

# Governance, Risk and Best Value Committee

10.00 a.m, Thursday, 9 October 2014

## Disposal of Council Property Assets – Outstanding Conditions of Sale

Item number	7.2
Report number	
Executive/routine	Executive
Wards	All

### Executive summary

---

This report summarises the position in respect of the conditions of sale imposed on disposals of the Council's surplus property assets and advises on the introduction of a new system to track such conditions of sale.

### Links

---

Coalition pledges	<a href="#">P40</a>
Council outcomes	<a href="#">CO7</a> , <a href="#">CO19</a> , <a href="#">CO23</a>
Single Outcome Agreement	<a href="#">SO4</a>

## Disposal of Council Property Assets – Outstanding Conditions of Sale

### Recommendations

---

It is recommended that Committee:

- 1.1 Notes the position in regard to conditions of sale imposed on the disposals of surplus Council properties; and
- 1.2 Notes the introduction of a new system to keep track of any conditions of sale imposed on the sale of Council property assets.

### Background

---

- 2.1 The Governance, Risk and Best Value Committee on 19 June 2014 considered a report remitted from the Finance and Resources Committee on Redhall House and Lawn, a category B listed building. The Council sold this property with certain redevelopment obligations which had not been implemented by the purchaser.
- 2.2 The Committee required that the Director of Services for Communities report back on;
  - outstanding conditions of sale in respect of any disposals in the last three years where, either the property was a listed building or the sale price was greater than £480,000 (exclusive of VAT); and
  - the introduction of a new system to monitor any outstanding conditions of sale, including an update on asset disposals.

### Main report

---

- 3.1 Since June 2011, 64 properties have been sold by the Council, 16 of which were either listed or had a sale price in excess of £480,000 (exclusive of VAT). These transactions are shown in appendix 1. Properties have only been included if they met the specified criteria and the sale, with the price paid, took place since June 2011.
- 3.2 Every sale of Council property is subject to certain minimum conditions, for example, when the price is to be paid, the ability to charge penalty interest for

late payment of the price, and other matters related to the conveyancing process. Such conditions are market standard and generally discharged by the Council receiving the sale price and the disposal completing, although some conditions will endure beyond that. For example, conditions which deal with the purchaser receiving a land certificate for the property when the registration of Title is completed at the Land Register of Scotland.

- 3.3 At the same time, the Council must have regard to existing statute and case law relating to legislation such as the Abolition of Feudal Tenure etc (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003, which has affected the process of creating and, enforcing Title conditions (or real burdens).
- 3.4 Many conditions imposed to deal with additional matters referred to above will be in favour of the Council and help protect its position as an adjacent proprietor or when dealing with the sale of a historic property. These conditions may be created as formal Title conditions.
- 3.5 Examples are the creation of servitude (access) rights in favour of the Council as adjoining landowner, giving the Council rights to connect to sewers, retain existing access routes, allow inspection of common areas, laying services and other such rights, or an obligation to meet the cost of repairs to common features such as a boundary wall.
- 3.6 The nature of these rights mean that they would simply be invoked by the Council as and when required. For example, when the Council is constructing an adjacent building, and wishes to connect into a sewer located in ground previously sold.
- 3.7 As the activation of these types of sale conditions is determined by the Council and is not reliant on actions by the purchaser, they do not require ongoing monitoring.
- 3.8 More information to the legal background to the Council's approach to such conditions was provided to Committee in the report on Redhall House and Lawn.
- 3.9 Similarly, other sale conditions may be imposed in favour of the Council that deal with financial matters. The Council may, for example, be due the sale price as stage payments or, on completion of a project, the Council may be due a share of any super profit that may arise.
- 3.10 Less frequently, the Council may impose conditions on a developer requiring that certain works be undertaken and completed by an agreed date. For example, a purchaser may be required to complete a redevelopment scheme within a certain number of years from the date of purchase. Such measures are usually introduced to try and prevent land banking or provide protections for the Council in dealing with historic buildings, where the Council wishes to ensure they are brought back into beneficial use within a certain timescale. The form and content of such conditions will, by their very nature, be unique to the property in question, and given, developments in procurement law, the Council

would also need to ensure any such obligations were compliant with those regulations.

- 3.11 The sale contracts for the 16 properties referred to in Appendix 1 have been examined to determine whether there are any of the conditions imposed still outstanding. In assessing the contracts the following have been excluded:
- Conditions which are standard and of a technical conveyancing (and not commercial) nature; and
  - Title conditions of the nature referred to in paragraphs 3.4 and 3.5 above, which are of a more ongoing nature or do not involve the undertaking of refurbishment or development works.
- 3.12 Only two disposals have development obligations yet to be completed:
- **24-26 West Harbour Road:** The sale completed in December 2013. Following the acquisition of the property, the purchaser was obliged to diligently commence the construction of four flats/workshops. The purchaser's development is ongoing, and accordingly the purchaser is not in breach of the sale conditions. Progress with the development is being monitored by Estates Services. Additional payments totalling £30,000, are due to the Council and these are to be paid at the earlier of the sale of the completed units or the long stop date of 23 December 2015.
  - **159/1 Newhaven Road:** The purchaser has redeveloped the property to create a private children's nursery. The only development obligation was to brick up a wall to replace a former gate within 6 months and this minor work remains outstanding. The owner has been asked to carry out the works at the earliest opportunity, and this will also be monitored by Estates Services.
- 3.13 To ensure that conditions of sale are properly tracked and monitored, the data base used by Estates Services to monitor regularly the Council's capital receipt programme has been expanded to record details of any sale conditions that require monitoring. In tandem, disposals that incorporate development or financial obligations will remain as live cases following disposal to ensure regular monitoring occurs using the new system.
- 3.14 The issues at Redhall House have led to a disposal strategy being developed for historic and other sensitive property assets. This was reported to the Finance and Resources Committee on 5 June 2014 and includes:
- the early engagement with the Planning Service prior to the preparation of sales particulars;
  - seeking evidence from bidders that adequate financial resources are available to complete the development;
  - that bidders have appropriate expertise involved in the project; and

- that development costs are properly taken into consideration.

## Measures of success

---

- 4.1 Undertaking due diligence with the Planning Service, prior to the commencement of marketing, and maintaining a continual dialogue during and following the bidding process of a listed building, will ensure the appropriate measures are undertaken to determine which bid offers Best Value and meets the Council's objective of conserving Edinburgh's built heritage.
- 4.2 Estates Services database will track all relevant conditions of sale and ensure timeous completion of all relevant outstanding obligations due to be undertaken by the purchaser.

## Financial impact

---

- 5.1 The costs involved will be limited to staff time incurred in monitoring transactions. Should legal action be required then additional costs will be incurred dependent on the case in question.

## Risk, policy, compliance and governance impact

---

- 6.1 Where contractual arrangements are in place there is always a risk that the new owner will fail to fulfil an obligation. This risk will be mitigated through monitoring and early intervention. The database allows the tracking of sales on an individual basis so the risks are minimised following disposal.

## Equalities impact

---

- 7.1 There are no adverse equality or human rights impacts arising from this report.

## Sustainability impact

---

- 8.1 The impacts of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties have been considered, and there are no adverse sustainability impacts arising from this report.

## Consultation and engagement

---

- 9.1 This report was originated by a petition submitted by the local community of Redhall House and Lawn. Through the petition, the local community have been given the opportunity to engage on this issue.

## Background reading/external references

---

Petitions Committee 23 January 2014, “Save Redhall House and Lawn”.

Finance and Resources Committee 5 June 2014, Redhall House and Lawn – Options for Action.

Governance, Risk and Best Value Committee 19 June 2014, Redhall House and Lawn – Options for Action – referral report from the Finance and Resources Committee.

### John Bury

Acting Director of Services for Communities

Contact: Robbie O'Donnell, Senior Estates Surveyor

E-mail: [robbie.o'donnell@edinburgh.gov.uk](mailto:robbie.o'donnell@edinburgh.gov.uk) | Tel: 0131 529 6560

## Links

---

<b>Coalition pledges</b>	P40 - Work with Edinburgh World Heritage Trust and other stakeholders to conserve the city's built heritage.
<b>Council outcomes</b>	CO7 - Edinburgh draws new investment in development and regeneration. CO19 - Attractive Places and Well Maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm. CO23 - Well engaged and well informed – Communities and individuals are empowered and supported to improve local outcomes and foster a sense of community.
<b>Single Outcome Agreement</b>	SO4 - Edinburgh's communities are safer and have improved physical and social fabric.
<b>Appendices</b>	Appendix 1 – List of 16 Qualifying Transactions.



Appendix 1 : Disposal of Council Property Assets - Outstanding Conditions of Sale

#	Property	Completion Date
1	24 - 26 West Harbour Road	23/12/2013
2	12-14 Redhall House Drive	19/03/2013
3	Tynecastle High School, McLeod Street	14/03/2014
4	Juniper Green Primary School Annexe	02/03/2012
5	19 Murrayfield Drive	25/07/2014
6	Dr Bell's Swimming Pool	04/06/2013
7	34 Hamilton Place	28/03/2014
8	9 George IV Bridge	18/09/2013
9	72-74 Eyre Place	30/04/2013
10	City Park, Ferry Road	08/01/2014
11	36/40 Candlemaker Row	22/08/2012
12	159/1 Newhaven Road	12/10/2012
13	3-5 Smith's Place	28/06/2013
14	1 Cockburn Street	20/12/2013
15	3 - 5 Hunter Square	28/02/2014
16	20/30 Cockburn Street	29/03/2012