

# **GUIDELINES FOR THE TRANSFER OF PROPERTY WITHIN THE SCOTTISH PUBLIC SECTOR**

## **Introduction**

These Guidelines provide a mechanism for the transfer of property within the public sector that is economical, transparent and fair. It is designed to avoid public bodies incurring unnecessary costs in relation to property that is already held within the public sector. The transferee benefits from an off market transfer and the transferor gains a less risky disposal process than may otherwise be the case. In return for that benefit both parties give an undertaking, at the outset, to accept the value determined by the jointly appointed independent valuer.

Normally, the parties cannot resile from the process following agreement to adhere to the Guidelines. However, exceptionally, if there are major uncertainties in the process due to structural, environmental or planning considerations or deficiencies in the title, the parties can agree beforehand in writing to allow one or both to resile, but it is expected that where one party withdraws from the process, they will meet the other side's abortive costs. Neither party may resile simply because they disagree with the independent valuer's determination of value.

Transferors covered by the guidance in the Scottish Public Finance Manual are expected to accept the adoption of the Guidelines within the internal advertising period (commonly referred to as 'the trawl'). However, the Guidelines may be adopted by the parties, or such other public bodies as choose to use this process, at any other time by mutual agreement. Otherwise any surplus property that fails to secure the agreement of a transferee to the adoption of the Guidelines should be placed on the open market.

The Guidelines can also be used where an acquiring body with compulsory purchase powers would have used those powers but for the fact that the property (or part thereof) was already in public ownership. The process results in the same outcome as a compulsory purchase as the definition of market value in the transfer process is identical to that used in the compulsory purchase code, but the parties save on professional costs as only one valuer is appointed. In this case, it is recommended that the transferee meets any legal costs of the transferor and the whole of the independent valuer's cost.

## **Principle**

In following this process, the parties can expect the price to be paid for the property to be the value determined by a suitably qualified and experienced valuer acting as an independent expert. The basis of the valuation shall be Market Value as it would be assessed for a compulsory purchase.

## **The Procedure**

The procedure provides a framework but it may need to be adapted to take account of the particular circumstances of the proposed transaction. Any such adaptation must be by mutual agreement and seek to address particular issues pertinent to the transaction. Scottish Government Property Division should be consulted in the event of any queries.

### **1. Define the property to be sold**

Prior to undertaking any transaction, the transferee must satisfy themselves on the extent of the property to be transferred, including all rights, responsibilities and liabilities. In the case of a property with development potential, the current planning situation will be important. The transferor should provide to the other party, all available information to enable the transferee to do this. It is the responsibility of the transferee to ensure that the property will satisfy their requirements.

The timescale allowed for the prospective transferee to consider this information will depend upon the complexity of the property. A reasonable time should be allowed, taking account of any external advice which may be required, but the transferee is expected to undertake its research as quickly as possible.

### **2. Agree the timescale for the transfer**

One of the benefits of this procedure is that it can help to facilitate a faster disposal than may be achieved using a traditional approach where each party obtains their own valuations and then seek to negotiate the price. Whilst it is expected that the parties will undertake the transaction in as short a timescale as possible, it is recognised that there are occasions when this will be more protracted. This may be due to factors such as an ongoing requirement for the use of the property until a certain date, the impact upon linked transactions or as a result of external matters, such as lack of clarity on planning consent. It is for the parties to agree the appropriate timescale in light of their particular circumstances.

### **3. Agree the timescale for the appointment of the valuer.**

The valuer should be appointed to provide the valuation as close to the date of transfer as possible in order to reflect the actual circumstances pertaining at that time. The time required for the valuation to be prepared will depend upon the valuation process adopted and the complexity of the case.

The determination of value may only be made once the agreed valuation date has passed and will reflect the circumstances pertaining as at that date. The independent valuer will not be able to provide a determination of value based upon anticipated circumstances at a future date unless the parties specifically require that the valuer makes special assumptions.

Where the independent valuer is required by the parties to make special assumptions (i.e. assume facts which differ from those existing at the valuation date, for example the existence of a higher value planning consent) the parties incur the risk that the

circumstances assumed in the valuation may not come to pass and they may either sell at less than the market value or pay more than the market value of the property which is ultimately transferred.

## **The Valuer**

The Guidelines are designed to avoid negotiation on price and associated delays and to minimise administrative costs. The parties involved must therefore jointly appoint a valuer and share the costs equally. The valuer must be independent of either of the parties to the transaction.

The independent valuer used must be a professional member of an appropriate body, such as the Royal Institution of Chartered Surveyors or the Institute of Revenues Rating and Valuation, and suitably qualified with sufficient current local and national knowledge of the particular market, and with the skills and understanding to undertake the valuation competently.

If agreement on an appointment cannot be reached, Property Division is willing to advise. All relevant procedures must be followed in making the appointment. If the independent valuer's fee is likely to be in excess of relevant limits the appointment would have to be put out to tender.

## **The Valuation Process**

The parties should appoint the independent valuer at the earliest opportunity, subject to the agreed timetable for the transaction. After appointment the independent valuer will agree a process and timetable with the parties.

One of the purposes of using an independent expert is to allow smaller public bodies who lack professional advice to enter the process with confidence that the valuer's expertise will cover any lack of professional resources. Notwithstanding this, it may be that the parties would prefer to make submissions to the independent valuer. This may be particularly helpful in complex cases. The ways in which such submissions may be made are:

### **1. Joint Statement of Agreed Facts**

This is where both parties work together to jointly produce a document for the valuer which sets out pertinent facts on which both parties agree. This may cover such items as any title matters, the extent of the property and include a plan, the planning status of the property, any lease information, ground conditions etc. The content of such a document would be determined on a case by case basis. Where appropriate, it may be helpful to also include a section listing the issues pertinent to the valuation on which the parties do not agree. This would highlight to the independent valuer issues of concern to the parties which the valuer may then consider in their determination of value.

The benefits of submitting a Joint Statement of Agreed Facts are that it can clarify for the valuer issues which may impact the valuation and it may also save the valuer time in his investigations, and thus help to keep the fee to a minimum.

## **2. Individual submissions and counter-submissions**

This is where each party prepares their own submission to the valuer. The submission may include items on which both parties agree as well as those on which there is disagreement, or may simply allow one party to put forward information which may be helpful to the valuer. Such representations may, but will not necessarily, include information on technical matters or the parties' own valuations. However, where submissions are made, both parties must then be given the opportunity to respond to the points made by the other party by way of counter-submissions.

While this process can be helpful in certain circumstances, its use is discouraged in all but the most complex, high value or controversial cases. This is because the valuer is acting as an independent expert and is expected to undertake their own research. They are under no obligation to take account of such submissions. (This differs from the appointment of an arbitrator who would be adjudicating between the respective submissions of the parties.) The process aims to be fair to all Scottish Public Sector bodies, whose experience and expertise in dealing with property matters may vary widely. By appointing a suitably qualified and experienced independent expert, the parties should be able to rely upon the valuer's judgement in determining the value without incurring the costs of employing their own surveyor.

## **3. A combination of both the above**

In this case there may be matters on which both parties agree and thus work together to produce a joint statement but in order to address other matters on which there is disagreement, they then also make individual submissions. Careful consideration must be given to the cost and undertaking involved in pursuing this route as it will only be appropriate in particularly complex or high value transactions.

## **4. Meeting between the valuer and the parties**

In some cases, rather than making written submissions, matters may be more quickly and simply dealt with in a meeting between the parties and the valuer. In that case the format for the meeting should be established beforehand with both parties clear on what will happen. It is expected that the valuer will chair the meeting.

## **Determination**

Once the independent valuer has been appointed, they will control the process and invite the parties to participate at each stage within the agreed timescales. After due consideration, the independent valuer will issue their determination of value, with reasons, to both parties and that value will form the transfer price. Whilst the parties may have had the opportunity to make submissions to the valuer during the process, once made, this determination is not negotiable and is binding upon the parties.

In the event that either the transferee or the transferor has had a separate valuation prepared in order to assist in their decision-making process, any such valuation must be viewed as indicative only and is not to be regarded as the final valuation to be used for determining the transfer value. It is the determination of value by the independent valuer that establishes the transfer price.

### **Additional Advice**

In complex cases the valuer may require advice from experts such as building surveyors, engineers, quantity surveyors, planners or professional environmental advisers. Where appropriate, experts can be appointed with the agreement of both parties and the fees shared equally between them.

### **Planning Uncertainty**

Normally, the planning position will have been clearly established beforehand. However, where this is not the case, the parties may decide to enter into a development gain sharing agreement. This would enable them to share the uplift in value which accrues from a subsequent planning consent by the transferee making a payment to the transferor of an agreed sum or proportion of the increase in value. Such an agreement would require a trigger event and an agreed formula for sharing the gain in value and would require to be tailored to the individual circumstances. Any agreement would have to be negotiated between the parties in a potentially complex and time-consuming process. It will impact the valuation of the property and the independent valuer will require full information on the detail of the agreement prior to making any determination of value. Property Division is happy to advise any parties considering this route.

### **Interpretation of this Guidance**

Any queries relating to the interpretation or application of this guidance should be referred to the Scottish Government Property Division.