



THE NEWCASTLE CHARTER

Part 5.4H - Protocol relating to Property Issues

Notes: -

This protocol provides guidance on how the Council makes decisions on matters involving the acquisition and disposal of land and property.

It seeks to ensure that appropriate professional advice is sought and that the Council complies with its statutory and fiduciary duties in relation to “best consideration”.

Statutory Sources

Local Government Act 1972, ss. 120 – 123

Circular 06/03 Local Government Act 1972 General Disposal Consent (England) 2003 - Disposal of land for less than the best consideration which can reasonably be obtained.

Authorisation

This was originally approved by City Council on 5 July 2000.

It has been amended to take account of changes to the Constitution since then.

Protocol Relating to Property Issues

1. Purpose of this Protocol

- 1.1. The purpose of this Protocol is to provide guidance in relation to the acquisition and disposal of land and other property issues.
- 1.2. It addresses the key issues necessary to ensure probity in relation to property matters.
- 1.3. It was originally issued by the former Director of Strategic Support and Head of Legal Services under paragraph 6 of the *Protocols on the Exercise of Officer Delegations* in Part D of *The Newcastle Charter*.
Delegated Officers are required to follow this Guidance.

2. Overriding Principle

- 2.1. Issues relating to the acquisition and disposal of land and other property issues must be dealt with in a fair, transparent and auditable process that is open and subject to scrutiny so far as it compatible with protecting commercial confidentiality.

3. The Council's Functions

- 3.1. The Council has a number of different statutory interests - as landowner, as promoter of development in furtherance of its statutory functions and as local planning authority responsible for determining planning applications.
- 3.2. Ultimately, the Council has a responsibility of ensuring that these functions are co-ordinated and operate holistically in the interests of the City and its citizens.
- 3.3. However, the integrity of the different functions must be protected - planning issues need to be determined in accordance with planning law, property issues must be considered in accordance with property law, and one function should not be unduly affected by the other.
- 3.4. It is a question a balance in all the circumstances and these protocols seek to ensure that the proper balance is achieved.
- 3.5. Furthermore all officers must act in accordance with local government law, the Council's Standing Orders, Financial Regulations, Codes and Protocols, and their own professional rules.

4. Cabinet Responsibility

- 4.1. The following matters should generally be referred to Cabinet for decision:-

- The principle of significant acquisitions or disposals except where the proposal forms part of an overall scheme or project that has been approved under delegated powers by an officer or committee of the Council.

<ul style="list-style-type: none"> • Freehold or leasehold disposals/acquisitions where the consideration is greater than £250,000.
<ul style="list-style-type: none"> • Leasehold disposals/acquisitions where the rental value is greater than £100,000 per annum.
<ul style="list-style-type: none"> • Disposals not at best consideration (other than leases of seven years or less) whether or not the disposal falls within the terms of a general or specific consent from the Secretary of State.

4.2. In all other cases, officers should decide whether to exercise delegated powers or refer matters to Cabinet or an individual member of Cabinet for decision in accordance with the principles in Annex 3 to Part 3.13 of *The Newcastle Charter*.

4.3. Decisions of Cabinet or individual Cabinet members may be subject to “call-in” under the Scrutiny Committee Procedure Rules (Part 4E of *The Newcastle Charter*)

4.4. All reports to Cabinet or individual Cabinet members relating to the acquisition or disposal of land and other property issues shall include advice from

- The Executive Director of Environment and Regeneration (or other appropriate Director)
- the Head of Property and Asset Management
- the Assistant Director Legal Services (as the Council's Monitoring Officer) and
- the Director of Resources (as the Chief Finance Officer),

unless they have indicated that they do not wish to give advice.

4.5. Alternatively, these officers shall have the right to report separately in their own name.

4.6. In order to ensure compliance with the duty with regard to best consideration:-

4.6.1. In all cases, the Head of Property and Asset Management shall state in such reports whether in his or her professional opinion the Council is or is not receiving or giving best consideration.

4.6.2. Where the Council is not receiving best consideration, the Assistant Director Legal Services shall indicate whether in his or her opinion it is necessary to obtain the consent of the Secretary of State or whether the circumstances fall within the terms of a general consent; and

4.6.3. Where the Council is not receiving best consideration, the Director of Resources shall give advice on any financial consequences for the Council.

5. Officer Responsibilities

5.1. Officers shall have the following responsibilities in respect of property issues:-

Executive Director of Environment and Regeneration	<ul style="list-style-type: none"> • Leading, Overseeing and Co-ordination of the Council's functions with regard to property, planning and economic regeneration.
Head of Property and Asset Management	<ul style="list-style-type: none"> • The Council's principal professional adviser on property issues. • Responsible for exercising delegated powers in respect of property matters. • Responsible for advising other officers when exercising their delegated powers in respect of property matters. • Responsible for ensuring the integrity of the property functions.
Director of Housing, Planning and Transportation	<ul style="list-style-type: none"> • The Council's principal professional adviser on planning issues. • Responsible for ensuring the integrity of the planning functions.
Assistant Director Legal Services	<ul style="list-style-type: none"> • Ensuring that the Council acts lawfully. • Preparation of legal documentation (except where he or she agrees that they may be prepared by others). • Execution of documents under seal and under hand (in accordance with Standing Orders and Financial Regulations).
Director of Resources	<ul style="list-style-type: none"> • Ensuring financial probity.

6. Officer Delegations

6.1. Except as provided in paragraph 8.2, all officer decisions under delegated powers in respect of property matters shall be made by the Head of

Property and Asset Management in accordance with Part 3.13 of *The Newcastle Charter*.

- 6.2. Other delegated officers may make decisions under delegated powers in respect of property matters with the prior agreement of the Head of Property and Asset Management and in accordance with his or her advice.
- 6.3. This will be appropriate where, traditionally, the Head of Property and Asset Management has not been involved and such matters do not raise strategic or professional issues (e.g. allotment tenancies, school rooms, burial rights). The Assistant Director Legal Services should approve all documentation.
- 6.4. The Head of Property and Asset Management will ensure regular liaison with the Executive Director of Environment and Regeneration in respect of the overall exercise of his delegated powers.

7. The Head of Property and Asset Management

- 7.1. The Head of Property and Asset Management shall be treated as a chief officer for the purpose of Standing Order (47) (Standing Orders Relating to Chief Officers).
- 7.2. The Head of Property and Asset Management shall as a minimum be a member of the Royal Institute of Chartered Surveyors (General Practice Division).
- 7.3. While reports will normally be in the name of the Executive Director of Environment and Regeneration (together with the Head of Property and Asset Management and other appropriate officers): -
 - 7.3.1. The Head of Property and Asset Management shall have the right at any time to submit a report in his or her own name to the City Council, to Cabinet, individual Cabinet Member or to any other committee or sub-committee of the Council on property issues that fall within his or her responsibilities; and
 - 7.3.2. The Head of Property and Asset Management shall also have the right to report direct to the Chief Executive (as Head of Paid Service), the Director of Resources (as Chief Finance Officer) or the Assistant Director Legal Services (as Monitoring Officer) on property issues that fall within his or her responsibilities.

8. Concerns

- 8.1. Any concerns about the application of this Code shall be referred to the Assistant Director Legal Services.