payments, half yearly, or annual re-charges, and or reconciliations running between March and February or such other period as appropriate for the efficient management and collection of service charges. Full reconciliations will be provided where possible within three months of closing the account for the year.

The Council will where possible comply with the RICS Service Charge Code of Practice.

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## 15. Telecoms Masts Policy

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Telecommunications installations usually consist of a monopole (mast) with adjacent equipment cabinets. Where these are to be installed on land owned by Elmbridge Borough Council, the consent of the Council will be required unless a Court Order has been obtained by the operator under the Electronic Communications Code that dispenses with the need for our consent.

Following a request for consent, an assessment will be made by the Council as to whether or not there will be any prejudice suffered by the Council as a result of the installation or presence of the equipment or if there are any plans in relation to the land that will be affected by such or if there are any other relevant factors that affect the Council's decision as to whether or not consent should be granted. Where the Council considers it prudent to do so, it will refuse consent.

If the Council agrees to grant consent, terms of the agreement shall be agreed with the operator that comply with Code rights and that protect the Council's interests. Any agreement shall be subject to planning and any other consents that may be required.

## 16. Unauthorised Encampments

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### Overview

The Council is obliged to manage unauthorised encampments within the Borough on Council owned land. It is not possible to stop all access to Council owned land and from time-to-time unauthorised encampments will be established.

Unauthorised encampments can be problematic, they rarely provide an appropriate or adequate setting and frequently result in poor living conditions for Gypsy, Roma and Travellers (GRT). The use of the land for its usual purposes will often be prevented or curtailed.

The Council and Surrey Police (SP) have agreed a joint protocol to manage any Unauthorised Encampment so that an overall policy and clear lines of responsibility are in place. This protocol, first adopted by the Council's Cabinet in 2013, has been updated and seeks to set out the overall approach in Elmbridge by Elmbridge Borough Council.

### Joint Protocol

The joint protocol is published on the Council website and sets out the approach to managing encampments on Elmbridge owned land. Where an encampment is set up on private, or leased land the leaseholder or private landowner is responsible for managing the encampment.

Report of unauthorised encampments (to EBC Customer Services or Surrey Police)

1. Surrey Police attend to carry out an initial assessment.
2. Welfare assessment undertaken by EBC contractor.
3. Welfare assessment reviewed and consideration of next steps.
4. If no issues arising from welfare assessment, legal notice served with a deadline to vacate the premises.
5. Court hearing date sought.
6. Eviction
7. Overall, this process is likely to take between 4-10 days depending on court availability and if Surrey Police are able to use other powers to aid the eviction.

The Asset Management and Property Services (AMPS) team support EBC in enforcing this policy.

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## 17. Valuations of council property

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### **‘One off’ valuations – for acquisitions, disposals, or information purposes**

Professional property valuation services will be overseen by AMPS. These will be undertaken by in house RICS qualified members of staff for a range of purposes across both commercial and residential sectors where possible. Alternatively, AMPS will be responsible for commissioning external valuation advice from appropriately qualified professionals. It will be left with the department to make the best commercial decision as to whether to use internal or external services.

### **Portfolio valuations for internal accounting purposes**

Across the portfolio, investment assets are valued annually by an independent valuer in accordance with RICS Red Book guidelines. Larger operational assets such as the Civic Centre and Excel Centre, and car parks are valued on an annual basis and other operational and surplus assets are valued on a rolling 3 to 5-year programme.

An internal system of Quality Assurance is observed.

All valuations comply with Chartered Institute of Public Finance and Accountancy requirements in relation to valuation and asset register requirements of the end of year accounts.

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## 18. Village Signs

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Any Village Sign should be fully funded, supplied and installed by the 'donor' i.e., individual or group to the satisfaction of the Council to ensure best location, quality, and safety.

The Village Sign needs to be legally 'gifted' to the Council, so that the Council can completely own and manage the Village Sign, avoiding private property being installed on public council owned and managed land.

The Village Sign is gifted on the understanding that it is allowed to remain in place, or relocated, if necessary, for its 'natural lifespan' which could be very short, if vandalised, or for several years, depending on the longevity of construction and materials of the sign.

This arrangement allows the Council to relocate, or remove the Village Sign if required, without notice to the original donor. The Council endeavours to liaise with the original donor if practicable.

The Council insures the Village Sign but seeks any maintenance and repair funding from the original donor. If the original donor does not wish to or cannot fund the maintenance or repairs and the Council is unable to find maintenance and repair funding from other sources, then the Council is permitted to remove the sign due to lack of interest or support for the Village Sign.

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## 19. Utilities and Wayleaves

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Any requests for access over Council owned land for the purpose of installing or connecting into a service media shall be dealt with in accordance with the New Roads and Street Works Act 1991 and where changes are permitted to be made by the owner of the land under the legislation reasonable charges may/will be made.

Any requests for the Council to grant wayleaves across its land will be considered on a case-by-case basis ensuring compliance with any law requiring permission to be granted. AMPS will oversee this process in conjunction with the Legal Services department. Fees will be charged on a case-by-case basis.



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## 20. Building Maintenance Policies

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- Asbestos Policy
- Contractors Policy
- Fire and Security – Civic Centre
- Fire and Security – Community Centres
- Water Hygiene
- Use of chemicals at work