

# DISPOSALS POLICY

## **1. Purpose**

- 1.1 In 2011 Wycombe District Council, now Buckinghamshire Council (the "Council") transferred its housing stock and associated land to us. Parcels of land transferred included open grassed areas on residential estates, unadopted roads, pathways, alleyways, small strips of land adjacent to private houses and road verges not maintained as public highway.
- 1.2 We manage our land assets proactively to ensure that they provide value for money and are put to best use. As a landlord we are often contacted by individuals and groups who wish to purchase land from us.
- 1.3 This Policy sets out our approach to disposal of our land and home assets. The Policy explains how we consider whether land or assets are suitable for disposal.

## **2. References**

- 2.1 This Policy has been drafted in line with our vision and values, relevant legislation and best practice. It has been developed in line with our Asset Management Strategy and ensures that each disposal is given appropriate consideration.
- 2.2 This Policy has been developed in line with Red Kite's Governance Regulations and delegation procedures, legislation and regulatory requirements.

## **3. Definitions**

- 3.1 Land disposal is defined as the sale or transfer of land owned by us to another party.
- 3.2 Reactive disposal is defined as the sale or transfer of our land in response to a request received from another party.
- 3.3 Proactive disposal is defined as the sale or transfer of land that has been identified by us as suitable for disposal.
- 3.4 Home disposal is defined as the sale or transfer of a building as well as the land on which it sits.
- 3.5 Sales disposal is defined as the sale of home built through our development programme for market sale.
- 3.6 Disposal Proceeds Account – means an account held by the Association pursuant to clauses 2.2 in the Clawback Agreement 17 June 2016 (please see Appendix 2)
- 3.7 Qualifying Disposal – means a Disposal to which the Deed of Amendment of Disposal Clawback Arrangements 17 June 2016 ("**Deed**") (please see Appendix 2 and Explanatory Note 5 at Appendix 3) applies (and excluding for the purpose of the Land Transfer any other Disposal)
- 3.8 Under-Used Land is defined as land that could be of use but is not currently delivering to its potential. This may be because it is not used as an amenity by our tenants or revenue opportunities cannot be realised because of service charge restrictions.

- 3.9 Surplus Land is defined as land which we cannot use to meet our Corporate Group objectives. Land would be deemed surplus, and therefore recommended for sale, if it meets any of the following criteria:
- insufficient future development/regeneration potential and not suitable for biodiversity net gain
  - makes no contribution to any of our services or objectives
  - is located in an area in which we own no homes, and therefore it is not used by our residents
- 3.10 Please refer to Appendix 3, which sets out a Flowchart, Explanatory Note and Definitions Extract to use to determine whether a “Disposal” of land or property will trigger Clawback. Reference to a “note” throughout this Policy refers to the corresponding note in the Explanatory Note.

## **1.**

### **4. Staff Responsibilities**

- 4.1 The Head of Property is responsible for ensuring that this Policy is kept up to date and consistent with any new Red Kite strategies. It will be reviewed every three years or following a change in legislation or regulatory requirements, to ensure that it remains fit for purpose.
- 4.2 The Head of Property is also responsible for ensuring that this Policy is adhered to through the implementation of the related procedure and auditable documentation.
- 4.3 The Head of Development is responsible for reviewing, carrying out due diligence and recommending land disposals, and providing support advice where necessary.
- 4.4 The Assistant Head of Property who is also our lead on asset management is responsible for carrying out supporting due diligence on disposal reviews, providing support advice where necessary.
- 4.5 The Assistant Director -Finance is responsible for providing assurance on financial viability of any disposals being recommended.
- 4.6 The Director of Property is responsible for checking any disposal reports before submitting to ELT for final approval.

### **5. Legal & Regulatory Framework**

- 5.1 Where we do agree to sell, transfer or dispose of land or assets, we will adhere to certain requirements laid down by regulations and legislation. Apart from those mentioned above we will also adhere to:
- Direction of the Regulator of Social Housing about notifications of disposal of social housing dwellings and of land other than a dwelling 2017

- Contractual obligations contained in the Transfer Contract between the Council) and Red Kite on **13 December 2011**.
  - The Seventh Schedule of the Transfer Agreement (**Please see Appendix 1**) – attaches the Transfer Deed dated 13 December 2011 and made between the Council and Red Kite ("**Stock Transfer**"). The Stock Transfer contains clawback provisions relating to the profit share on the disposal of our homes and other assets by the original Stock Transfer ("**Clawback**").
  - In the Deed the Council and Red Kite agreed that in certain circumstances clause 3.2 of the Land Transfer shall not apply to certain Disposals made by Red Kite – (**Please see Appendix 2**)
  - Under the Stock Transfer the Clawback applies for the period of thirty years from the date of transfer 13 December 2011 (until 12 December 2041). The profit is shared 50:50 with the Council unless the share is retained by Red Kite to invest in activities as defined in the Stock Transfer (see note 3) and Deed (see note 2), and held in a special Disposal Proceeds Account. Any balance of this retained profit ("**Remaining Consideration**") not invested under the terms of the Stock Transfer or Deed by the tenth anniversary of the relevant disposal must be paid to the Council (see note 8). **HEALTH WARNING: please note that the restriction noted on the property registers of the titles transferred pursuant to the Stock Transfer has been incorrectly registered and refers to 12 December 2031. This should refer to 12 December 2041. The Clawback applies until the 12 December 2041.**
  - The Remaining Consideration relating to the Council's share is recognised as a creditor and Red Kite's element is released through the Statement of Comprehensive Income in the year of the payment to the Council
  - Our treatment of proceeds is also detailed in the Accounting Policies within the Financial Statements.
  - Please note: the contractual arrangements are complex so, where there is any uncertainty in the treatment of proceeds, the [Head of Property] shall take responsibility for obtaining any external legal advice.

## 6. Policy Statement

- 6.1 We are committed to providing excellent services to our residents and the local communities in which we work. We take pride in our work, and we operate in a fair and open manner to build trust and mutual respect.
- 6.2 We will utilise the change in disposal consent requirements as set out by the deregulation measures in the Housing and Planning Act 2016.

- 6.3 We have no legal obligation to sell land unless directed to under statutory process such as a Compulsory Purchase Order. All voluntary decisions to dispose of land will be signed in line with our authority limit in our Governance Regulations.
- 6.4 Where its disposal of individual home/s the Head of Property will prepare the disposal report with clear recommendations for ELT sign-off in collaboration with Assistant Head of Property, Head of Development, Assistant Director- Finance and Director of Property and in line with the governance regulations.
- 6.5 Where its disposal of land the Head of Development will prepare the disposal report with clear recommendations for ELT sign-off in collaboration with Assistant Head of Property, Head of Development, Assistant Director- Finance and Director of Property and in line with the governance regulations.
- 6.6 Land value will be fully assessed, and a valuation will be obtained from a qualified independent RICS valuer and usually subject to marketing on the open market to achieve best value in all cases.
- 6.7 We reserve the right to decline an application to purchase land if it is not considered to be commercially viable, in the best interests of the Red Kite Group objectives or in line with the approach set out in this Policy.
- 6.8 We will endeavour to maximise revenue from land disposal and sell land for market value, this may include seeking planning permission before marketing to release the land or home asset's full potential. However, there may be occasions when selling for less than market value or at no cost would be economically beneficial and enable us to deliver value for money, social value or long-term efficiency savings. This situation may occur when:
- Disposal is to a public agency such as a Parish Council
  - We own no home in the area immediately surrounding the land yet incur the cost of maintenance
  - A piece of land is offered to the open market but fails to receive bids matching its market value
  - It would be adding value to the community
  - Transfer restrictions prevent future development opportunities
  - Disposal would reduce management costs
  - For some other useful strategic reason
- 6.9 Applications for the purchase of land can be received from many different sources, including, but not limited to, individuals, groups of residents and parish councils. Each application will be considered fairly and follow our disposal procedure. This will ensure that each application for purchase is considered consistently before a decision is made.

- 6.10 All applications to purchase land will be declined if one or more of the following criteria are met:
- The sale of the land negatively impacts or prevents our plans for neighbourhood regeneration
  - If we wish to use the land for the development of new homes
  - The sale of the land would prevent development of adjacent land whether owned by Red Kite or not
  - The land provides access to properties in ownership of Red Kite Community Housing
  - There is a greater community benefit to the retention of the land or home
  - The land is valued higher than the purchase offer
  - The applicant does not pay our legal and administrative costs
- 6.11 The value of land will be based on the maximum commercial use of the land not the proposed use.
- 6.12 If we agree to sell land for the purpose of use as a garden, we will include an overage clause which enables us to share any future value arising from change of use.
- 6.13 All costs relating to reactive disposal of land must be covered by the applicant. These may include and are not limited to, consultation costs, legal, administrative and professional fees.
- 6.14 Many parcels of land were transferred to us by Wycombe District Council, now Buckinghamshire Council. In line with good asset management principles, we review our land and home holdings to ensure that they are put to the best and most suitable use. On occasion, we may determine that land or home should be sold or transferred. This identification of suitable sites and their subsequent disposal is referred to as proactive disposal.
- 6.15 We will apply two tests to help us to decide on suitability for proactive disposal. We refer to these tests as the 'Surplus Test' and the 'Under-used Test.' If the land or home to be sold meets the criteria described in either of the tests, we will seek to dispose of the land on the open market.
- 6.16 There may be some instances in which we consider selling the freehold of buildings. Whether we sell through a proactive or reactive disposal, the criteria for the disposal of properties is as follows:
- the home is a long-term void and will continue to be so for the foreseeable future and disposal as opposed to redevelopment or other options is considered the best approach



- the home is not economically viable – the process for determining this is set out in our Asset Management Strategy. It returns a negative financial and/or non-financial value when evaluated through our asset performance review process
- the cost to repair the home is far beyond any income we would potentially receive *for example excessive structural work of £100k whilst home is worth £300k (excluding future insurance premium costs)*
- the market value is above £750k as agreed by Board and liquidating the asset will help us to invest in our communities and provide a greater number of homes
- disposal may assist the local authority or other partners with strategic development plans
- the freehold is sold for leasehold blocks where a Collective Enfranchisement right exists.
- there are other strategic reason for considering disposal

6.17 Due to our charitable objectives, we must ensure that the optimal use of our land and assets is achieved through the disposal of any of our properties.

6.18 On occasions, despite a home meeting the criteria set out above, we may decide that we will not dispose of the home because it is of benefit to the community and there is an advantage to our continued ownership.

Appendix 1 – Seventh Schedule of the Transfer Agreement **13 December 2011**

Appendix 2 – Deed of Amendment of Disposal Clawback Arrangements **17 June 2016**

Appendix 3 – Disposal Flowchart and Explanatory Note

Document Controls			
<b>Version</b>	3	<b>Effective date</b>	January 2025
<b>Subject matter expert drafter</b>	Head of Property	<b>Process owner</b>	Head of Property
<b>Related Pod</b>	Property Pod Finance Pod	<b>Related Policy</b>	Asset Management Strategy Development Strategy Property transfer to Twenty11 Policy
<b>Review period</b>	3 years	<b>Next review due by</b>	January 2028
Delegated approvals			
<b>Approved by ELT</b>	Director of Property and Development	<b>Approved Date</b>	5 <sup>th</sup> February 2025
<b>Approved by Board/ Committee/ RRT</b>	Red Kite Board	<b>Approved Date</b>	24 <sup>th</sup> March 2025