

Item: 14

Development and Infrastructure Committee: 2 February 2021.

Policy on Industrial Estates.

Report by Executive Director of Development and Infrastructure.

1. Purpose of Report

To consider criteria for the sale by exception of sites on Industrial Estates.

2. Recommendations

The Committee is invited to note:

2.1.

That, on 10 November 2020, when considering a review of policy in respect of the provision and disposal of industrial land and property, the Development and Infrastructure Committee recommended:

- That consideration of the policy statement in respect of Industrial Estates be deferred, to enable officers to establish a set of criteria in respect of sites for sale by exception.
- That the Executive Director of Development and Infrastructure should submit, to the next meeting of the Committee, a revised policy statement in respect of Industrial Estates, including the criteria referred to above.

2.2.

The assessment of possible criteria for sale of sites by exception, as detailed in section 5 of this report.

It is recommended:

2.3.

That the policy statement in respect of Industrial Estates, attached as Appendix 1 to this report, be approved.

3. Background

3.1.

At its meeting held on 10 November 2020, the Development and Infrastructure Committee noted:

- That the Council had historically developed industrial estates and business parks for the purpose of economic development.

- That industrial estate properties were held as investment properties within the Strategic Reserve Fund.
- That a key criterion for holding investment properties was to generate a financial return for the Council.
- That all land and property on the Council's industrial estates and business parks was currently designated for lease only, with rental valuations assessed independently by the District Valuer.
- That a presumption existed in favour of leasing land and property on the industrial estates to new or existing businesses in key eligible sectors and to businesses which might assist the Council in achieving its economic objectives.
- That the current policy in respect of the provision and disposal of industrial land and property was established in 2011.
- That a review of policy had been undertaken, with an updated policy statement in respect of industrial estates attached as Appendix 3 to the report by the Executive Director of Development and Infrastructure.

3.2.

The Committee recommended:

- That consideration of the policy statement in respect of Industrial Estates be deferred, to enable officers to establish a set of criteria in respect of sites for sale by exception.
- That the Executive Director of Development and Infrastructure should submit, to the next meeting of the Committee, a revised policy statement in respect of Industrial Estates, including the criteria referred to above.
- That the boundaries of the currently designated Food Parks at Hatston and Garson be disestablished.

4. Policy Considerations

4.1.

Although the current lease only policy ensures that the industrial estates provides the Council with a return on its investment and continues to address a market failure by providing sites for new and growing businesses, the Council cannot refuse a request to purchase a site based on policy alone. Each request must be considered carefully on its own facts and circumstances, having regard to the relevant policy.

4.2.

Although each request to purchase a site on the industrial estates will be unique in terms of its intended development and use, criteria that might be considered as justification for the sale of a site have been explored in the following section.

5. Potential Criteria for Exception to Policy

5.1.

Following deferral of the policy statement in respect of Industrial Estates in November 2020, officers have considered potential criteria that might be considered appropriate for exceptions to the lease only policy. Further detail is provided in the undernoted sections. In all cases the impact of sale should be carefully considered if the site is deemed to be of strategic importance.

5.1.1. Sites vacant and undeveloped

It has been suggested that sites that have been vacant for some time should be sold. However, the primary purpose of creating serviced self-build industrial sites is to provide opportunities for new businesses to become established and for existing businesses to grow and thereby create new job opportunities. New businesses are generally cash-poor with the resources they do have required to invest in the business operation. Without the ability to access self-build sites or rental property at an independently assessed market rental, business development may be impeded. There are minimal ongoing costs to the Council associated with maintaining vacant sites and it is not recommended that sites be sold just because they are vacant.

5.1.2. To promote significant new economic activity

In the event of a development proposal that could create significant new additional permanent and well-paid local jobs, and where site development costs may be substantial, it might be appropriate to consider sale. However, in order to ensure the proposed development takes place, it might be prudent to offer to lease the site initially but incorporating agreement to complete a sale upon satisfactory completion of the development and following the proposed business operation being established.

5.1.3. Developed sites with leases in excess of 5 years

This might apply to a tenant with a long lease on a self-build site who has invested significantly in erecting buildings on the site in accordance with a previously agreed development plan, and has complied with the terms and conditions of the lease over a period of some years. If a request to purchase the site demonstrates that ownership, rather than an extended lease, is necessary to secure the future of the business and its employees, a sale might be considered.

5.1.4. Lack of alternative sites

As indicated in the report submitted to Committee in November 2020, there is little evidence that the private sector is prepared to invest in the speculative development of industrial sites in the same way that self-build housing sites are sometimes developed and there are, therefore, few options available for a potential developer who wishes to purchase a business development site. This is acknowledged, however sites available for lease on the industrial estates do offer a reasonable alternative and longer leases may now make this even more attractive.

5.1.5. Other circumstances

It is not possible to envisage all circumstances that might exist and be submitted in support of a request to purchase a business development site and these cannot all be captured in a policy. All requests to purchase that would assist the Council to meet its strategic objectives should therefore be considered carefully based, in each case, on its own circumstances and merit, having regard to relevant policies.

5.2.

In considering the requirement for the Council to achieve a return on its investment and secure best value, it should be noted that the market value of sites has seldom reflected the cost to the Council of creating and servicing the sites in the first place. In the example of the most recently developed Hatston Enterprise Area, where serviced land was transferred from the Strategic Reserve Fund to the Miscellaneous Piers and Harbours Account, values were as follows:

Land purchase cost.	£400,000.	Total development cost.	£2,391,840.
Roads and services cost.	£1,991,840.	ERDF grant received.	£796,736.
Total cost of provision (9.4 hectares (Ha)).	£2,391,840.	Net development cost.	£1,595,104.
Total development cost per Ha.	£254,451.	Net development cost per Ha.	£169,692.
Valuation.			
Market valuation 20 July 2018 (5.2 Hectares).	£415,000.	Market valuation per Ha.	£79,810.

5.3.

In the above example, the market valuation of the land was equal to less than half the net development cost to the Council after deduction of grant funding, and just over 30% of the full development cost. The sale of a self-build site, particularly one for which no rental income has yet been received, at a value less than the development cost might be considered a state subsidy and represent an action likely to distort the operation of the open market. However, in the event of a site being deemed surplus to requirements, disposal on the open market is the best way to establish market value.

5.4.

In the above circumstances, although the transfer of the land was an internal transaction that enabled immediate revenue generating opportunities, it perhaps offers an indication of why private developers do not generally consider the development of industrial land to be a viable investment activity. Although a return on its investment is also a key criterion for the Council, this can be weighed against the wider long-term benefits generated by rental income and economic activity.

6. Proposed Policy Statement

6.1.

Several requests to purchase sites on the Council's industrial estates have recently been received and reported to Committee for consideration, as required by the relevant policy.

6.2.

On balance, it is recommended that the current lease-only policy is maintained, subject to adjustments to the term of leases in order to assist businesses to access development capital. However, reflecting on the decision of the Committee in November 2020, an assessment of suggested 'Sale by Exception' circumstances is outlined in section 5 above with recommendations incorporated at Section 8 of the policy statement, attached as Appendix 1 to this report. It is however not possible to make provision in policy for all circumstances that might occur.

6.3.

As opportunities to establish new sectors may emerge, it is recommended that the current presumption to offer long-term leases only to businesses in specific sectors is removed. Subject to evaluation by the Executive Director of Development and Infrastructure, to maximise the wider economic benefits, and to generate a return on the Council's investment, it is considered prudent to maintain the policy for long leases to deliver against the Council's objectives as defined in the current policy.

6.4.

It is appropriate to restrict the term of a lease on any site within the estates portfolio where that site might be strategically important, for example if required to facilitate infrastructure development such as road widening or utilities upgrades. There may also be Council projects which may require specific sites and the policy should enable the strategic importance of relevant sites to be reflected in the Council's decision making.

6.5.

In terms of the lease of buildings, it is recommended that the term of a lease to qualifying businesses does not normally exceed the assessed useable life of the building, unless a tenant proposes a redevelopment that meets the Council's economic development objectives.

6.6.

Each request to purchase is unique in terms of the proposed type of activity, the scale of the proposed development and the economic benefits it is projected to deliver. It is therefore suggested that requests outwith current policy should continue to be supported by an outcomes-based evaluation and determined by the Asset Management Sub-committee. Should the revised policy statement, attached as Appendix 1 to this report, be approved, the necessary amendments will be made to the Scheme of Administration and the Scheme of Delegation to Officers.

7. Equalities Impact

An Equality Impact Assessment has been undertaken and is attached to the report as Appendix 2.

8. Corporate Governance

This report relates to governance and procedural issues and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

9. Financial Implications

9.1.

On the basis that industrial estates are held on the Strategic Reserve Fund as an investment property and primarily for commercial gain, the Fund should not be disadvantaged for decisions that may be taken on service-related grounds and including economic development objectives.

9.2.

It is considered that the economic development objectives were discharged at the outset when the case for the original investment in the industrial estates were made and the capacity created to meet both existing identified and future forecast need for serviced sites and industrial units. Also, on the basis that surplus capacity still exists across the Council's industrial estates, then it could be said that the need for future intervention by the Council on the grounds of economic development objectives is unnecessary.

9.3.

In giving due consideration to the Council's role as a provider of industrial estates going forward, it is important to consider the business case of this function or activity as a whole rather than on a piecemeal site by site basis. For example, any investment in infrastructure is long term in nature, and therefore any financial return needs to be measured over the lifetime of the asset being the industrial estate, rather than the term of the lease for an individual site or unit. This of course can be challenging to measure, particularly where the condition and remaining useful lives of individual units can vary considerably.

9.4.

While the underlying risks associated with any long term investment need to be recognised and understood, including for example, that it can take many years for an industrial estate to generate a sustainable return, in practice it is necessary to assume a minimum level of vacant lots at any one time. On the basis that vacant lots need to be actively managed against a target, from a commercial investment perspective it is not considered good business to restrict the use of serviced sites or industrial units, for example by prioritising sectoral support on economic development grounds where vacancy levels remain high. Indeed, it may be the case that the Council's return on these investment properties can be improved through a

combination of disposals and/or reinvestment as a means of adapting the facilities on offer to better meet the needs of local businesses, for example if there is unmet demand for small business units.

9.5.

Taking this all into consideration, when assessing the business case for the disposal of any individual serviced site or industrial unit, the potential to generate a capital receipt needs to be considered on a like for like basis against the potential to generate a regular income stream from that unit on a net basis, namely after the deduction of direct and indirect expenses. To do this, the potential to generate a return from the capital receipt has to be notionally assessed as if the capital sum had been invested. As a general guide or rule of thumb, the market value of a commercial property is typically ten times the current rental value (equivalent to a 10% return on the capital value of the property). Therefore, if the Strategic Reserve Fund is expected to generate an average return of 5.5% per annum from its managed fund investments over the long term, a capital receipt of at least 1.8 times larger than the market value would be required to be able to invest at an average rate of 5.5% per annum and generate an equivalent return. The enhanced capital receipt requirement in part is recognition of the inherent risks that the Council has carried over the long term.

9.6.

While it is understood that individual business owners or investors will have to weigh up their own risks and reward ratio when looking to commit additional resources into their own business models, this should not detract from the Council's own objective which is to generate a commercial return on the Strategic Reserve Fund by investing locally in industrial estate infrastructure to address a market failure and support local businesses as a whole rather than individually. The focus of the individual business owner will however be much narrower, and predominately look to secure ownership and outright control of the serviced site or industrial unit as a means of tilting the risk and reward ratio in their favour and maximising the potential for capital appreciation. Capital appreciation is of course one of the key elements that underpins the Council's long-term investment in industrial estates as a commercial investment.

10. Legal Aspects

10.1.

When the Council leases a site in an industrial estate it can include in the lease whatever conditions are deemed necessary in order to regulate the future use of the site, or preserve the amenity of the industrial estate, and as landlord can take steps to enforce such conditions.

10.2.

In the case of leases of undeveloped sites, it can be made a condition of the lease that the site is developed within a specified time period, as the Council has done in the past.

10.3.

It was noted in the report submitted to the Committee on 10 November 2020 that the high street banks contacted confirmed that a lease would provide acceptable security for bank lending, providing the remaining term of the lease concerned was sufficiently long. A lease in excess of 20 years is registrable in the Land Register of Scotland and therefore a standard security can be granted over the lease to provide security for bank lending. Although for various reasons, such as investment, some businesses may prefer ownership rather than leasing; this is not a necessity from the perspective of the high street banks contacted for the purposes of this report. If the remaining term of a particular lease is insufficient for security purposes from a bank's perspective, then the Council could consider extending the term of the lease as necessary.

10.4.

If sites are to be sold rather than leased the Council may wish to include conditions in the title deed in order to attempt to regulate future use of the site or preserve the amenity of the industrial estate. In the past, sites would have been sold by way of Feu Dispositions which would have included conditions regarding the use of the sites which the Council would have been able to enforce. However, the law changed as a result of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003 and such conditions in the title deeds of properties already sold by Feu Disposition have not been preserved by the Council. Although the Council can still include such conditions in future sales, these conditions will only be enforceable by the Council as long as it retains ownership of nearby property and as sites are progressively sold the Council's ability to enforce will be diminished. Although the Title Conditions (Scotland) Act 2003 allows a local authority to impose burdens for "the purpose of promoting economic development" it does not define what will constitute an economic development burden and this will no doubt be tested by the courts.

10.5.

Accordingly, once sites in an industrial estate have been sold the Council has little or no control over them.

10.6.

In terms of the Title Conditions (Scotland) Act 2003, a right of pre-emption (right to buy back a property on subsequent sale) can now only be created by the Council in extremely limited circumstances in its capacity as a Rural Housing Body and, accordingly, incorporating a right of pre-emption in the title in respect of any industrial estate property sold is not considered to be an option.

10.7.

Rental valuations are currently independently assessed by a valuation surveyor. Once property has been sold by the Council the availability of sites for lease and the terms of lease will be dictated by the commercial market.

10.8.

Regular review of Council policies ensures such policies remain up to date and relevant to current circumstances. However, the Council cannot refuse a request based on policy alone, and each request must still be considered carefully on its own facts and circumstances, having regard to the relevant policies. If the Council is not minded to depart from policy having regard to the merits of a particular request it must be able to demonstrate that the decision has been well reasoned and based on thorough consideration of the particular circumstances, rather than a blanket application of policy.

10.9.

Section 1 of the Local Government in Scotland Act 2003 states that it is the duty of a local authority to make arrangements which secure best value. Best value is continuous improvement in the performance of the authority's functions and necessitates the local authority maintaining an appropriate balance between cost and quality. Leasing industrial sites will assist the Council in discharging this duty.

11. Contact Officers

Gavin Barr, Executive Director of Development and Infrastructure, Email gavin.barr@orkney.gov.uk

Roddy MacKay, Heading of Planning, Development and Regulatory Services, extension 2530, Email roddy.mackay@orkney.gov.uk.

Hayley Green, Head of IT and Facilities, Email hayley.green@orkney.gov.uk

Graeme Christie, Estates Manager, Email graeme.christie@orkney.gov.uk

Jackie Thomson, Development and Regeneration Manager, Email jackie.thomson@orkney.gov.uk.

12. Appendices

Appendix 1: Industrial Estates and Business Parks: Policy Statement.

Appendix 2: Equality Impact Assessment.

Appendix 1.

Industrial Estates and Business Parks

Policy Statement

1. All land and property on the Council's Industrial Estates and Business Parks is designated for lease only.
2. Subject to exclusions, serviced self-build industrial sites may be leased for terms of up to 99 years to business which might assist the Council to:
 - Diversify the economy.
 - Increase employment.
 - Raise average earnings.
3. The term of any lease referred to at section 2 above will be negotiable, subject to evaluation of the development proposal.
4. Restrictions or special conditions might additionally apply to some sites of strategic importance.
5. Requests for lease of industrial sites from businesses that do not satisfy the criteria at section 2 above may be considered for terms of up to 5 years.
6. Any lease of buildings to qualifying businesses, will generally not exceed the estimated useful life of the building. Requests for lease of buildings from businesses that do not satisfy the criteria at section 2 above may be considered for terms of up to 5 years.
7. Any request outwith policy should be reported to the relevant committee for consideration by Elected Members.
8. Any request to purchase a site on the Industrial Estates at Hatston and Garson may be reported to the relevant committee for consideration by Elected Members under the following circumstances:
 - If the request is accompanied by a development proposal that demonstrates that significant new additional permanent and well-paid local jobs will be created, where site development costs may be substantial, and where there is a demonstrable requirement to secure ownership of the site. In the event of a decision to sell the site, a lease should first be offered incorporating agreement to complete the sale upon satisfactory completion of the development and following the proposed business operation being established on the site.
 - If the request is submitted by a business which has invested significantly in a leased site in accordance with a previously agreed development plan, and has consistently complied with the terms and conditions of the lease, and where it has been demonstrated that ownership, rather than an extended lease, is necessary to secure the future of the business and its employees.
 - In the event of other circumstances being presented that will assist the Council to deliver against its strategic objectives.



Equality Impact Assessment

The purpose of an Equality Impact Assessment (EqIA) is to improve the work of Orkney Islands Council by making sure it promotes equality and does not discriminate. This assessment records the likely impact of any changes to a function, policy or plan by anticipating the consequences, and making sure that any negative impacts are eliminated or minimised and positive impacts are maximised.

1. Identification of Function, Policy or Plan	
Name of function / policy / plan to be assessed.	Industrial Estates and Business Parks
Service / service area responsible.	Development and Infrastructure/ Economic Development
Name of person carrying out the assessment and contact details.	Jackie Thomson, jackie.thomson@orkney.gov.uk Tel: 01856 873535 Ext 2507
Date of assessment.	22 January 2021
Is the function / policy / plan new or existing? (Please indicate also if the service is to be deleted, reduced or changed significantly).	Existing

2. Initial Screening	
What are the intended outcomes of the function / policy / plan?	To guide the disposal of land and property on Industrial Estates and Business Parks
Is the function / policy / plan strategically important?	Yes
State who is, or may be affected by this function / policy / plan, and how.	Businesses wishing to purchase/lease property on Industrial Estates and Business Parks
How have stakeholders been involved in the development of this function / policy / plan?	The review responds to various requests to purchase property. Prospective lenders have been consulted.
Is there any existing data and /	

<p>or research relating to equalities issues in this policy area? Please summarise.</p> <p>E.g. consultations, national surveys, performance data, complaints, service user feedback, academic / consultants' reports, benchmarking (see equalities resources on OIC information portal).</p>	<p>No</p>
<p>Is there any existing evidence relating to socio-economic disadvantage and inequalities of outcome in this policy area? Please summarise.</p> <p>E.g. For people living in poverty or for people of low income. See The Fairer Scotland Duty Interim Guidance for Public Bodies for further information.</p>	<p>No</p> <p>Unemployment rates are low in Orkney and school lever positive destinations are above the Scottish average.</p> <p>Statistics also indicate that the self-employed percentage for Orkney is 10.2% which is higher than Scotland (8.7%).</p> <p>However, tackling deprivation and reducing inequalities in Orkney remains a priority. It is recognised that fuel poverty is a significant issue across Orkney and evidence suggests that child poverty is variable and the Isles locality has the greatest level of housing deprivation. Whilst Orkney does not have data zones within the greatest areas of deprivation across Scotland within the SIMD analysis, it is acknowledged that in remote and rural settings SIMD may be a less useful marker of deprivation.</p>
<p>Could the function / policy have a differential impact on any of the following equality areas?</p>	<p>(Please provide any evidence – positive impacts / benefits, negative impacts and reasons).</p>
<p>1. Race: this includes ethnic or national groups, colour and nationality.</p>	<p>No</p>
<p>2. Sex: a man or a woman.</p>	<p>No</p>
<p>3. Sexual Orientation: whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.</p>	<p>No</p>
<p>4. Gender Reassignment: the process of transitioning from one gender to another.</p>	<p>No</p>
<p>5. Pregnancy and maternity.</p>	<p>No</p>
<p>6. Age: people of different</p>	<p>No</p>

ages.	
7. Religion or beliefs or none (atheists).	No
8. Caring responsibilities.	No
9. Care experienced.	No
10. Marriage and Civil Partnerships.	No
11. Disability: people with disabilities (whether registered or not).	No
12. Socio-economic disadvantage.	No This policy may have a positive impact for those experiencing socio-economic disadvantage by means of increasing the number of well-paid local jobs.
13. Isles-proofing.	No

3. Impact Assessment

Does the analysis above identify any differential impacts which need to be addressed?	No
How could you minimise or remove any potential negative impacts?	n/a
Do you have enough information to make a judgement? If no, what information do you require?	n/a

4. Conclusions and Planned Action

Is further work required?	No.
What action is to be taken?	
Who will undertake it?	
When will it be done?	
How will it be monitored? (e.g. through service plans).	

Signature:

Date: 22 January 2021

Name: JACKIE THOMSON

(BLOCK CAPITALS).

Please sign and date this form, keep one copy and send a copy to HR and Performance. A Word version should also be emailed to HR and Performance at hrsupport@orkney.gov.uk