

A photograph of three business professionals (two men and one woman) sitting around a table in a modern office or meeting room at night. They are looking at laptops and talking. The room has large windows showing a city view at night. The lighting is warm and focused on the people.

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# Local Authority Estate Rationalisation & Land Disposals

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# Introduction & Welcome

- Housekeeping
- What we'll cover

# What we'll cover

- Estate rationalisation
- Section 123 LGA 1972
- Open Space
- School Playing Fields
- Charity land
- Allotment land
- Appropriation
- Public Law reminder
- Preparing for disposal
- Q&As

# Estate Rationalisation

- What do we mean by estate rationalisation?
- Reasons for it
- Relevance to local authority property disposals

# Local Authority disposal powers

- Section 123, Local Government Act 1972
  - The general power of disposal, subject to achieving best consideration
- Section 233, Town and Country Planning Act 1990
  - Disposal of land held for planning purposes, including supporting development and regeneration objectives
- Housing Act 1985 powers
  - Disposal of housing land, which is subject to a separate statutory regime

# Section 123 of the Local Government Act 1972

- Provides a power for local authorities to dispose of land
- Requirement to obtain the best consideration that can reasonably be obtained
- What is meant by “disposal”?
- What is meant by “land”?
- What amounts to best consideration?
- Is there a process to secure best consideration?
- *Cillarda Group Holdings Limited v West Northamptonshire Council [2023] EWHC 1675 (Admin)*

# General Disposal Consent

- Disposals of land for less than best consideration
- Promotion or improvement of the economic, social or environmental well-being of the area
- In all cases the undervalue does not exceed £2 million
- Consider subsidy control rules and fiduciary duty

# Disposals of “Open Space” land

- “any land that is laid out as a public garden or used for the purposes of public recreation, or that is a disused burial ground” s336(1)
- Section 123 (2A) of the LGA 1972
- What are the effects of complying or not complying with s123 (2A)?
- *R (Day) v Shropshire Council and another [2023] UKSC 8*
- Disposal - what else should local authorities consider?
- *Muir v Wandsworth Borough Council [2017] EWHC 1947 (Admin)*

# Disposals of Playing Fields

- Playing Fields (Community Involvement in Disposal Decisions) (Wales) Regulations 2015 (SI 2015/1403) (“The Regulations”)
- Are playing fields “open space”?
- Obligations under the Regulations

# Charity land

## Charity Commission Regulatory Alert

- Charities Act 2011 Sections 117 to 129 and resources
  - Land Registry Practice Guide 14
  - Charity Commission Guide to the Selling, Leasing and Disposing of Charity Land
- The Four Principles for dealing with Charity Land
  - Does the Charity own the land?
  - Do the trustees have the power to make a disposal?
  - Is the disposal in the best interests of the charity?
  - Is Charity Commission consent required?

# Land swap and renting Charity land

- Local authorities can swap their own corporate property with the charity's land
- Where the charity's land is "designated", the local authority must consider how the purposes for which the land must be used may be affected
- The corporate property becomes charitable land but the decision must be in the charity's best interests
- Regardless of the nature of the land, if the local authority is a trustee, Charity Commission authority is required
- An authority may rent charity land but it must be in the charity's best interest to do this and the authority as trustee must comply with the rules on disposing of charity land
- Where the charity's land is "designated", it must be used for the purposes set out in its governing document. If it is not, this could be a breach of trust

# Allotment land

- Allotment land can create additional legal constraints on disposal
- Disposal for other purposes requires consent of the Welsh Ministers – Section 8, Allotments Act 1925
- Land is only statutory allotment land if formally acquired or appropriated for that purpose
- Allotment sites are usually occupied – notice periods and compensation apply
- Early identification is critical to managing risk and programme

# Appropriation

- S122 Local Government Act 1972
- S203 Housing and Planning Act 2016 – overriding easements and other interests:
  - Planning purposes
  - Planning permissions
  - Could be acquired compulsory
  - Work relates to purpose for which land is appropriated
- Extend to successors in title
- Compensation implications

# Public Law reminder

- General public law principles apply
- Vires - power to dispose:
  - General Power of Competence – Local Government and Elections (Wales) Act 2021
  - Section 123 (1) Local Government Act 1972
- But consider any applicable statutory restrictions e.g. s123(2) and (2A) and s122(2) and (2A)
- UK Subsidy Control Regime - Subsidy Control Act 2022
- Statutory Guidance for the United Kingdom Subsidy Control Regime:
- Subsidy Control Act 2022
- Procurement Act 2023 and works obligations
- Cichel Down rules?

# Preparing for disposal

- KYA – Know your Asset
- Make it easy for potential buyers?
- What's it worth?
- Once it's gone it's gone

# KYA – Know your Asset

- Good and marketable title?
- Indemnity policies?
- Any title plan issues?
- Restrictions (against dispositions)?
- What powers were used to buy it?
- Any other special features?

# Make it easy (for potential buyers)?

- May help maximise number of potential buyers
- Could ensure speedier disposal
- Might reduce professional costs
- Could lead to higher bids
- Audit / cleanse title in advance?
- Prepare accurate replies to CPSE enquiries...with accompanying information?
- Commission searches?
- Provide title summary?
- Have a plan to deal with statutory requirements

# What's it worth?

- Don't forget Section 123
- Risk of reputational damage / adverse publicity even if not challenged
- Valuation?
- Exposure to the market?
- Overage?
- Be cautious with unsolicited bids

# Once it's gone it's gone

- What impact might disposal have on your retained property?
- Consider potential problem uses / developments
- Do you need to have rights over the property once it's been sold e.g. right of way, services
- Think carefully about whether you need to impose covenants or provide for rights

# Closing Remarks & Q&A

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# Thank You

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