

NAFWC 41/2003 Local Government Act 1972: General Disposal Consent (Wales) 2003.

To :

Chief Executives
County and County Borough Councils

Clerks
Community Councils

Chief Officers
National Park Authorities
Fire Authorities
Police Authorities

One Voice Wales
Association of Larger Local Councils
National Association of Local Councils Cymru
North Wales Association of Town Councils
Wales Association of Community and Town Councils
Welsh Local Government Association

Audit Commission in Wales

Our ref: **NAFWC 41/2003**

December 2003

LOCAL GOVERNMENT ACT 1972 : GENERAL DISPOSAL CONSENT (WALES) 2003

DISPOSAL OF LAND IN WALES BY AUTHORITIES FOR LESS THAN BEST CONSIDERATION

1. This circular and the General Disposal Consent (Wales) 2003 ("the General Disposal Consent") apply to the following authorities in Wales: county and county borough councils, community councils, fire authorities constituted by a combination scheme, police authorities and national park authorities. Authorities have powers, under sections 123 and 127 of the Local Government Act 1972 ("the 1972 Act"), to dispose of land in any manner they wish provided that the disposal is not at an undervalue. A disposal will be at an undervalue where the proposed consideration is less than the best that can reasonably be obtained.

2. The General Disposal Consent (Annexed to this circular), which comes into effect on **31 December 2003**, removes the requirement for authorities to seek specific consent for any disposal at an undervalue where the authority considers that the disposal is in the interests of the economic, social or environmental well being of the whole or any part of its area, or any or all persons resident or present in its area **and** the undervalue is £2,000,000 or less.

3. If an authority considers that a proposed disposal is at an undervalue and does not fall within the scope of the General Disposal Consent then it must first obtain the consent of the National Assembly for Wales (“the National Assembly”) – see paragraphs 12 to 14. Where an authority wishes to grant an option to purchase, or an option holder wishes to exercise a previously negotiated option, the authority must consider whether the option terms will result in an undervalue.

4. It is for the local authority concerned to decide whether a proposed disposal requires the consent of the National Assembly, seeking its own legal or other professional advice as appropriate, and to bear responsibility for its decisions. It is recommended that authorities confer with their external auditors when seeking to rely on the General Disposal Consent. In any event, where an authority intends to dispose of land in reliance upon the General Disposal Consent, it should notify its external auditor within 28 days of taking the decision to do so. Where the undervalue is likely to be substantial and could exceed the £2 million threshold, authorities are recommended to obtain a professional valuation, in terms of “unrestricted value” as set out in the General Disposal Consent, in order to assess whether the National Assembly’s specific consent to the disposal is required. The valuer should be directed to have regard to the guidance on local authority disposals of land at an undervalue in the version of the Appraisal and Valuation Manual of the Royal Institution of Chartered Surveyors’ (otherwise known as “the Red Book”), which is current at the time of the disposal.

5. The National Assembly’s role is solely to determine any application for consent to a disposal on its merit. Where the National Assembly gives consent to a disposal, that consent will apply only to the particular transaction detailed in the application. If there are any material changes to the transaction terms, the authority will need to make a fresh application for consent. The National Assembly has no power to grant consent for a disposal that has already taken place.

6. The General Disposal Consent disappplies Department of the Environment/Welsh Office Circular 6/93 (WO 19/93) and the Department of the Environment, Transport and the Regions/Welsh Office Circular letter issued on 11 December 1998 and replaces the Local Government Act 1972 General Disposal Consents 1998. In so far as these documents relate to Wales, they should be disregarded from the date of coming into effect of the General Disposal Consent.

7. The General Disposal Consent does not constitute any consent that may be required under any enactment other than sections 123 and 127 of the 1972 Act. It is the responsibility of the authority to undertake any further procedures that may be necessary to enable it to dispose of any particular area of land. In particular, authorities should note that the terms of the General Disposal Consent do not extend to the disposal of land under section 233 of the Town and Country Planning Act 1990 Act (“1990 Act”). Where consent to a disposal of land is given under a statutory power other than section 128 of the 1972 Act, that provision may state that no further consent in respect of that disposal is required. For example, paragraph 12 of Part III of Schedule 3 of the School Standards and Framework Act 1998 provides that where land is held for educational purposes and is disposed of to a governing body of a foundation, voluntary or foundation special school (or other person proposing to establish such a school) consent under section 123 of the 1972

Act is not required. In these circumstances further consent under section 128 of the 1972 Act will not be required. Authorities must ensure that the disposal is made under the appropriate statutory power.

8. Sections 123(2A) and 127(3) of the 1972 Act require that where an authority wishes to dispose of "open space" (defined by section 336(1) of the 1990 Act), it must advertise its intentions in a local newspaper for two consecutive weeks and consider any objections. Such advertisement must be undertaken regardless of whether the proposed disposal of open space falls within the terms of the General Disposal Consent.

9. Where an authority is directed to dispose of land, under sections 98 and 99 of the Local Government, Planning and Land Act 1980, the National Assembly's consent, for the purposes of the 1972 Act will be deemed given if compliance with the direction results in a lower price being paid than would have been realised through some other method of disposal. However, where the authority voluntarily attaches conditions to the disposal (in addition to any specified in the National Assembly's direction) and any resultant undervalue exceeds the £2 million threshold in the general disposal consent, the Assembly's specific consent will be required.

10. Authorities are reminded that all disposals need to comply with the European Commission's State aid rules. The subsidised sale of land and property, and its subsequent development, can be deemed to be State Aid. The Commission has approved several schemes where a permitted amount of aid is allowed in the sale of land and buildings and the proposed transaction must meet the terms of such schemes as are from time to time in force. If authorities conclude that the proposed transaction may constitute state aid, it must seek clearance from the European Commission before proceeding. Where there is a failure to notify aid, that aid is illegal and it may have to be recovered from the beneficiary. The responsibility for compliance with State aid rules rests with the authority.

Applications for Specific Disposal Consent

11. The Welsh Assembly Government anticipates that far fewer applications for specific disposal consent will be required as a consequence of the new General Disposal Consent. Where an authority considers that it requires the specific consent of the National Assembly to a disposal, an application should be submitted to:

Local Government Administration Team
Local Government Modernisation Division
Welsh Assembly Government
Cathays Park
CARDIFF
CF10 3NQ

12. In future, the Welsh Assembly Government intends to simplify its approach to dealing with disposal consents. Authorities will not normally be required to submit the detailed information previously required for all applications at the outset.

13. In submitting an application, an authority should provide sufficient information to enable the National Assembly to make at least a decision in principle on the disposal. This will depend on the nature and scale of the

disposal, but as a minimum will include details of the current and proposed future use of the land in question and an explanation of the authority's reasons for wishing to dispose of the land at an undervalue. Following initial consideration of the application, the National Assembly may approve or reject the application, or give an in principle decision. The National Assembly will in general seek to reach a decision based on the initial application. However, where the National Assembly gives an in principle decision, it will at that stage request any further information that it requires in order to reach a final decision.

14. Any queries regarding this circular should be directed to the Welsh Assembly Government at the above address, or by telephone on 029 2082 3621.

Kate Cassidy
Head of Local Government Modernisation Division

Annex

THE LOCAL GOVERNMENT ACT 1972: GENERAL DISPOSAL CONSENT (WALES) 2003

1. The National Assembly for Wales ("the National Assembly"), in exercise of the powers conferred on the Secretary of State by sections 123(2), 127(2) and 128(1) of the Local Government Act 1972 and transferred to the National Assembly by virtue of Article 2 and Schedule 1 of The National Assembly for Wales (Transfer of Functions) Order 1999, gives general consent to the disposal of an interest in land (as defined in paragraph 4 below) by an authority (see paragraph 4), in those circumstances specified in paragraph 3 below.

2. This General Disposal Consent applies in Wales.

General Consent

3. In any case where an authority would be empowered, under sections 123(1) and 127(1) of the Local Government Act 1972, to dispose, other than by way of a short tenancy, of an interest in land for the best consideration that can reasonably be obtained, consent is hereby granted for that authority to dispose of such an interest for a sum which it considers to be less than the best consideration that can reasonably be obtained where the following conditions are met:

a) the authority considers that the purpose for which the interest in 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 interest to be disposed of and the consideration accepted does not exceed

£2,000,000 (two million pounds).

Interpretation and savings

4. In this general disposal consent –

"authority" means a county and county borough council, community council, fire authority constituted by a combination scheme, police authority or a national park authority;

"interest in land" includes any interest in freehold land, any leasehold interest exceeding 7 years, any agreement to acquire such an interest in land (e.g. options to purchase), any easement or right of way over or under land and any licence;

"unrestricted value" means:

- for the disposal of a freehold interest, the best price for which the disposal, if made on terms which are intended to maximise the consideration, might reasonably be expected to have been completed unconditionally for cash on the date of valuation by a willing seller; or

- for the disposal of a leasehold interest, the sum of:

i) the unrestricted value of the freehold interest, as defined above, subject to a lease which is granted on terms which are intended to maximise the consideration and which terms contain no unusual or onerous conditions; and

ii) any premiums paid.

and, in either case, taking into account any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest, on the assumptions that:

a) before the date of the valuation, there had been a reasonable period (having regard to the nature of the property and to the state of the market) for the negotiation and agreement of the price and terms and for completion of the sale; and

b) the state of the market, level of values and other circumstances were, on any earlier assumed date of exchange of contracts, the same as on the day of the valuation.

5. Nothing in this instrument shall be construed as giving consent to a disposal of an interest in land for any purpose for which the consent of the National Assembly is required by virtue of any enactment other than sections 123 and 127 of the Local Government Act 1972 as may be appropriate.

Name and Application

6. This General Disposal Consent is called the Local Government Act 1972 General Disposal Consent (Wales) 2003 and comes into effect on 31 December 2003.

7. From the date of this General Disposal Consent the Local Government Act 1972 General Disposal Consents 1998 are disapplied in Wales.

8. From the date of this General Disposal Consent the guidance given by the Department of the Environment/Welsh Office Circular 6/93 (WO 19/93), which was issued on 16 April 1993, and the Department Environment Transport and the Regions/Welsh Office Circular Letter, issued on 11 December 1998, do not apply in Wales.

Signed on behalf of the National Assembly for Wales

2003

Minister for Finance, Local Government and Public Services