

**Circular 06/03: Local Government Act 1972
general disposal consent (England) 2003
disposal of land for less than the best
consideration that can reasonably be obtained**

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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Corrigendum

Please note that paragraph 21 in the Technical Appendix to this Circular under the heading "Consideration for the exercise of an option" which came into force on 4 August 2003 contains errors. Sub-paragraphs **d**, **e** and **f** should correctly read **a**, **b** and **c** so that the proper calculations can be made according to the formula. While we have taken steps to rectify the errors in the web version of the Circular we have no plans at present to do the same with the printed versions (ISBN 0-11-753896-5) published by the Stationery Office (TSO).

Introduction

1. The purposes of this Circular are to convey the Local Government Act 1972: General Disposal Consent 2003 ("the Consent"), which is attached as an Annex, and to provide guidance to those local authorities in England (listed in paragraph 3(1) of the Consent) which have land disposal powers under sections 123 and 127 of the Local Government Act 1972 ("the 1972 Act"). The Consent removes the requirement for authorities to seek specific consent from the Deputy Prime Minister and First Secretary of State ("the Secretary of State") for any disposal of land where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2,000,000 (two million pounds) or less. It therefore offers authorities greater freedom than previously to exercise discretion in the disposal of their land, and this Circular aims to provide guidance on the exercise of this freedom. However, this guidance is not exhaustive and does not purport to be an authoritative interpretation of the law. It remains the responsibility of each authority to seek their own legal or other professional advice as appropriate.

Consultation

2. Local Government and other interested bodies in England have been consulted on the Circular and the General Disposal Consent 2003. All comments and suggestions received from consultees and others to the draft Circular issued as a consultation paper in December 2002 have been fully considered. Where practicable, text has been altered in order to meet concerns which have been expressed or suggestions which have been made.

3. The main topics covered in this Circular are:

- Powers
- General Disposal Consent (England) 2003
- Applications for Specific Disposal Consent
- Other considerations
- Valuations
- Options

Annex: **The General Disposal Consent (England) 2003**

Technical Appendix: the Valuation report

- unrestricted value
- restricted value
- voluntary conditions
- negative development value
- grants

Related Circulars

4. For the purposes of local authorities in England, this Circular replaces Circular DOE

6/93, which was issued on 16 April 1993 and the advice given to authorities in the Circular Letter issued on 11 December 1998. The Consent accompanying this Circular replaces the Local Government Act 1972 General Disposal Consents issued on 11 December 1998.

Powers

5. Local authorities are given powers under the 1972 Act to dispose of land in any manner they wish, including sale of their freehold interest, granting a lease or assigning any unexpired term on a lease, and the granting of easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable (except in the case of short tenancies, see footnote 3, paragraph 1 of the Consent), unless the Secretary of State consents to the disposal.

6. It is Government policy that local authorities and other public bodies should dispose of surplus land wherever possible. Generally it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. Authorities should clearly not divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action. The Consent has been issued to give local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.

The Consent

7. Section 128(1) of the 1972 Act confers on the Secretary of State power to give a general consent for the purposes of land disposals by local authorities carried out under their powers in Part 7 of the 1972 Act. The Secretary of State's sole statutory function in respect of the exercise by local authorities of these disposal powers is to give or withhold consent to a proposed disposal in cases where his consent is required.

8. The terms of the Consent mean that specific consent is not required for the disposal of any interest in land which the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. Where applicable, authorities should also have regard to their community strategy. Although these criteria derive from the Local Government Act 2000, their use in the Consent is not confined to authorities with duties and powers under that Act. Therefore, authorities not covered by the 2000 Act can also rely upon the well-being criteria when considering disposals at less than best consideration. It will be for the authority to decide whether these decisions taken comply with any other relevant governing legislation. 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).

9. In determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue.

Application for Specific Consent for Disposal

10. It will be for the local authority to decide whether any proposed disposal requires specific consent under the 1972 Act, since the Secretary of State has no statutory powers to advise authorities that consent is needed in any particular case. Once an application for a specific consent is submitted, the Secretary of State is obliged to make a decision on the proposed disposal on its merits. However, if he is of the opinion that his consent is not required (ie the sale is not at an undervalue), or if he believes that the case falls within the terms of the Consent, his statutory function to give specific consent will not arise. Where an authority is uncertain about the need to seek consent, it may wish to seek its own legal advice on the matter. An authority may find it useful to keep its appointed auditor informed of any legal advice it receives and the proposed action it wishes to take. An auditor has a duty to consider whether the authority is acting lawfully.

11. Applications for specific consent should be sent to the Secretary of State via the Director of Planning at the Government Office for the relevant Region. The Secretary of State will require the following information:

- i)** a written description of the site and buildings, its physical characteristics, location and surroundings together with a plan which should be accurate enough to allow it to be used to identify the land in the Secretary of State's decision in cases where consent is given;
- ii)** a written description of the authority's tenure and a summary of the details of any leases, encumbrances, such as easements etc, to which it is subject. Details should be given of the purpose(s) for which the authority holds the land. Normally land is held for the purposes of the power under which it was acquired, or taken on lease, unless it has since been formally appropriated to another purpose;
- iii)** a written description of the existing use(s), current planning consents and alternative planning uses(s) that are likely to be permitted;
- iv)** a summary of the proposed transaction, noting the reasons for disposing at an undervalue, the key terms and any restrictions to be imposed by the authority; and
- v)** a detailed Valuation Report covering the matters listed in the Technical Appendix, and signed by a qualified valuer (a member of the RICS). The Department would normally expect the valuation to have been undertaken no earlier than six months before the submission.

Other Considerations

Procedural requirements

12. It is the responsibility of the authority to undertake any further procedures which may be necessary to enable it to dispose of any particular area of land. For example, sections 123(2A) and 127(3) of the Local Government Act 1972 and section 233(4) of the Town and Country Planning Act 1990 ("the 1990 Act") require a local authority wishing to dispose of

open space under those powers¹ to advertise its intentions in a local newspaper for two consecutive weeks and to consider objections. Authorities should carry out these procedures before making any final decisions about disposal as the public response to the notices may be material to any such decision. It could also be an important factor in any determination by the Secretary of State of an application for specific consent.

Land held under correct powers

13. It is the responsibility of the authority to satisfy itself that the land is held under powers which permit it to be disposed of under the terms of the 1972 Act and, if not, to take action to appropriate it (for example, under section 122 of the 1972 Act). In this regard, authorities are reminded that the terms of the Consent do not extend to proposals to dispose of land under section 233 of the 1990 Act, for which specific consent is still required. Nor does the Consent apply to the disposal of land held under powers derived from the Housing Act 1985, upon which authorities should seek advice from LAH 5 Division in the Housing Directorate, ODPM, Zone 2/D2, Eland House, Bressenden Place, London, SW1E 5DU.

State aid

14. Authorities are reminded that all disposals need to comply with the European Commission's State aid rules. The Commission's Communication on State aid elements in sales of land and buildings by public authorities (97/C 209/03) provides general guidance on this issue. When disposing of land at less than best consideration authorities are providing a subsidy to the owner, developer and/or the occupier of the land and property, depending on the nature of the development. Where this occurs authorities must ensure that the nature and amount of subsidy complies with the State aid rules, particularly if there is no element of competition in the sale process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.

15. Authorities might find it helpful to refer to the decisions by the Commission concerning commercial bespoke and speculative developments (N747/A/99 & N747/B/99) which the Commission has indicated may also be applicable to local authorities. These decisions set out the amount of aid that could be provided within and outside the Assisted Areas.

16. English authorities may obtain further advice and guidance from the State Aid and Taxation Team in EASD A, ODPM, Eland House, Bressenden Place, London, SW1E 5DU and at: www.bridgingthegap.uk.com.

Valuations

17. Before disposing of any interest in land for a price which may be less than the best consideration reasonably obtainable, local authorities are strongly advised in all cases to ensure that they obtain a realistic valuation of that interest, following the advice provided in the Technical Appendix. This applies even for disposals by means of formal tender, sealed bids or auction, and irrespective of whether the authority considers it necessary to make an application to seek the Secretary of State's specific consent. By following this advice, an authority 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 an authority has acted reasonably and with due regard to its fiduciary duty.

Options

18. Where an authority wishes to grant an option, or an option holder wishes to exercise his option on land which the authority holds, the authority will need to consider whether the consideration for either the grant or exercise of the option will result in a discount. In relation to the exercise of an option this will depend on the valuer's assessment of whether, if the option were to be exercised, the terms would be likely to require the authority to accept less than the best price that could reasonably be obtained for that interest at the time of disposal and, if so, whether that would fall within the terms of the Consent. The matters which would need to be considered by the valuer are covered in paragraphs 20 and 21 of the Technical Appendix. If, as a result of the valuer's advice, the authority wished to seek specific disposal consent, it would need to provide the Secretary of State with full details of the terms of the option agreement which is to be entered into or implemented.

Contacts

19. If there are any questions about this Consent, please contact Marlene Rodney or Cyril Kearney by email to cpocrown@communities.gsi.gov.uk or write to ODPM, Planning Directorate (Plans, International, Compensation and Assessment Division), Zone 3/J4 at Eland House, Bressenden Place, London, SW1E 5DU (telephone 020 7944 8726/ 3915). Please note that cases which fall outside this Consent will require an application to be made to the Secretary of State for specific consent for disposal. These applications will continue to be handled by the Government Offices for the Regions.

Lisette Simcock

Divisional Manager
Plans, International, Compensation and Assessment Division

The Chief Executive
County Councils
District Councils }
Metropolitan Borough Councils }
London Borough Councils } England
Parish Councils }
Council of the Isles of Scilly

The Town Clerk, City of London

The Chief Executive
The National Park Authorities in England

The Chief Executive, Broads Authority

The Chief Officer

Joint Authorities } England

Police authorities }

The Metropolitan Police Authority

The London Fire and Emergency Planning Authority

Annex

The Local Government Act 1972: General Disposal Consent (England) 2003

1. The First Secretary of State ("the Secretary of State"), in exercise of the powers conferred by sections 123(2), 127(2) and 128(1) of the Local Government Act 1972, hereby gives consent to a disposal of land² otherwise than by way of a short tenancy³ by a local authority in England in the circumstances specified in paragraph 2 below.

2. The specified circumstances are:

- a) the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
 - i) the promotion or improvement of economic well-being;
 - ii) the promotion or improvement of social well-being;
 - iii) the promotion or improvement of environmental well-being; and
- b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).

Interpretation and savings

3. (1) In this instrument -

"local authority" means:

- i) London borough council;
- ii) a county council;
- iii) a district council;
- iv) a parish council and parish trustees acting with the consent of a parish meeting;
- v) a National Park authority;
- vi) a Metropolitan Borough Council
- vii) a joint authority established under Part IV of the Local Government Act 1985;
- viii) a police authority established under section 3 of the Police Act 1996;
- ix) the Metropolitan Policy Authority;

- x) the London Fire and Emergency Planning Authority;
- xi) the Broads Authority;
- xii) the Council of the Isles of Scilly;

and any other person to whom, by virtue of statute, section 123(2) or section 127(2) of the Local Government Act 1972 applies;

"unrestricted value" means the best price reasonably obtainable for the property on terms that are intended to maximise the consideration, assessed in accordance with the procedures set out in the Technical Appendix.

(2) Nothing in this instrument shall be construed as giving consent to a disposal for any purpose for which the consent of the Secretary of State is required by virtue of section 25(1) of the Local Government Act 1988, section 133(1) of the Housing Act 1988, section 32(2) or section 43(1) of the Housing Act 1985, or otherwise as having effect as a consent for any purposes other than those of Part 7 of the Local Government Act 1972.

Citation and revocation

4. (1) This instrument may be cited as the Local Government Act 1972 General Disposal Consent (England) 2003 and shall come into effect on 4 August 2003.

(2) The Local Government Act 1972 General Disposal Consents 1998 are hereby revoked insofar as they apply to England.

Signed by authority of the First Secretary of State

Lisette Simcock

30 July 2003 Divisional Manager

Plans, International, Compensation and Assessment Division

Technical Appendix

Valuations For The Purpose Of Determining Whether Proposed Land Disposals Under The Terms Of The Local Government Act 1972 Fall Within The Provisions Of The General Disposal Consent 2003

The Valuation Report

1. An application to the Secretary of State for a specific consent to dispose of land under the terms of Part 7 of the Local Government Act 1972 for less than the best consideration reasonably obtainable must be supported by a report prepared and signed by a qualified valuer (a member of the RICS), providing the following information.

Valuations

2. The report should set out the unrestricted and restricted values together with the value of conditions. Where any of these is nil this should be expressly stated. The valuer should also describe the assumptions made. These might include, for example, existing or alternative uses that might be permitted by the local planning authority, the level of demand and the terms of the transaction. The effect on value of the existence of a purchaser with a special interest (a special purchaser) should be described.

3. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State where the difference between the unrestricted value of the land to be disposed of and the consideration accepted is £2,000,000 or less. The purpose of requiring the restricted value and the value of conditions to be reported as well as the unrestricted value is to ensure that the monetary value to the authority of any voluntary conditions can be taken into account when applications for specific consent are considered by the Secretary of State.

4. The valuer should take into account the requirements of the RICS Appraisal and Valuation Standards (Fifth Edition), ("the Red Book"), including UK Guidance Note 5⁴. All values should be assessed in capital, not rental, terms; and where a lease is to be granted, or is assumed by the valuer to be granted, the valuer should express the value of the consideration as a capital sum.

Unrestricted value

5. The unrestricted value is the best price reasonably obtainable for the property and should be expressed in capital terms. It is the market value of the land as currently defined by the RICS Red Book (Practice Statement 3.2)⁵, except that it should take into account any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest (a "special purchaser"). When assessing unrestricted value, the valuer must ignore the reduction in value caused by any voluntary condition imposed by the authority. In other words, unrestricted value is the amount that would be paid for the property if the voluntary condition were not imposed (or it is the value of the property subject to a lease without the restriction).

6. In general terms, unrestricted value is intended to be the amount which would be received for the disposal of the property where the principal aim was to maximise the value of the receipt. Apart from the inclusion of bids from a purchaser with a special interest it is defined in the same way as market value. For example, the valuer should take account of whatever uses might be permitted by the local planning authority insofar as these would be reflected by the market rather than having regard only to the use or uses intended by the parties to the proposed disposal.

7. The valuer should assume that the freehold disposal is made, or the lease is granted, on terms that are intended to maximise the consideration. For example, where unrestricted value is based on the hypothetical grant of a lease at a rack rent, or a ground rent with or without a premium, the valuer should assume that the lease would contain those covenants that a prudent landlord would normally include. The valuer should also assume that the lease would not include any unusual or onerous covenants that would reduce the consideration, unless these had to be included as a matter of law.

8. In the case of a proposed disposal of a leasehold interest, or where the valuer has assumed that a lease would be granted, the unrestricted value should be assessed by valuing the authority's interest after the lease has been granted plus any premium payable for its grant. This will usually be the value of the authority's interest subject to the proposed or assumed lease. In other words, it will be the value of the right to receive the rent and other payments under the lease plus the value of the reversion when the lease expires.

9. Where an authority has invited tenders and is comparing bids, the unrestricted value is normally the highest bid. But where, on the advice of the authority's professionally qualified valuer, the authority considers that the highest submitted tender is unrealistically high, or is too low, the unrestricted value may be assessed by the valuer.

Restricted value

10. The restricted value is the market value of the property having regard to the terms of the proposed transaction. It is defined in the same way as unrestricted value except that it should take into account the effect on value of any voluntary condition(s).

11. Where the authority has invited tenders and is comparing bids, the restricted value is normally the amount offered by the authority's preferred transferee. In other cases it is normally the proposed purchase price.

12. In cases where the proposed consideration is more or less than the restricted value both figures need to be given.

Voluntary conditions

13. A voluntary condition is any term or condition of the proposed transaction which the authority chooses to impose. It does not include any term or condition which the authority is obliged to impose, (for example, as a matter of statute), or which runs with the land. Nor does it include any term or condition relating to a matter which is a discretionary rather than a statutory duty of the authority.

14. The value of voluntary conditions is the total of the capital values of voluntary conditions imposed by the authority as terms of the disposal or under agreements linked to the disposal that produce a direct or indirect benefit to the authority which can be assessed in monetary terms. It is not the reduction in value (if any) caused by the imposition of voluntary conditions and any adverse effect these may have on value should not be included in this figure.

15. The proposed disposal, or an agreement linked with it, may give rise to non-property benefits to the authority. For example, these might include operational savings or income generated as a result of the transaction where the authority has an associated statutory duty. The monetary value of these benefits to the authority should be included in the value of voluntary conditions.

16. Where the status in law of a voluntary condition is unclear, the authority may need to seek legal advice as to whether the condition is such that its value to the authority can form part, or all, of the consideration. Conversely, there may be cases where, in law, the condition can form part, or all, of the consideration but it has no quantifiable value to the authority.

17. Where the valuer is not qualified to assess the value of any benefits (for example, of share options) the report should make clear the extent to which the valuer accepts liability for the figures. Where the valuer does not accept full responsibility the report should make it clear by whom the remainder of the figures have been assessed, and copies of any valuations or advice received from accountants or other professional advisers should be annexed.

18. All the values given should be in capital, not rental, terms; and the values of individual conditions as well as the total should be provided. Where there are no conditions, or their value is nil, this should be stated.

Valuation of Options

19. A discount may occur in connection with the consideration for either the grant of an option or the exercise of an option, or both. Where the consideration is less than the best price that can reasonably be obtained, (or where the valuer considers that if the option were to be exercised its terms would require the authority to accept less than the best consideration that can reasonably be obtained), the valuations described in paragraphs 20 and 21 below must be provided in support of an application for disposal consent.

Payment for the grant of an option

20. In explaining the basis for calculating the consideration for the grant of an option, the valuer's report needs to include the following information, based on the most likely date for the exercise of the option:

- a)** the unrestricted value of the option to be granted;
- b)** the proposed cash consideration for the option to be granted (which may be nominal or nil); and

- c) the value to the authority of any terms or conditions which, in the valuer's opinion, form part of the consideration for the option to be granted.

The grant of an option will then be at an undervalue where the unrestricted value at (a) exceeds the proposed cash consideration at (b) plus the value of any conditions at (c) (ie: where $a > (b+c)$).

Consideration for the exercise of an option

21. In explaining the basis for calculating the consideration for the interest to be disposed of under an option, the valuer's report should include the following information, based on the most likely date for the exercise of the option:

- a) the unrestricted value of the interest to be disposed of under the option, disregarding the effect of the option;
- b) the proposed cash consideration for the interest to be disposed of under the option (which may have been specified in the terms and conditions for the granting of the option); and
- c) the value to the authority of any terms or conditions which, in the valuer's opinion, form part of the consideration for the interest to be disposed of under the option.

The disposal of an interest pursuant to an option will then be at an undervalue where the unrestricted value of the interest at (a) exceeds the proposed cash consideration at (b) plus the value of any conditions at (c) (ie: where $a > (b+c)$).

Development Land

22. In cases where there is no detailed scheme, the valuer should make reasonable assumptions about the form of the development.

Negative Development Value

23. Where the value of the completed scheme is less than the development cost, (for example, where there is low demand or high costs associated with land reclamation or decontamination), the valuer should assess the unrestricted value by making reasonable assumptions about such matters as alternative uses that might be permitted by the local planning authority and the level of demand. Where the proposed scheme is the most profitable but still produces a negative development value the unrestricted value will be nil and therefore a disposal at nil consideration will not be at an undervalue. But where land with a negative development value has a positive value for some other use the disposal would be at an undervalue.

General Effect Of Grants On Values

24. The valuer should consider whether the value of the site is in any way affected by the prospect of grant and take this into account in the valuation. If the valuation is based on

assumptions that disregard the effect of grant then this should be stated in the valuation report. When assessing a value for a use other than that for which a grant has been approved, the valuer should consider the likelihood of any such use achieving planning consent.

[1](#) For the purposes of the 1972 and 1990 Acts 'open space' is defined in section 336(1) of the latter Act.

[2](#) By section 270, land includes any interest in land, and any easement or right in, to or over land.

[3](#) By sections 123(7) and 127(5), a short tenancy is a tenancy, which is granted for seven years or less, or the assignment of a term, which has not more than seven years to run. Disposals by way of a short tenancy do not need consent, see sections 123(2) and 127(2) of the 1972 Act.

[4](#) RICS Appraisal and Valuation Standards (Fifth Edition), UK Guidance Note 5: 'Local authority disposals at an undervalue' published 1 May 2003

[5](#) [see above]