



Estatecode

ESSENTIAL GUIDANCE ON ESTATES
AND FACILITIES MANAGEMENT

NHS Estates
An Executive Agency of the Department of Health



Executive Summary

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Estatecode

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Executive summary

Estatecode provides guidance to NHS organisations on managing their estate, including acquisitions and disposals of owned or leased land and property. It builds on and replaces substantial elements of the previous edition of Estatecode.

This document is aimed at chief executives, finance and general managers, as well as directors of estates and facilities and estate officers who have responsibility for the strategic planning and day-to-day operation of healthcare facilities.

Chief executives are responsible for the estate that their organisation owns or manages. They need to be aware that the Department of Health has imposed a number of restrictions on the way property transactions are conducted. The management of the estate is an area of management that needs detailed consideration at board level. Whilst this document is likely to be forwarded to the director of estates and facilities and/or an appropriate board member or senior member of staff responsible for estates matters, the chief executive nevertheless should be aware of the advice contained within it.

As part of the process of estate management, NHS organisations need to have a thorough understanding of their existing land and property assets. Estatecode provides an approach to land and property appraisal based on a six-facet survey. Some changes have been made to the five facets given in the previous edition of Estatecode and a new facet, “quality”, has been introduced. The energy performance facet has been augmented and renamed “environmental management”. From this baseline information, NHS organisations can calculate what it will cost to maintain their estate at an acceptable level and where opportunities for adaptation and rationalisation lie.

Estatecode also alerts NHS organisations to the following:

- the statutory requirements relating to the ownership and management of land and property;
- the Department of Health’s mandatory requirements relating to the ownership and management of land and property, including all property transactions;
- commercial requirements relating to the ownership and management of land and property.

It clearly sets out the relevant powers available to NHS organisations to carry out land and property transactions. It will help NHS organisations to identify when they require support and advice from internal and external professional advisers.

The management of the existing estate should be carried out in accordance with a well thought-out estate strategy that supports the Government’s aim of improving the health and wellbeing of the population through the resources available. This document should therefore be read in conjunction with ‘Developing an estate strategy’.

All land and property transactions should be fully supported by a robust business case, which will include a comprehensive option appraisal of costed alternatives resulting in a preferred plan of action.

This document outlines the steps that NHS organisations need to take when acquiring and disposing of land and property, including listed buildings.

The section on acquisitions outlines the Department of Health's policies regarding the following:

- site identification;
- use of compulsory purchase powers;
- negotiating the purchase;
- the decision to lease.

The section on disposals outlines the Department of Health's policies regarding the following:

- sales at open market value;
- concessionary sales;
- sales to selected purchasers;
- sales to priority purchasers;
- sales that are subject to clawback and those which reserve a profit participation.

NHS Estates will provide advice to all NHS organisations about property transactions, and must be informed about all proposals that may lead to the disposal of land and property.

Estatecode does not outline the procedures to be adopted when preparing a business case for acquisitions, which should be undertaken in accordance with the 'Capital Investment Manual'. Neither does it cover the issues involved in the development of the business case leading to land and property becoming surplus, which should be in accordance with the Government's Health Improvement Programmes (HIMPs) and Primary Care Investment Plans (PCIPs).

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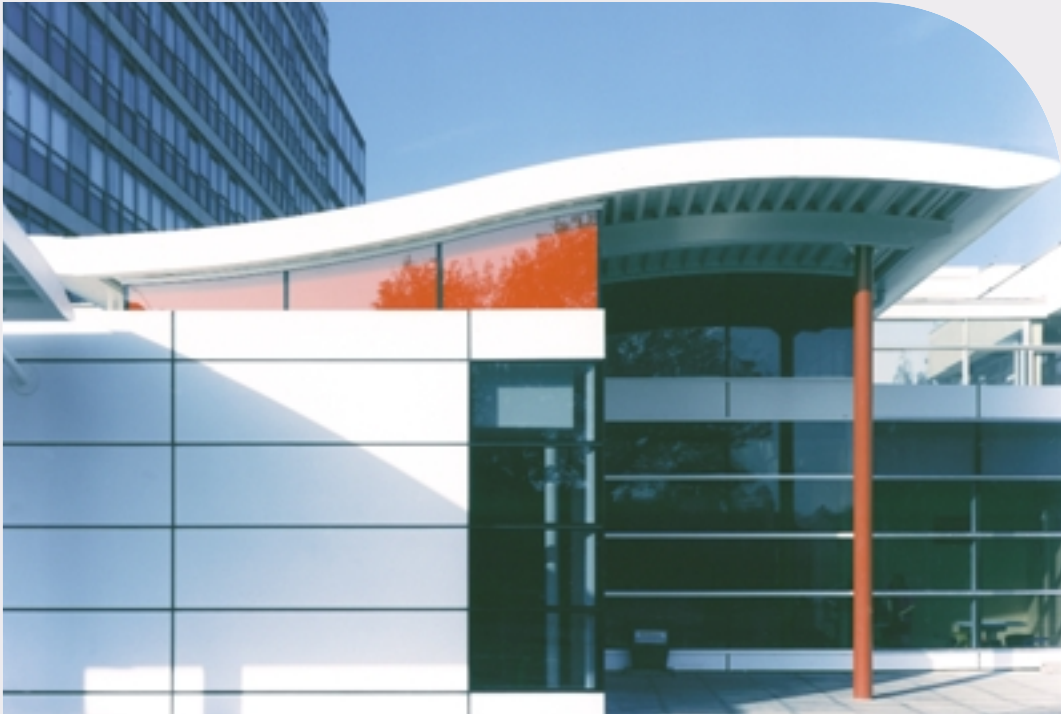
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Introduction

About this publication

1.1 Estatecode provides guidance to NHS organisations on managing their existing estate, including transactions for owned or leased land and property.

1.2 A thorough land and property appraisal is necessary to:

- determine day-to-day operational issues;
- develop an effective estate strategy, which will consider whether disposals or acquisitions are necessary in order to meet future service needs;
- inform capital investment proposals;
- underpin Primary Care Investment Plans (PCIPs), Health Improvement Programmes (HImPs) and Health Action Zone (HAZ) objectives.

Both land and property appraisal and service planning (and investment) are dealt with in this guidance.

1.3 For the purpose of this document, NHS organisations include:

- NHS trusts;
- Primary Care Trusts (PCTs);
- Health Authorities (HAs);
- Special Health Authorities (SHAs);
- Department of Health;
- NHS Estates.

1.4 This document is aimed at chief executives, finance and general managers, as well as directors of estates and facilities and estates officers who have responsibility for the strategic planning and day-to-day operation of healthcare facilities. It will also give clinicians a general appreciation of the Department of Health's policies governing land and property transactions.

1.5 This guidance will enable you to act as an informed client. It will help you to identify when you require support and advice from internal or external professional advisers.

Note:

This guidance is for use in England. Separate guidance is given by health departments in Wales and Scotland. This guidance is not suitable for use in Northern Ireland where local arrangements on the issue of Estatecode and land and property transactions will continue to apply.

Reference to other guidance

1.6 This document replaces the following sections from Volume 1 of the previous edition of Estatecode:

- a. 'Strategic asset management', NHS Estates, 1993;
- b. 'Estate investment planning', NHS Estates, 1993;
- c. 'Analysis of estate performance', NHS Estates, 1993.

It also replaces 'Property transactions – a management guide for NHS trusts', NHS Estates, 1994 from Volume 2 of the previous edition of Estatecode.

1.7 The following sections from the previous edition of Estatecode will continue to be available as stand-alone documents and should be referred to as necessary:

- 'Environments for quality care', NHS Estates, 1993;
- 'Environments for quality care: Health buildings in the community', NHS Estates, 1994;
- 'Historic buildings and the health service', NHS Estates, 1995.

1.8 The management of the existing estate should be carried out in accordance with a well thought-out estate strategy. This document should, therefore, be read in conjunction with 'Developing an estate strategy', NHS Estates, 1999.

1.9 Capital investment for acquisitions should be carried out in accordance with the 'Capital Investment Manual', NHS Executive, 1994 (which is currently being updated). This includes, among other requirements, the need for the preparation of a business case for land and property acquisitions (which again should reflect the estate strategy).

1.10 Reference should also be made to 'Sold on Health – Modernising procurement, operation and disposal of the NHS Estate', which recommends that business cases for capital expenditure should only be approved if an estate strategy is in place.

1.11 Any person with responsibilities for estate matters should also be aware of advice given in 'Quarterly Briefing' (issued by NHS Estates) and Health Service Circulars (HSCs), and the range of guidance documents from NHS Estates.

The policy context

1.12 The Government's overall aim through the Department of Health is to improve the health and wellbeing of the population through the resources available. NHS organisations have a responsibility to:

- ensure that their land and property is used efficiently, effectively and strategically to support Government plans (including the NHS Plan) and clinical needs;
- provide and maintain an appropriate quality of affordable healthcare facilities in the right location which complement and support the provision of quality healthcare and are sustainable over the life cycle.

1.13 The management and maintenance of land and property should be carried out in the context of a fully developed estate strategy. For NHS trusts and SHAs, this strategy should be developed in close conjunction with managers and others responsible for service planning. It is necessary to facilitate estate strategies that take account of HImPs, PCIPs and HAZ objectives. Estate strategies should also take account of regional strategic directions, health economies overall, and suitable administrative requirements.

1.14 When addressing estate matters, it is important that you take into account the three strands of sustainable development – economic, social and environmental.

1.15 You must comply with all statutory requirements, national and international directives, including those that relate to:

- the health, safety and welfare of your patients, staff and visitors;
- the physical access to your land and property by staff, patients and visitors;
- the impact that your estate and services have on the environment and the community.

● The NHS Plan, issued in 2000, sets out a challenging agenda that will impact on the use of the estate in the NHS. A summary of the NHS Plan can be found at:

<http://www.doh.gov.uk/nhsplan/summary.htm>



Land and Property Matters

Land and property ownership

NHS trusts

2.1 NHS trusts own or lease their land and property. NHS trusts can acquire new land and property, in their own right or through Public-Private Partnerships/Private Finance Initiatives (PPP/PFI), subject to delegated limits set out by the Department of Health.

2.2 In the case of shared properties, or those with a short operational life, there will normally be occupational agreements between the Secretary of State for Health and the NHS trust, or vice versa. In the case of sites shared by trusts, one will be the “owner” and the other(s) should occupy on terms set out in a written memorandum of terms and conditions.

2.3 NHS trusts have no Crown immunity. Therefore, they must comply with all statutory requirements arising from the use, ownership and occupation of land and property.


Primary Care Trusts

2.4 Primary Care Trusts are able to provide services, run hospitals and community health services, and employ the necessary staff. At levels 3 and 4 they are both commissioners and providers of healthcare, and will own land and property. When it is established, a level four PCT will have transferred to it all those assets needed to enable it to function. In most cases the interest in the land and property will have been formerly owned by a community trust, and usually the freehold will be transferred to the PCT by Order. That ownership interest should be registered by the PCT at HM Land Registry. Land and property surplus to a PCT’s requirements should not be transferred to it.

2.5 In the case of shared properties, or those with a short operational life, there will normally be occupational agreements between the community trust and the PCT. The “owner” will normally be the majority user.

2.6 Land and property owned by PCTs is not Crown land. Therefore, PCTs must comply with all statutory requirements arising from the use, ownership and occupation of land and property.

2.7 Primary Care Trusts are responsible for reimbursing GPs to cover their accommodation costs and should refer to the Statement of Fees and Allowances (“the Red Book”), which deals with reimbursement of property costs to GPs, and processes for change and development (including improvement grants).


 See [Appendix VII](#) for further details on Public-Private Partnerships/Private Finance Initiatives.

Note:

NHS trusts are established under the National Health Service & Community Care Act 1990. The Act sets out their functions, powers and restrictions, all of which are laid down in their Establishment Order.

Note:

Primary Care Trusts were established by the Health Act 1999. They have evolved from Primary Care Groups (PCGs). Primary Care Trusts that are commissioners of healthcare only (rather than both commissioners and providers) are unlikely to require accommodation other than administrative offices.

 For further information on PCTs refer to HSC 1999/246: LAC (99) 40.

Health Authorities

2.8 Health Authorities do not own land and property in their own right. All land and property occupied or used by a HA is vested in the Secretary of State for Health.

2.9 Health Authorities have no Crown immunity. Therefore, they must comply with all statutory requirements arising from the use and occupation of land and property.

2.10 Primary Care Groups are sub-committees of HAs. Any accommodation requirements will be provided for them by HAs. It is expected that many PCGs will become PCTs. Therefore, PCG accommodation requirements should normally be of a temporary nature.

Special Health Authorities

2.11 Special Health Authorities do not own land and property in their own right. All land and property occupied or used by an SHA is vested in the Secretary of State for Health.

2.12 Special Health Authorities have no Crown immunity. Therefore, they must comply with all statutory requirements arising from the use and occupation of their land and property.

 [See marginal note at paragraph 2.7.](#)

Note:

Health Authorities' powers to manage and deal with land and property have been delegated and are subject to limits, as set out in the Health Authorities (Land Transaction) Direction 1996. This restricts HAs to managing their own administrative properties, although Local Directions issued by Regional Offices (ROs) may extend their powers.

Land and property transactions

NHS trusts' powers to carry out land and property transactions

2.13 Subject to three statutory restrictions, an NHS trust can buy and sell land and property, and is given the appropriate powers by paragraph 16 of the Second Schedule to the National Health Service & Community Care Act 1990.

The three statutory restrictions, stipulated in the National Health Service & Community Care Act 1990, are:

- if you want to use your compulsory purchase powers, you must first seek the approval of the Department of Health;
- Government procedures for the disposal of surplus public land and property must be followed;
- any proposed disposal of assets valued in excess of £1 million may be halted if the Secretary of State considers it contrary to the interests of the NHS.

Note:

Prior to the Health Act 1999, only NHS trusts that had been established under 5(1)(b) powers, as opposed to 5(1)(a), had the power to purchase land and property.

Primary Care Trusts' powers to carry out land and property transactions

2.14 A PCT can buy and sell land and property, and is given the appropriate powers by the Health Act 1999.

2.15 A PCT's power to carry out land and property transactions may be the subject of a Land Transactions Direction (issued by NHS Estates), which will limit (by value) the power of a PCT to acquire, manage and dispose of land and property.

Health Authorities' powers to carry out land and property transactions

2.16 Health Authorities' abilities to carry out land and property transactions of any kind are limited by the delegated authority set out in the Health Authorities (Land Transactions) Direction 1996. This restricts HAs to managing for themselves land and property required for their administrative functions (that is, normally offices).

2.17 Health Authorities might also manage on a day-to-day basis non-administrative land and property assets vested in the Secretary of State for Health. The power to do so was contained in the Health Authority (Land Transactions) Directions 1996, but that power has now expired. If, therefore, HAs are asked to continue in the process of land and property management, they should seek a locally-agreed authority by way of a Land Transactions Direction from their RO to allow them to do so. That locally-agreed delegated authority will normally be limited to the day-to-day management of land and property, and any disposal, for example, will be carried out by NHS Estates and not the HA.

2.18 All land and property transactions carried out by HAs will be in the name of the Secretary of State for Health.

Note:

Health Authorities are obliged to consult on substantial variations in service pursuant to Statutory Instrument (SI) 1996 No 640. This could include the location of service provision, which would indirectly affect NHS trusts and PCTs.

Special Health Authorities' powers to carry out land and property transactions

2.19 Special Health Authorities' abilities to carry out land and property transactions of all kinds are provided by delegated authority set out in either their establishment documents (SI) and/or specific Land Transaction Directions, issued by the Department of Health. These set out the limits within which SHAs can carry out transactions without reference to the Department of Health. They will vary according to the status of the SHA.

All NHS-funded land and property transactions

2.20 This document applies to all land and property transactions made in the name of the Secretary of State for Health, irrespective of the management arrangements in place. Any land owning/management powers of NHS organisations are likely to be the subject of limitations set out in their establishment documents.

2.21 Many organisations are funded through the NHS, or have land and property provided by the NHS. For public accountability purposes, whoever signs documents relating to land and property transactions that involve public expenditure by the NHS, must first have taken account of the advice, guidance and procedures set out in this document.

Mandatory requirements relating to land and property transactions

General

2.22 You must, whether occupying as owners or tenants, comply with all statutory requirements relating to health and safety regulations, landlord and tenant law, listed buildings and conservation area policy, town and country planning regulations, building regulations, and the Disability Discrimination Act (DDA).

2.23 The approval of the director of your local Department of Health RO must be obtained if you want to take the lease of land and property that has a freehold value (vacant possession) in excess of £1 million.

2.24 If you want to use your compulsory purchase powers, you must first prepare an appropriate business case to do so and then seek the approval of the director of your local Department of Health RO before proceeding.

2.25 Specified delegated limits to deal with land and property transactions may be contained in your establishment documentation and these must not be exceeded. You should check with your solicitor to find out what these limits are.

2.26 Appropriate legal and professional advice (from those with knowledge of NHS policy and procedures) must be obtained for all land and property transactions. Any proposal contrary to that advice should only be made with the approval of the Department of Health.

2.27 NHS trusts and PCTs must not mortgage or charge any of their assets, or use them in any way as security for a loan (NHS & Community Care Act 1990, Schedule 3, Paragraph 1).

2.28 Any person signing any form of contract in respect of a land and property transaction must be authorised to do so, fully informed about the transaction, and have the clear support of professional advisers before signing any legal document.

2.29 Separation of duties will be required to ensure probity, for example the same person should not sign a contract that he/she has negotiated, nor should anyone sign a contract where that person has an interest in the outcome of the transaction.

Disposals

2.30 Government procedures for the disposal of surplus public land and property must be followed. These are set out in 'Government Accounting: Disposal of Assets' (chapter 32), and mirrored in this document.

2.31 NHS trusts and PCTs must notify the Department of Health RO whenever surplus land and property has been, or may have been, identified, or whenever alternative options are being considered that may lead to surplus land and property. If land and property is surplus to one health organisation, but is required for operational purposes by another, it is not classified as surplus.

2.32 Any proposed disposal of assets valued in excess of £1 million may be halted if the Secretary of State for Health considers it contrary to the interests of the NHS, and so must be referred to the Department of Health RO.

2.33 Where the selling price of surplus land and property is likely to exceed £5 million or in major or potentially difficult disposals, for example where it is likely to be difficult to establish what planning consents or what uses prospective purchasers may anticipate, professional advice and a valuation in

Note:

More detailed explanations of the operation of landlord and tenant law, VAT, joint ventures, town and country planning, rating law, conveyancing processes, valuation and on the method of appointment of professional advisers can be obtained from NHS Estates Information Centre (telephone 0113 254 7070, e-mail: nhs.estates@doh.gsi.gov.uk.)



For more details on disposals see Section 8.

addition to and independent of the selling agent must be secured. This advice must be provided by the District Valuation Office (DVO).

2.34 When disposing of land and property to a selected purchaser by private treaty rather than testing on the open market, approval from the Department of Health must first be secured, unless professional advice is given that this method of sale might have an advantage over a sale by tender or auction. (For example a sale to a “heritage” body such as the National Trust or to a voluntary organisation).

2.35 There is no need for NHS trusts to consult with anyone other than HAS and ROs as part of the process of settling their business plans prior to closing a facility and declaring it surplus. It is desirable, however, to liaise with Community Health Councils (CHCs), who remain the statutory representative of the public interest in the health service (subject to any changes following publication of the NHS Plan).

Note:

NHS Estates will offer advice on the management of the disposal process.

Commercial requirements relating to land and property transactions

2.36 In all land and property transactions the highest possible commercial judgements need to be brought to bear. Any decision-making process should take account of relevant codes of conduct, accountability and probity. All land and property transactions should be fully supported by a robust business case, which will include a comprehensive option appraisal of costed alternatives resulting in a preferred plan of action.

2.37 Land and property transactions must be made in compliance with financial and standing orders. These will set out:

- limits of delegated authority from the board;
- limits of delegated authority to the NHS organisation;
- expenditure approval processes;
- levels of expenditure requiring tender action;
- decision-making processes;
- delegated authority to sign contracts and agreements, make appointments, agree sales or purchases of land and property;
- processes for affixing an NHS trust's, PCT's, HA's or the Secretary of State for Health's seal when required.

2.38 Financial parameters will impose further requirements relating to land and property management, including the following:

- all capital and revenue expenditure is regarded as public expenditure, even if private finance is used. Therefore, any business case must demonstrate best value in the use of that finance;
- capital charges on land and property are based on the District Valuer's (DV's) assessment of its depreciated replacement cost, and its remaining life;
- capital charges are adjusted to reflect the market value of land and property that becomes surplus;
- income from surplus land and property sales should normally be returned to the Department of Health either by adjustments of External Financing Limits (EFLs) or by cash payment;
- control of funding through the EFL or capital allocation effectively restricts land and property acquisitions to those required for projects approved by the Department of Health in its business plans;
- land and property should not be purchased in advance of approval of a business case (although options or conditional contracts may be used to ensure that there will be no loss of opportunity to purchase suitable land and property);
- traditional forms of "joint venture" arrangements are not allowed, that is, a shareholding in a company where both upside and downside is possible;
- NHS organisations do not have the power to mortgage their land and property as security for any purpose.



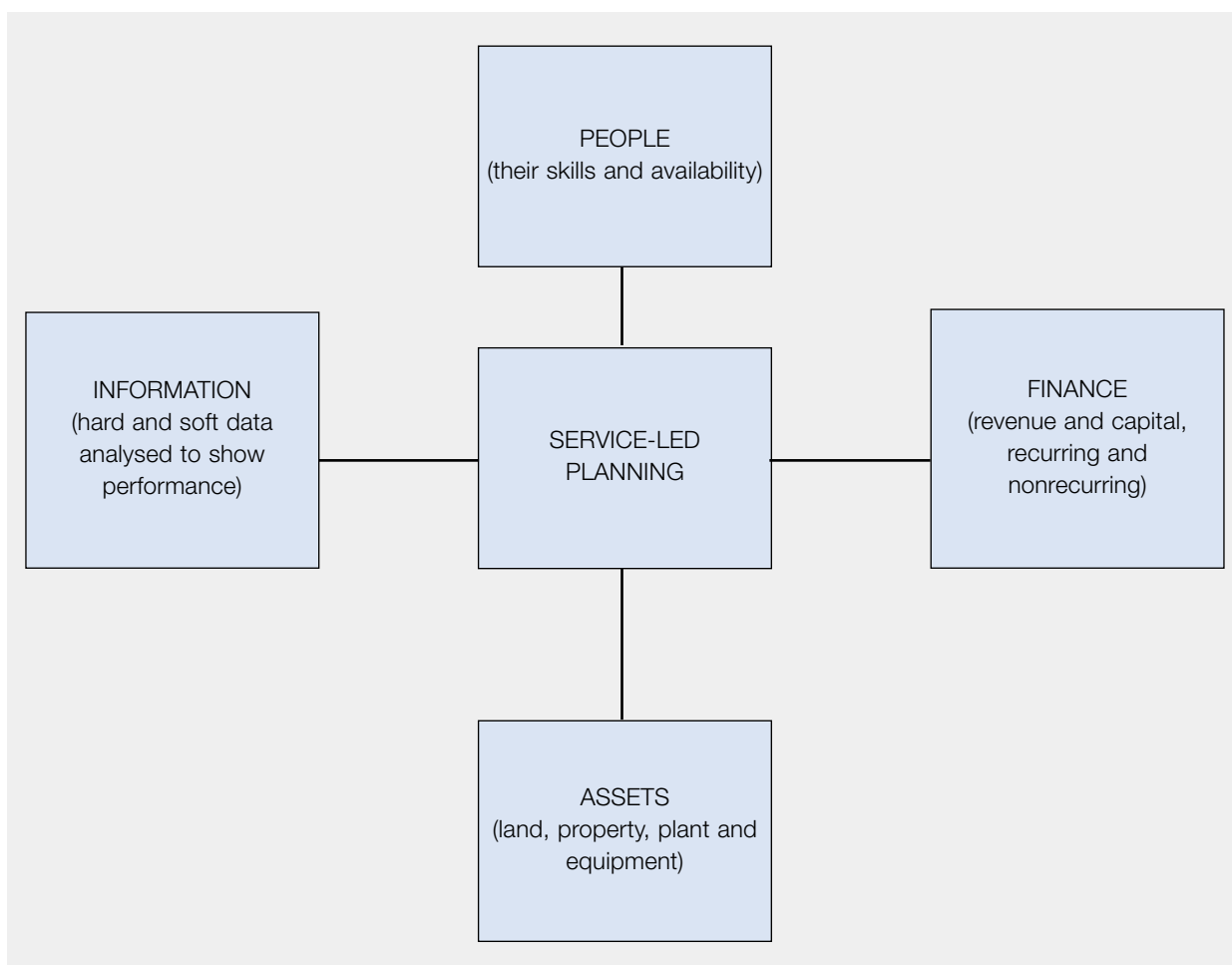
Planning Strategic Investment in the Estate

Estate management and strategic service planning

3.1 Management of your assets should form part of an integral process of strategic service planning, taking account of, and forming part of PCIPs and supporting HImPs. Developing a realistic service plan will be determined by the interaction of service need, asset availability and performance, the constraints of available finance, and the availability of skilled healthcare professionals.

3.2 The resources of people, finance, assets and information should be considered in an iterative way in a strategic service planning exercise as illustrated in Figure 3.1.

Figure 3.1 Resources to be considered in a strategic planning exercise



3.3 The NHS stock of land and property represents a valuable resource equally as important as the resources of finance and manpower. Experience shows that a creative manipulation of the estate in the context of service planning can substantially reduce the revenue burden. But it can only be achieved if the nature of the estate and its future potential are properly understood.

3.4 Key requirements for strategic service planning include:

- a. detailed knowledge of national priorities and resource policies;
- b. the ability to analyse your local healthcare needs – for example using evidence-based studies undertaken by HAs and PCGs;

- c. the ability to link service development projects to the priorities set out in HImPs;
- d. the ability to effectively respond to new and updated policy initiatives.

3.5 Your strategic service plans must address the following questions:

- a. Where are we now?
- b. Where do we want to be?
- c. Is it the right direction in which to go? (in terms of the retention or creation of services that build on your strengths and address your weaknesses, and meet defined priorities);
- d. Do we have the ability to get there?
- e. How do we get there and can it be achieved at an affordable cost?

3.6 Effective strategic service planning can:

- a. maximise the health and wellbeing of the population through the resources available;
- b. provide a base for decision-making;
- c. encourage innovation;
- d. identify objectives;
- e. identify priorities;
- f. contribute to the development of policies.

A framework for strategic service planning

3.7 This section provides a framework for strategic service planning based on asking the key planning questions:

- a. Where are we now?
- b. Where do we want to be?
- c. How do we get there?

3.8 All the information should be analysed and summarised so that it highlights key issues rather than presenting a mass of detail. Information should be comprehensive but not so bulky or expensive to produce that the process is unworkable.

3.9 Although good information and rational analysis are the starting points for the formulation of options, the selection of a particular service plan will be influenced by local judgements on the practicability of implementing them.

3.10 Key features of successive reorganisations of the NHS – integration of health services and now social services, involvement of multidisciplinary teams in planning, clear definition and allocation of responsibilities, decentralisation of decision-making – have been intended to provide two processes which are essential for effective service planning:

- a. reviewing and challenging historical patterns and practices of service delivery and resource use;
- b. taking full advantage of the views of clinicians about the improvement and development of services in the future.

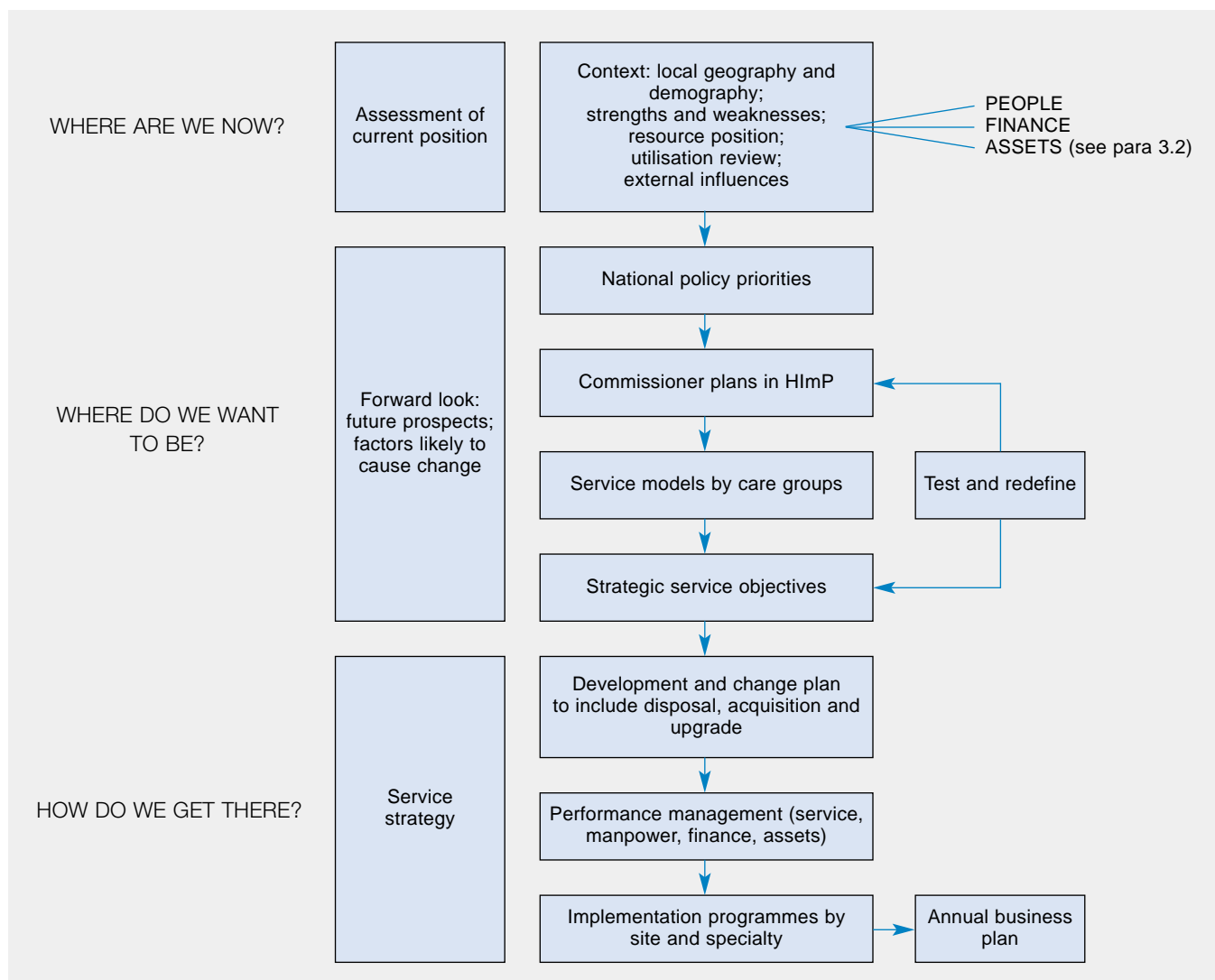
3.11 The process of strategic service planning is initially best undertaken through an intensive multidisciplinary workshop. Prior to the workshop you will need to collate a corporate database, which will form the resource and reference point for the whole exercise.

3.12 The framework is summarised in [Figure 3.2](#).

Section 3: Planning strategic investment in the estate

A framework for strategic service planning

Figure 3.2 A framework for strategic service planning



Information required for strategic service planning

Corporate database

3.13 The information necessary to produce your corporate database has four main elements:

- a. an assessment of your local context in terms of geography, demography, epidemiology and neighbouring services;
- b. the strengths and weaknesses of your organisation and its constituent parts;
- c. current service provision, and a utilisation review in terms of facilities used, finance, manpower and the estate;
- d. an assessment of the opportunities and constraints affecting your organisation at both macro and micro levels within its environment such as financial situation, HImP priorities, and estate issues.


Information about your estate

3.14 Information about your estate will form a key part of your corporate database. The information required is summarised in [Table 3.1](#).

3.15 Much of this information can be derived from existing estate records. These include:

- Land Registry Certificate Number;
- legal title documents (deeds, leases and licences);
- the estate terrier (an illustrated register of legal title including site and location plans – [see Appendix V](#));
- asset registers, most commonly a computerised record of land and property values, and also records of other assets with a capital value of more than £5000;
- contracts for services and utilities.

3.16 Information on space utilisation and the condition and functional suitability of land and property is covered in detail in Section 4 on Land and Property Appraisal. For further information on estate performance see 'Developing an estate strategy'.

 [For more details see Section 4.](#)

Section 3: Planning strategic investment in the estate

Information required for strategic service planning

Table 3.1 Information about your estate for developing a corporate database

Information	Description of information	Source
Hospitals and any adjacent properties, and the Primary Care Estate	<ul style="list-style-type: none"> • Site plan (including size and Ordnance Survey (OS) reference) • Aerial photos with site boundaries where available • Photos of significant features • Floor plans – single line A4 • Potential site value (with development) • Condition of land and property • Functional suitability • Space utilisation • Rateable value • Annual occupancy costs by site • Energy costs/volume 	<ul style="list-style-type: none"> • Estate terrier • Special survey • Existing/commission • Estates/facilities dept. • District Valuer • Special survey • Special survey • Special survey • Local Authority • Estates/facilities dept. • Estates/facilities dept.
Residential staff accommodation	<ul style="list-style-type: none"> • List of property, site, size and location • Number of residential units • Floor plans (if available) • Potential site value (with development) • Condition of buildings • Cost of annual maintenance • Rental income 	<ul style="list-style-type: none"> • Estate terrier • Housing managers • Estate/facilities dept • District Valuer • Special survey • Estates/facilities dept • Finance dept.
Ambulance stations	<ul style="list-style-type: none"> • List of site, size and location • Floor plans (if available) • Potential site value (with development) • Condition of land and property 	<ul style="list-style-type: none"> • Estate terrier • Estates/facilities dept • District Valuer • Special survey
Surplus property	<ul style="list-style-type: none"> • List of site, size, location and state of disposal • Floor plans (if available) • Potential site value (with development) • Condition of land and property 	<ul style="list-style-type: none"> • Estates/facilities dept/ Regional Office • Estates/facilities dept • District Valuer • Special survey
Policies (NHS)	<ul style="list-style-type: none"> • Land sales etc 	<ul style="list-style-type: none"> • Regional Office
Policies (other) – Town planning	<ul style="list-style-type: none"> • Development Plan policies 	<ul style="list-style-type: none"> • Planning authority • Structure and Local Plans or Unitary Development Plans • Estate terrier
Town planning history	<ul style="list-style-type: none"> • Details of previous planning decisions on, or affecting, the estate 	<ul style="list-style-type: none"> • Local Planning Authority • Estate terrier

Opportunities and threats in service planning arising directly from the estate

3.17 Once you have collected a comprehensive set of information about your estate, you will need to analyse it to identify opportunities or constraints, to enable change in service delivery if required. The analysis should also highlight problems in estate condition and performance, which will need to be taken into account in drawing up robust service plans.

3.18 Some of the analysis can be summarised from estate data and presented in written or tabular form. You may also find it helpful to consider the information from performance indicators (and benchmarking figures where appropriate), and from site plans and aerial photographs in a workshop setting with estates/facilities managers, general managers and clinician colleagues.

3.19 The questions that need to be asked in such discussions include the following:

- Are services inappropriately located in terms of the sites and buildings in which they are found?
- Does under-used space exist and can this be used for other purposes or disposed of?
- Which sites or parts of sites have planning and development potential and can this value be unlocked?
- Which parts of the estate need investment to meet acceptable standards, or to cope with service change and development?
- What is needed in terms of capital investment in order to generate change?

Formulating the service strategy

3.20 The strategic service planning approach should not stop once senior managers have agreed on a particular option or range of options.

3.21 Discussion on elements of the strategic direction and key implementation issues will need to take place within your organisation. In particular, the details of implementing elements of the service strategy may need lengthier discussion with a wider set of small groups. It may be appropriate to produce a summary of the outcome for wider circulation; team briefing might form a useful vehicle to cascade the essential proposals quickly downwards and to seek immediate responses. Displays may be mounted, which show how the vision could be put into practice, for both internal and external consumption.

3.22 As a matter of good practice, the plans should be discussed at an early stage with key constituencies: HAs, PCGs, NHS trusts, PCTs, GPs, Local Authorities, CHCs, local MPs and others. Whatever communication tool is used, it will be very important to actively promote the benefits of the chosen strategic service plan.

The estate investment programme

3.23 The process of identifying and appraising options as part of strategic service planning produces the framework within which detailed investment proposals can be developed. So far as the estate is concerned the process for doing this is set out in 'Developing an estate strategy'. In summary the following information should be presented:

- a. the estate that is to be retained;
- b. the degree of modification (extension, change of use, reduction) envisaged to your existing estate;
- c. the need for additional land and property and the functional units to be provided;
- d. the availability for disposal of unwanted existing land and property;
- e. the potential for re-use of assets (equipment, plant) currently used in unwanted facilities;
- f. the timing for delivery of retained, refurbished, re-usable, extended or newly-created land, property and other assets and the availability for disposal of unwanted assets;
- g. the resources to sustain the resultant estate.

3.24 Return on investment from the estate investment programme includes the following factors:

- a. improved services resulting from land and property with improved functionality;
- b. increased services resulting from additional provision of land and property;
- c. revenue savings resulting from:
 - (i) elimination of spare capacity and under-utilised space;
 - (ii) reduction in land and property overheads;
 - (iii) increased utilisation of the estate and the capital assets;
- d. capital generation resulting from disposal of all surplus land and property;
- e. improved physical condition resulting from:
 - (i) replacement of worn-out property by new property;
 - (ii) improved maintenance of existing land and property;
 - (iii) upgrading of existing land and property;
 - (iv) disposal of land and property that is uneconomic to maintain and which accommodate functions that can be relocated.


3.25 Sometimes there are benefits in developing an estate strategy and subsequently an estate investment programme on a wider basis, either covering a number of trusts or other appropriate healthcare organisations, or at a regional or national level. The reasons for taking this wider view include:

- a. the need to review and rationalise acute services between separate sites, often in separate NHS trusts, to allow for effective sub-specialisation, cope with accreditation issues and meet changing staffing needs;
- b. the interrelationship between changes in primary and community services and secondary care settings. Pressure to change and expand what can

be done in primary care will have implications for the use of community hospitals, and changing ways of delivering secondary care may depend on community facilities;

- c. investment in new technologies which may facilitate wider service and financial objectives across organisational boundaries (for example telemedicine);
- d. recognition of the importance of the GP-owned estate in the context of the modernised NHS;
- e. acceptance that the NHS should work in a more collaborative and less competitive way, with priorities for investment in key areas being agreed across rather than just within organisations. This implies both HImP-led investment and the possibility of joint development of sites with Local Authorities;
- f. the large proportion of total expenditure which is spent on the estate. The revenue cost of running healthcare buildings, before any care goes on in them, is approximately 20% of total costs.

3.26 These pressures have led in some cases to the constituent trusts coming together with HA managers and sometimes with social services representatives to create a strategic framework for change in the estate of the entire health and social care system.

 *Suggestions for handling the process of such a system-wide review are set out in [Appendix I](#).*



Land and Property Appraisal

Objectives

4.1 Land and property appraisal involves a thorough examination of your land and property with the ultimate aim of calculating what it will cost to maintain your estate at an acceptable standard and where opportunities for adaptation and rationalisation lie. The underlying aim of such an appraisal is to ensure that your estate, as a resource, is aligned with your business plan, so that you can provide the right facilities in the right place at the right time.

4.2 Land and property appraisal is the key activity in drawing up a baseline assessment of your land and property. It is the first step in the creation of an estate strategy. Information from land and property appraisal is also essential in drawing up annual minor capital and estate maintenance programmes.

4.3 Before starting the appraisal process ensure that you are clear about the objectives for carrying out the work. This is important because it will determine the level of detail at which you collect data.

4.4 It is likely that the appraisal will be carried out for one (or more) of three reasons as shown in Table 4.1.

Table 4.1 Reasons for carrying out land and property appraisals

APPRAISAL OBJECTIVES	LEVEL OF DETAIL NEEDED	OUTPUT
(i) As a baseline assessment for developing your estate strategy.	High-level appraisal on a site or block basis.	Information for general management purposes, to help you assess “black spots”, investment priorities and opportunities for rationalisation.
(ii) As a detailed assessment for operational maintenance purposes.	Appraisal on a block or room basis; may focus on specific problem blocks within your estate.	Information required largely for internal use by your estates department; will be used to develop in-year maintenance and minor capital programmes.
(iii) For service reviews on a departmental basis.	Appraisal on room-by-room basis.	Information for senior management and heads of department; the emphasis may be on some of the facets, e.g. quality of the environment and functional and space suitability.

4.5 In each case the purpose of the appraisal will be different as will the level of detail required. The following questions will help you determine the type of appraisal to carry out:

- Will a mass of detailed information tell you any more than a broad-brush appraisal?
- Will the data help you to answer strategic questions such as, should the estate be rationalised in order to minimise expenditure on backlog maintenance or to bring down overhead costs?
- Does the data help to identify ways to use your site(s) more intensively and thus improve space utilisation?
- How easy will it be to convert raw data into information that can be used by your board?

4.6 The prime purpose of carrying out land and property appraisal is to help in the operational and strategic tasks of estate management. A secondary purpose is to provide data for the Estates Returns Information Collection (ERIC). Data at this stage is highly aggregated and can only be indicative of the issues and problems that need to be addressed. It is always necessary to undertake assessments on a block or floor basis in order to identify action to be taken and to carry out investment planning.

Note:

Highly aggregated data is used in ERIC (the estates subset of the trust financial pro-formas) in order to provide comparative information across the NHS.

Undertaking the appraisal – the six-facet approach


4.7 Land and property appraisal should be undertaken on the basis of six facets. Some changes have been made to the five facets given in the previous edition of Estatecode and a new facet, “quality”, has been introduced. The energy performance facet has been augmented and renamed “environmental management”.

4.8 The six facets are:

- physical condition;
- functional suitability;
- space utilisation;
- quality;
- statutory and non-statutory requirements (including the DDA);
- environmental management.

4.9 The subject of environmentally-friendly policies is only partially covered in the six facets through the energy efficiency measures covered in the “environmental management” facet and the inclusion of some elements under the “fire safety, statutory and non-statutory requirements” facet.

4.10 NHS organisations should undertake an environmental impact assessment in order to capture the full details of the environmental effects of their current operations. From this baseline information, an Environmental Management Strategy and a Healthy Transport Plan can be produced. An environmental impact assessment can also form the basis for assessing the environmental impact of any planned new development, both for estate management purposes and to meet town planning requirements. At the moment this should be carried out as a distinct exercise and should cover subjects such as carbon emissions, waste management, water use, transport and procurement policies.

 For further information on undertaking an environmental impact assessment, refer to ‘Developing an estate strategy’.

Facet 1: Physical condition

4.11 The overall physical condition of your estate should be assessed on the basis of the condition of three elements: buildings (internal and external); mechanical systems; and electrical systems (shown in [Figure 4.1](#)).

4.12 For strategic planning purposes, you should carry out a high level appraisal of each building block on the basis of these three elements.

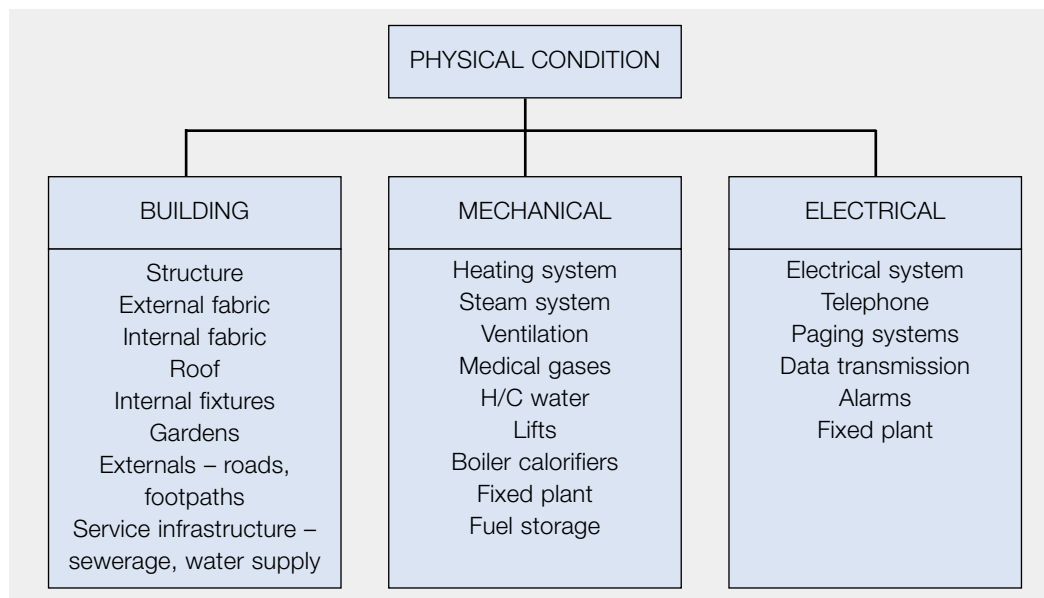
4.13 The overall condition of each element should be scored out of 10. The aggregate score of the three elements can be used to produce an overall ranking of the physical condition of your estate as follows:

A 25+	as new and can be expected to perform adequately over its expected shelf life;
B 20–24	sound, operationally safe and exhibits only minor deterioration;
C 14–19	operational but major repair or replacement will be needed soon, that is, within three years for building elements and one year for engineering elements;
D under 14	runs a serious risk of imminent breakdown;
X added to C or D	impossible to improve without replacement.

4.14 Following categorisation, the cost of appropriate measures to upgrade a C- or D-condition building to a B-level building should be recorded. Condition B is to be considered as an operationally acceptable standard for all building and engineering elements. A form will be needed to undertake the site survey.

 See Appendix II for a suggested format for data collection forms.

Figure 4.1 Elements for conducting a high-level appraisal of the physical condition of your estate

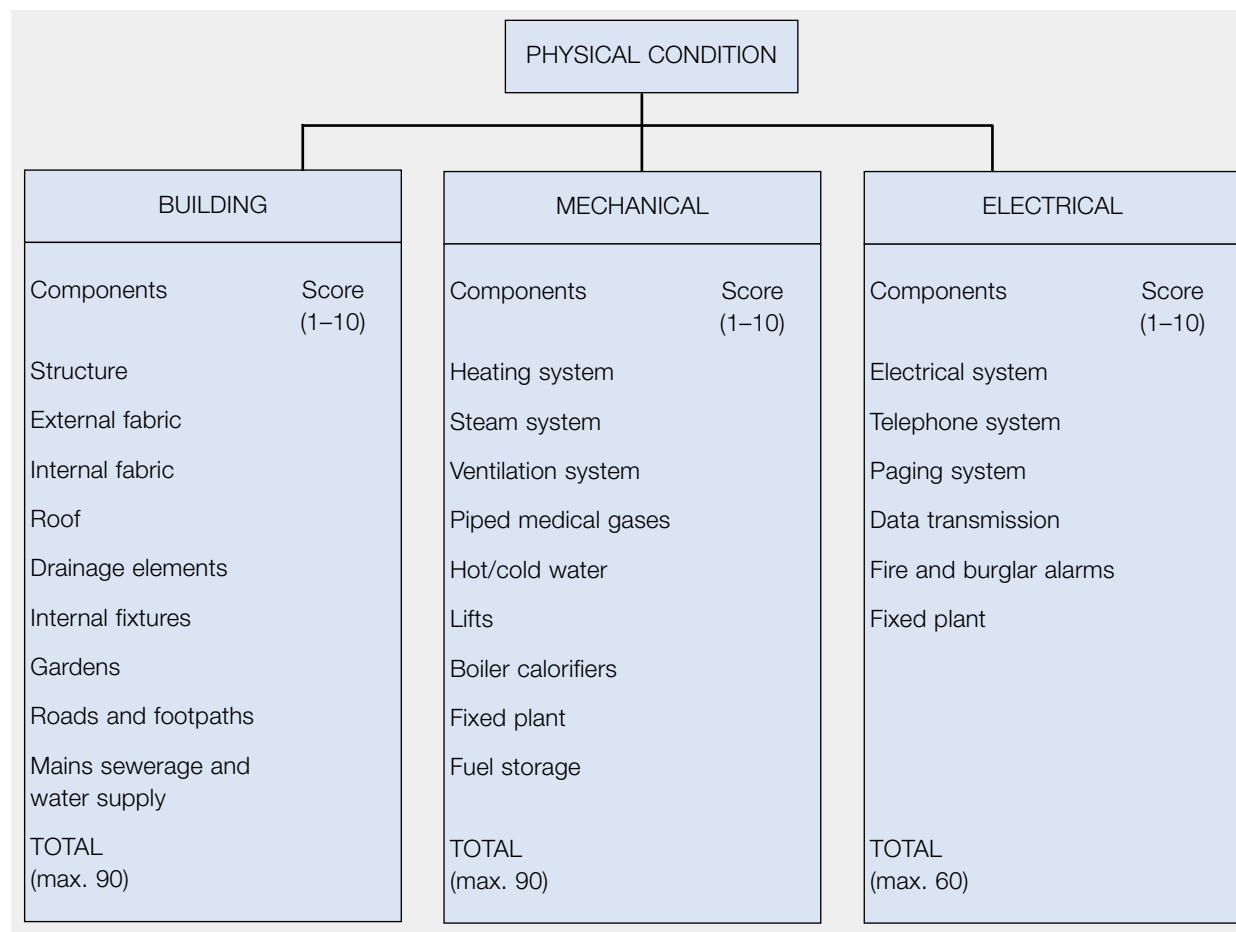


4.15 If a more precise and detailed assessment is wanted, for example for inclusion in a new business case or for operational maintenance purposes, the three elements can be broken down into a list of components (see Figure 4.2). These can then be scored as shown in order to reach an A–D score.

4.16 Each component should be scored and the aggregate score used to rank the physical condition of your estate as follows:

- A 190–240
- B 150–189
- C 110–149
- D under 110

Figure 4.2 Components for conducting a detailed appraisal of the physical condition of your estate



Facet 2: Functional suitability

4.17 Functional suitability should be assessed on the basis of three elements: internal space relationships; support facilities; and location (shown in Figure 4.3).

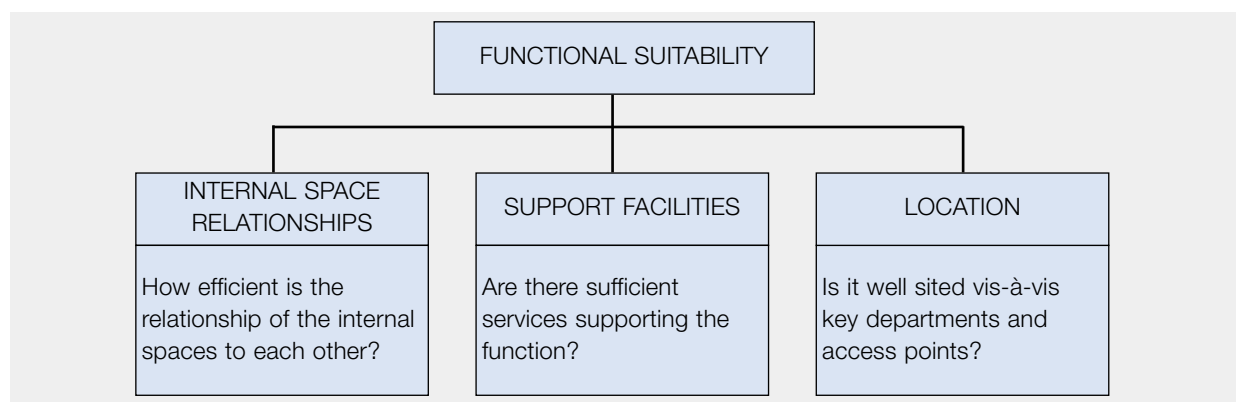
4.18 Assessment of functional suitability is normally done on a block or a departmental basis by a multidisciplinary team. Each of the above elements should be scored out of 10. The aggregate score can be used to produce an overall ranking of the functional suitability of your estate as follows:

- A 25+ very satisfactory, no change needed;
- B 20–24 satisfactory, minor change needed;
- C 14–19 not satisfactory, major change needed;
- D under 14 unacceptable in its present condition;
- X supplementary rating added to D to indicate that nothing but a total rebuild or relocation will suffice.

4.19 Where the ranking is C or D, you should consider the urgency to improve the condition of your estate or site to level B, and estimate the cost of doing so.

4.20 The whole site or departmental functional suitability assessment will determine how effectively your building (or part of your building) supports the delivery of your service. The aim is to hold space that is functionally appropriate to the current and (known) future demand for your services.

Figure 4.3 Questions to ask when conducting a high-level appraisal of the functional suitability of your estate

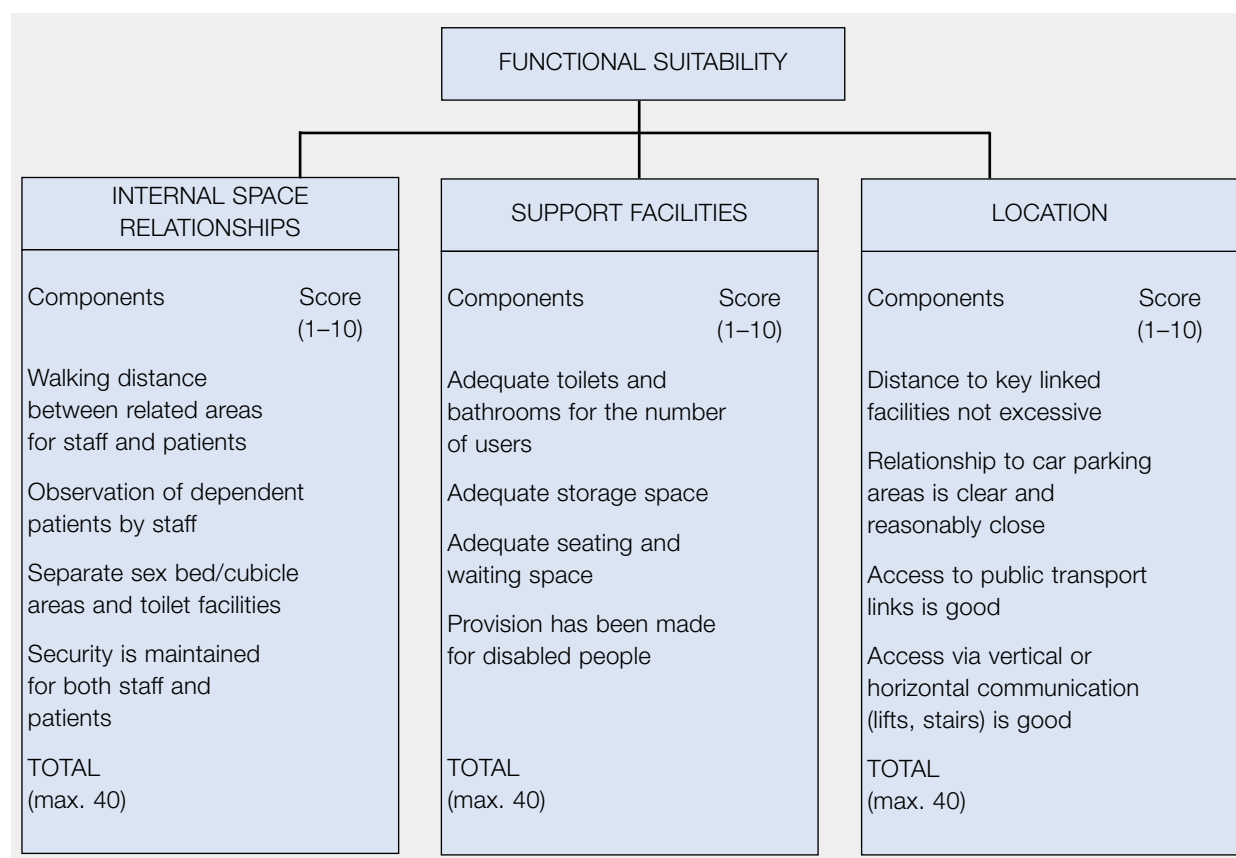


4.21 If a more detailed assessment is wanted, for example for inclusion in a new business case, the three elements can be broken down into their component criteria. These can be scored as shown in Figure 4.4 in order to reach an A–D score.

4.22 Each component criterion should be scored and the aggregate score used to produce an overall ranking of the functional suitability of your estate as follows:

- A 100–120
- B 70–99
- C 50–69
- D under 50

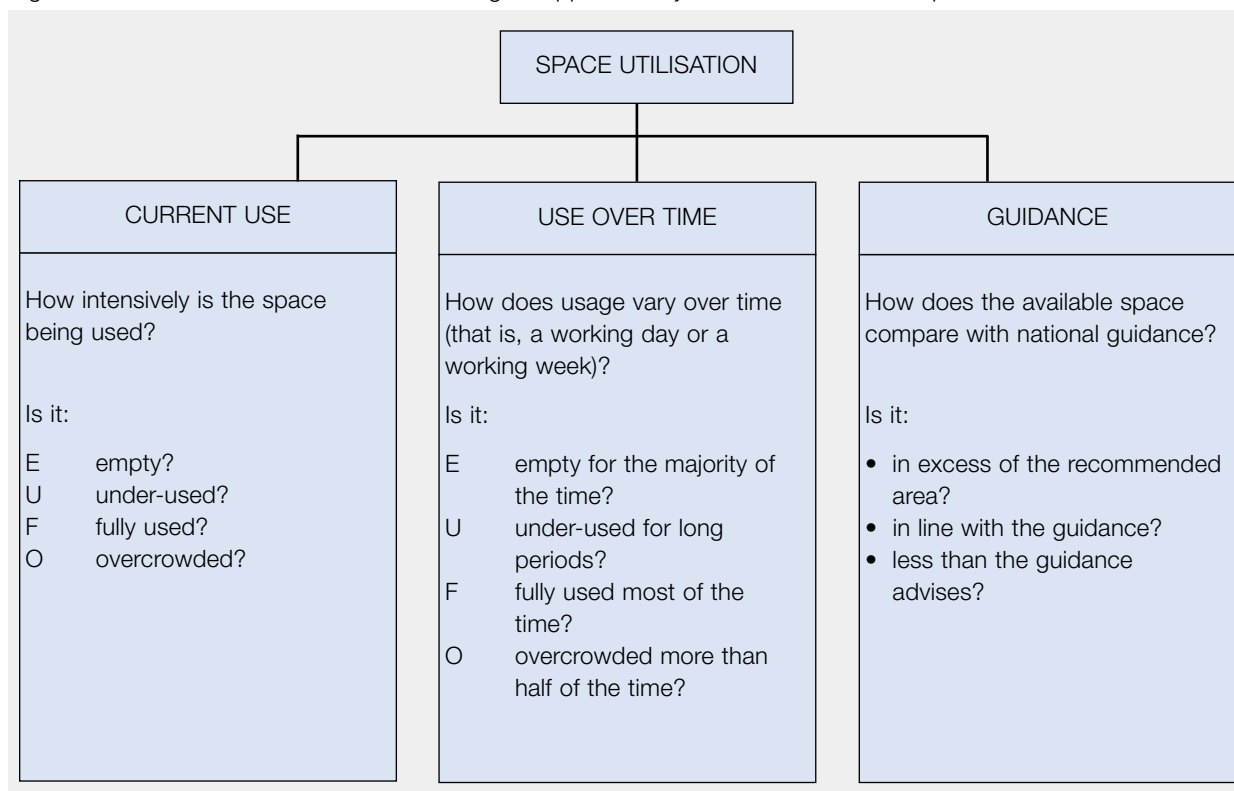
Figure 4.4 Component criteria for conducting a detailed appraisal of the functional suitability of your estate



Facet 3: Space utilisation

4.23 Space utilisation is a complex and sensitive subject as it touches on territorial issues. This facet explores how well available space is being used, largely by asking you to make judgements about the intensity of use: that is, the number of people using it and the frequency with which they use it. In order to reach a balanced assessment you should make visual inspections, talk to users, consult technical guidance and visit the area at different times of the working day. Figure 4.5 illustrates the main questions that you need to ask.

Figure 4.5 Questions to ask when conducting an appraisal of your estate in terms of space utilisation



4.24 Following assessment of each of these elements you should make an overall judgement about the space under consideration, and categorise it as follows:

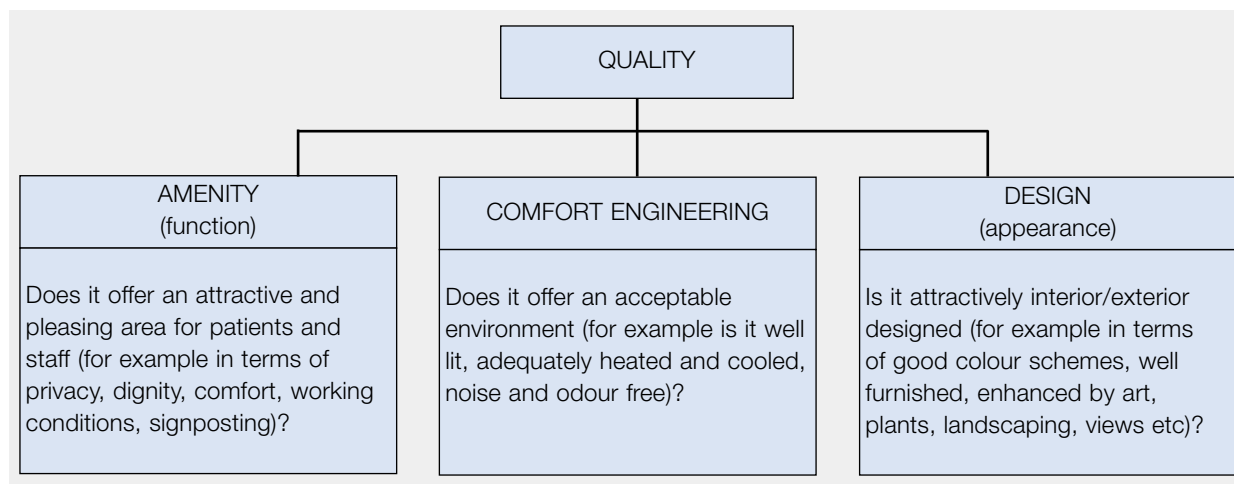
- E empty
- U under-used
- F fully used
- O overcrowded

In this facet there is only one level of scoring.

Facet 4: Quality

4.25 An assessment of the quality of your estate should take into account three elements: amenity; comfort engineering; and design. Figure 4.6 illustrates the key questions that need to be asked when carrying out such an assessment on a broad-brush basis, in order to gain a quick overview for use when preparing an estate strategy.

Figure 4.6 Questions to ask when conducting a high-level appraisal of the quality of your estate



4.26 Each element should be scored out of 10 and the aggregate score used to produce an overall ranking of the quality of your estate as follows:

- | | | |
|---|----------|---|
| A | 25+ | a facility of excellent quality; |
| B | 20–24 | a facility requiring general maintenance investment only; |
| C | 14–19 | a less than acceptable facility requiring capital investment; |
| D | under 14 | a very poor facility requiring major capital investment or replacement. |

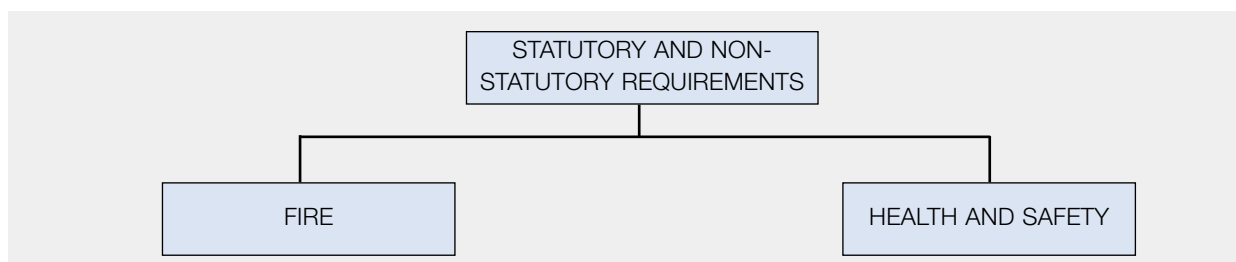
4.27 If a more precise and detailed assessment is wanted, for example for inclusion in a new business case or for operational maintenance purposes, the three elements can be broken down into a list of component criteria as shown in [Appendix IV](#). These can be applied and scored in order to reach an A–D score. The emphasis throughout should be on how to address identified deficiencies within locally available resources.

Facet 5: Statutory and non-statutory requirements

4.28 A broad-brush approach to carry out assessments in terms of statutory and non-statutory requirements will give you the necessary information to carry out an estate rationalisation process. A more detailed survey may follow the outcome of strategic planning or may be required for operational estate maintenance scheduling.

4.29 The elements of this facet are summarised in Figure 4.7.

Figure 4.7 Elements for conducting a high-level appraisal of your estate in terms of meeting statutory and non-statutory requirements



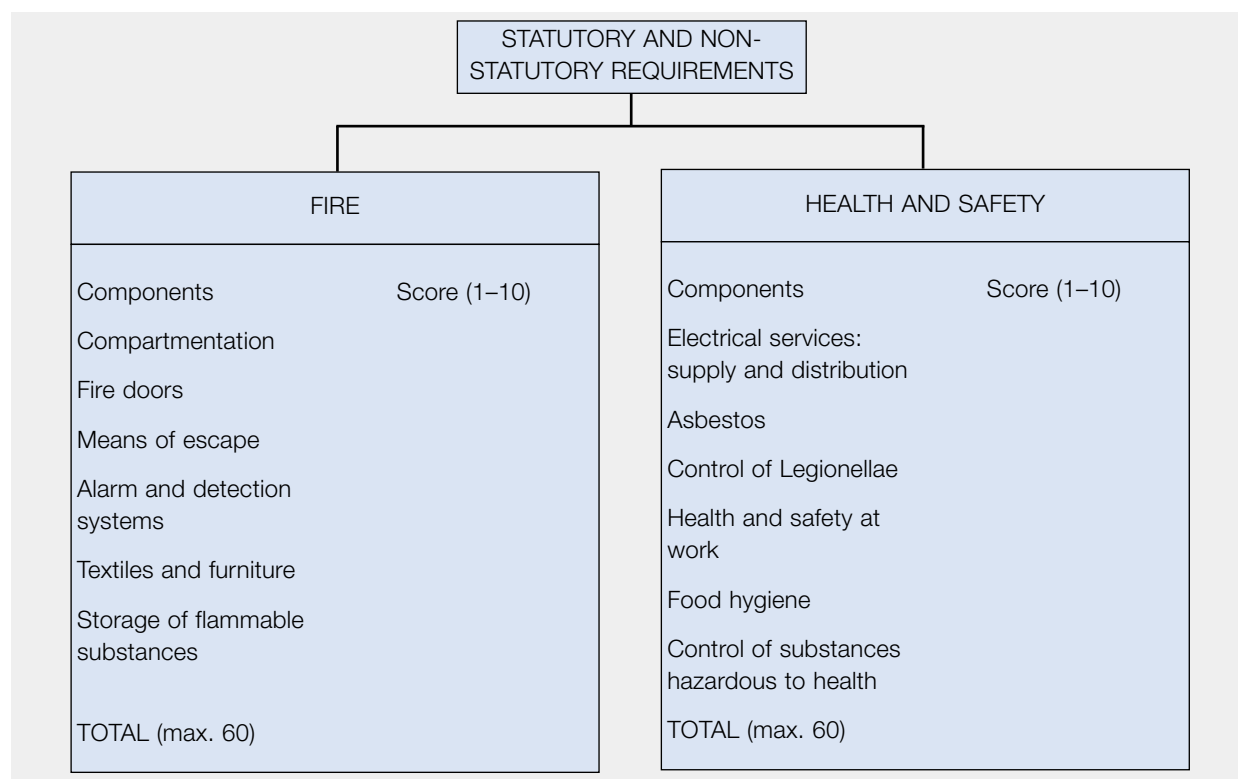
4.30 For the high-level or broad-brush approach you should assess each element out of 10 and produce an overall ranking based on the aggregate score as follows:

- | | | |
|---|---------|--|
| A | 18+ | building complies with all statutory requirements and relevant guidance; |
| B | 13–17 | building where action will be needed in the current plan period to comply with relevant guidance and statutory requirements; |
| C | 8–12 | a building which falls short of B; |
| D | under 8 | areas which are dangerously below B standard (that is, have been subject to adverse external inspections); |
| X | | added to C or D to show that structural improvements are either impractical or too expensive to be tenable. |

4.31 The form for recording your appraisal should be specific about the elements relevant to your situation. In this respect the controls assurance team at NHS Estates is building up a database of risk areas from the practical experience of NHS organisations as they carry out local assessments. It may be useful to consult this prior to developing your own appraisal survey for this facet.

4.32 If a more detailed assessment is wanted, for example for inclusion in a business case or for operational maintenance purposes, the two elements can be broken down into their components as shown in Figure 4.8 and scored in order to reach an A–D score.

Figure 4.8 Components for conducting a detailed appraisal of your estate in terms of meeting statutory and non-statutory requirements



4.33 Each element should be scored and the aggregate score used to produce an overall ranking as follows:

- A 100–120
- B 70–99
- C 50–69
- D under 50

Facet 6: Environmental management

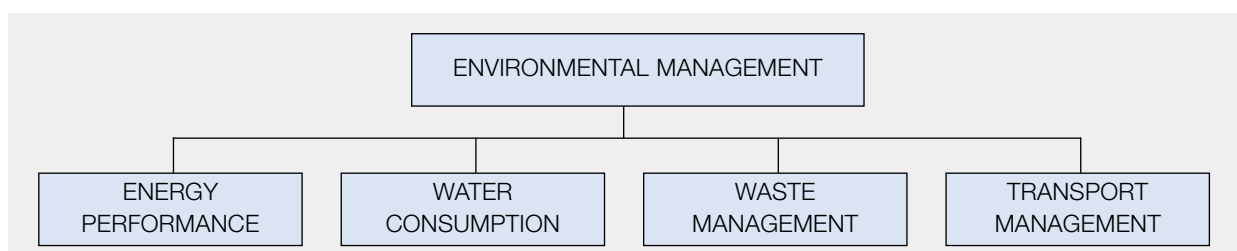
4.34 This facet has been expanded from energy performance to a wider focus on the success of your organisation in improving its management of the environment. The elements of this facet are shown in Figure 4.9.

4.35 A general overview of the energy performance of your estate can be gained from an analysis of the relevant performance indicator: that is, energy usage per unit volume – GJ/100 cubic metres. Other second line indicators may also influence your assessment of energy performance, the most useful being the Energy Cost Indicator – cost/GJ. These calculations are currently used for local estate management purposes and in the review process.

Note:

At present there are no figures available for ranking your estate in terms of transport management, water consumption and waste management. A working group is currently being put together to address these issues.

Figure 4.9 Elements for conducting an appraisal of your estate in terms of environmental management



4.36 For strategic planning purposes, you can rank your site and/or building block based on the following energy usage per unit volume figures (without needing to carry out further surveys):

- A 35–55 GJ per 100 cubic metres;
- B 56–65
- C 66–75
- D 76–100
- X added to C or D indicates improvement to a B performance is either impossible or uneconomic.

4.37 This approach will only give a broad indication of the energy performance of your estate. The building type, its major specialisations and the mix of accommodation – that is, the proportion of 24-hour occupation with its continuous energy use compared to the intermittent energy use in 9–5 premises – can have a marked effect.

4.38 More detailed assessments of carefully targeted areas can be carried out as a follow-up to the strategic planning exercise. Appraisal can then be concentrated on those buildings that are guaranteed a useful future life.

Note:

You should use these figures as a guide only and adopt a range of energy usage values appropriate to your own conditions.

🔑 *Energy performance is an important factor in determining the overall efficiency of your property. The Department's energy code (Encode) provides guidance, in the form of documents, on energy efficiency techniques. It should be used in assessing the energy performance of your buildings.*

Data collection

4.39 The process of collecting data from your land and property appraisal should be approached pragmatically based upon informed and experienced observation. It will constitute a snapshot in time and, therefore, needs to be completed within a tight timescale.

4.40 Surveying should be carried out by more than one person, as this will allow assessments to be compared and discussed, and will lessen the subjectivity of the exercise. In order to ensure consistency it is advisable, wherever possible, for the same people to conduct appraisals across all the sites involved. For example, assessments of functional suitability, space utilisation and quality could be undertaken by a single panel of people at a single visit. Thus an estates or facilities manager or architect could team up with a general manager or clinical departmental manager to survey these three facets in order to give a multi-disciplinary viewpoint. However, it should be noted that a team of three or more will be very cumbersome and may not be welcomed by departments.

4.41 A standard form should be used to ensure that data is collected across each block in the same way. It is useful to have a “notes sheet” for each block on which more specific issues can be recorded, to be followed up later.

4.42 Ultimately the aim should be to collect the data electronically, using a hand-held terminal to input data as the surveying takes place. This can be downloaded later into the database and can populate the drawings in the CAD system.

An approach to validation

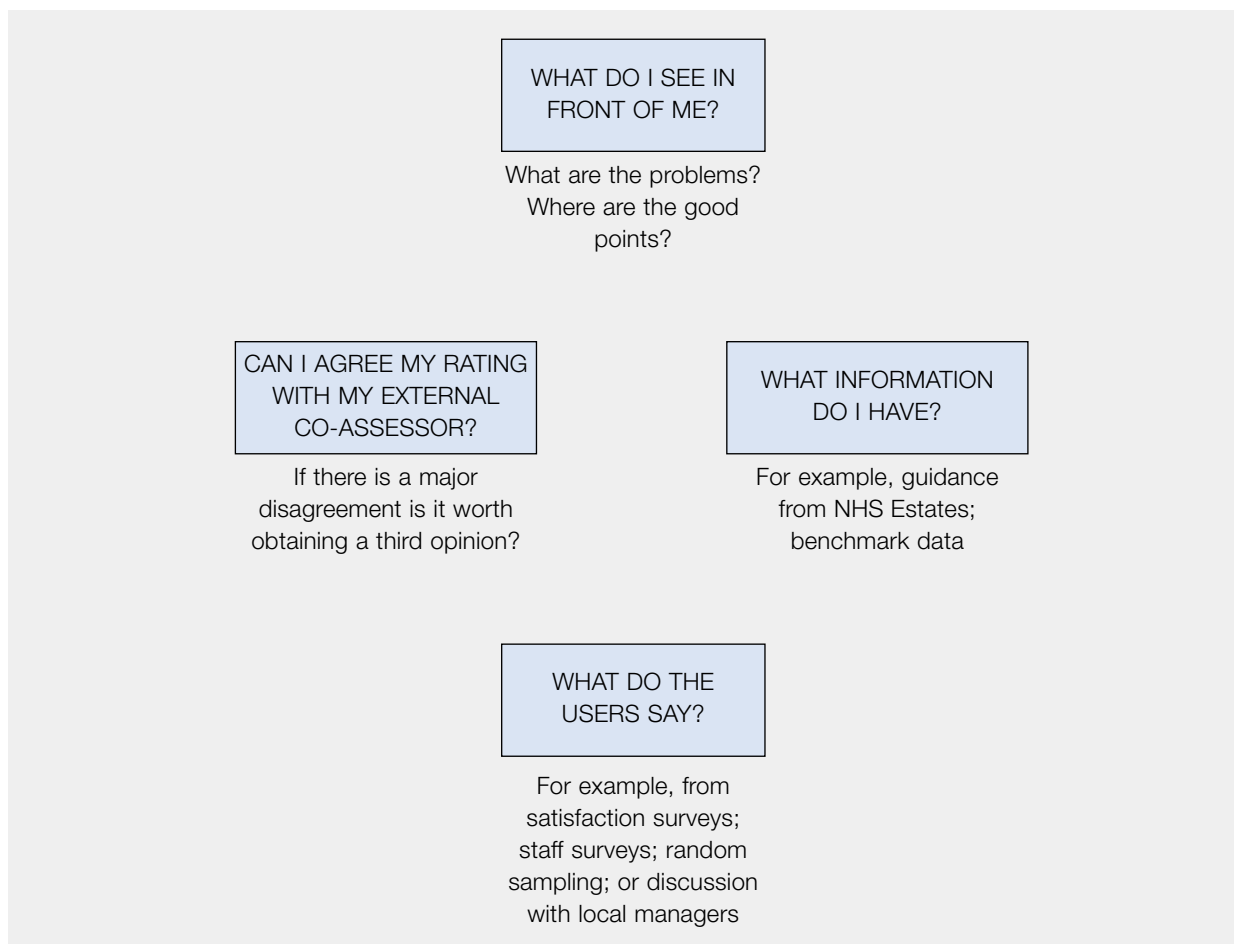
4.43 Much of your surveying work will rely on subjective assessment. It is impossible to make assessments objective as there is no absolute measure of the right standard for a building's condition, function or even statutory compliance. The energy facet has least subjectivity about it and external inspection for aspects of statutory requirements, such as fire safety and lift certification, provide a measure of objectivity.

4.44 The inclusion of external people in your survey team will help to reduce subjectivity. This could be done either by employing external consultants, or by teaming up with a neighbouring NHS organisation to exchange survey staff.

4.45 Information can also be used to mitigate subjective decisions. In some cases benchmark data exists.

4.46 [Figure 4.10](#) illustrates the key questions that you should ask in order to improve the objectivity of your assessments.

Figure 4.10 Questions to ask to improve the objectivity of your assessments




Developing a database

4.47 It is particularly important that the results from your appraisal are presented in a clear and concise way. This can be achieved by using a computerised database, which allows large amounts of data to be stored and easily handled. The system used should have outputs in the form of statistical diagrams, scale drawings, spreadsheets, reports or a combination of these. It should be capable of extensive interrogation and the more flexible it is the better.

4.48 The database should be capable of presenting different levels of aggregation of data, for example:

- by floor level;
- by whole estate (for example whole trust);
- by site;
- by individual building;
- by block;
- by statutory heritage designation (listed buildings/scheduled monuments/registered landscapes/Special Sites of Scientific Interest (SSSIs)/conservation area);
- by building age/value.

 As well as information based on your property appraisal, the database should contain other information about your estate ([see table on page 18 for details of information required](#)).

It is useful to be able to present data on a care group or management directorate basis, but this may be difficult where several functions share a site or building.

4.49 A presentation of the cost implications of your appraisal is very important – in other words, what will it cost to bring your estate up to condition B?

4.50 It is often useful to be able to look back in order to establish whether the situation has got worse over the past decade. It can also be useful to look forward and estimate the requirement for expenditure on your assets to keep them in condition B over the next 5–10 years. Examples of data outputs are given in 'Developing an estate strategy'.

4.51 One of the best ways of sharing data is to apply it to site and floor plans through the graphical interface capability of a CAD package. Most CAD packages are complex and require a powerful computer with specialised equipment to make them effective for the user. There are specialised software packages on the market that provide integration between data files and plans/maps; most require significant investment to set up and specialised operation to keep the record updated. Specialised software packages also require specialised training and dedicated staff resources to keep them updated.



Management of Land and Property

Introduction

5.1 Successful management of your assets depends upon clear designation of who is responsible for what. Chief executives are accountable for the proper management of all the services provided by their organisations. A chief executive has two distinct responsibilities:

- a. the strategic management of assets, which involves constant review of productivity, cost, and fitness for purpose, and handling the process of change in terms of rationalisation and investment in the light of such review;
- b. the operational maintenance of assets, which means ensuring that all assets are of high quality and are appropriate and safe for day-to-day use.

5.2 An estates/facilities manager, whether employed in-house, externally or as part of a partnership arrangement, must provide a service that enables managers to know:

- a. the land and property assets of their estate;
- b. the costs to run and maintain those assets;
- c. whether space could be better used;
- d. that procedures are in place to ensure “best value”;
- e. that the estate is maintained to a level that will minimise the risk of costs and claims arising, whether from third parties or statutory regulators such as the Health and Safety Executive;
- f. that staff and patients can enjoy a secure and attractive environment;
- g. that tenancy arrangements with third parties are properly monitored and contractual obligations honoured;
- h. that environmental impacts are identified and proposals are in place to reduce/limit harm to the environment;
- j. what statutory designations apply (listed buildings etc) and, therefore, what special planning consents may be required if development, including alterations, are required;
- k. town planning designation.

Management of land and property records


5.3 Records of land and property holdings may be either manual or, preferably, computerised. Manual records normally comprise an A3 format pre-printed ledger, incorporating full text details for each property, with plans of the site.

5.4 Good records are essential to manage land and property effectively. These must be accurate, up-to-date and open to full audit, especially if maintained by a third party. Failure to adhere to time-scales (for example planned maintenance) can lead to major occupation problems, as well as costs. In landlord-and-tenant situations. An events diary should be kept either manually or on computer. This system should adequately serve as a reminder for action on notices, rent reviews, rent renewals etc.

5.5 It is good practice for one senior person to undertake to maintain and update the records, as well as taking responsibility for all land and property transactions. Experience shows that if the management function is diluted or dispersed, errors occur and occupiers are exposed to the risk of loss of rights and in some cases significant expense.

5.6 Accuracy of records may be maintained by the adoption of policies and procedures that involve:

- clear management accountability for compiling and updating records;
- formal audits on transactions and records;
- specific guidelines in standing orders for the acquisition, disposal, leasing and licensing of land and property;
- the compilation of reports on legal title for all occupied land and property.

 For further information on developing an estate database see [pages 13 and 30](#).

Storage and management of legal title documents and deeds

5.7 The storage and management of deeds is a key responsibility. All deeds should be kept in a secure, fireproof safe with a policy for registering when they are removed and returned to the store. This service may be provided in-house or externally by, for example, solicitors. Now that all freehold and long leasehold land and property have registered title, deeds will be much less bulky and storage easier and cheaper. Notwithstanding registration, it is useful to be able to refer back to pre-registration deeds when disputes arise. Photocopies of deeds and documents should be kept by estates/facilities managers as working documents.

5.8 Deeds to historic buildings, particularly if listed, should be retained for possible research use. Pre-registration deeds should not normally be destroyed or sold. If you cannot make arrangements in-house for their safe-keeping, they should be stored by your Local Authority archive department.

The costs of holding land and property

5.9 Fixed freehold land and property costs include:

- the internal “capital charging” mechanism, where it is vital to appreciate the differences between the various valuation methods. In particular, Open Market Value (OMV), Existing Use Value (EUV) and Depreciated Replacement Cost (DRC);
- planned, and unplanned, maintenance expenditure.

5.10 Leasehold land and property costs include:

- where the landlord is another NHS organisation, a rental, often equivalent to “capital charges”;
- where the landlord is a non-NHS organisation and in the case of the civil estate, an open market rent, which will normally be subject to review on a regular basis;
- Value Added Tax, which cannot be recovered in all cases;
- service charges;
- repairing and decorating obligations – often on a fixed period basis;
- dilapidation claims on expiry of the lease.

5.11 Whatever the tenure, liabilities often include:


- uniform business rates;
- charges for utilities (gas, water, sewerage, electricity etc);
- security costs;
- insurance premiums (pooled arrangements);
- special expenses where buildings are listed or the property is in a conservation area;
- those incurred to comply with statutory requirements.


5.12 In the case of leasehold land and property, liabilities may also include commercial insurance costs and landlord’s service charge expenses, which can be significant and can easily give rise to a need to check and dispute.

Managing those costs

5.13 Periodic budgeting will include:

- a review of the space occupied, to see whether surplus space can be identified for sale, income generation (see Appendix VI) or beneficial re-use within the NHS;
- consideration of the various contracts, whether for supplies or services, relating to the estate;
- consideration of the efficiency of existing land and property, the cost of their replacement and their value in the market.

 Further information on capital charges can be found in the ‘Capital Accounting Manual’ issued by the Department of Health. Note that there is a separate manual for HAs, trusts and PCTs.

 See section on insurance arrangements, paragraphs 5.35–5.44.

Procuring services – including accommodation

5.14 Under PPP/PFI schemes (see Appendix VII), bidders are responsible for developing operational policies and identifying facilities to support services based on your output specification for each service. Bidders should put forward solutions that help to maximise efficiencies – for example the use of their own commercial, organisational and management systems.

5.15 Under the new Treasury accounting guidance (PFI Technical Note No 1 (Revised): 'How to Account for PFI Transactions') there is no longer an automatic requirement for a PFI partner to provide "soft" facilities management services (for example catering, portering) in order to achieve an off-balance sheet audit opinion. Reference must be made to this, and any other guidance in this respect. The extent to which all types of support services are provided by the private sector partner will continue to be driven by the requirement in PFI schemes to optimise value for money under the contract.

5.16 Well-written and well-implemented service provision contracts will enable efficient and effective services to be secured. A good contract should ensure that the specific service is provided to the required standard, is self-policing, cost-efficient, reduces the management burden, and ensures all relevant regulations are complied with.

5.17 Where possible, the number of external contractors used should be limited to avoid "buck passing" between contractors. This should also avoid management problems such as excessive monitoring and invoicing. An independent monitoring of construction schemes is, however, recommended.

5.18 Detailed specifications must be provided to tenderers to enable a fair tendering process. The tender list should be prepared using well-established companies that have undergone an appropriate vetting process to minimise risk to the NHS organisation from bankruptcy, inadequate insurance, or the use of unauthorised subcontractors, and other similar problems.

5.19 The role of in-house staff should primarily be one of supervising and overseeing contractors to ensure that they comply in all respects with the terms of the contract and that appropriate logs are updated.

5.20 Contracts should be reviewed regularly to ensure that the required service is being provided and, where necessary, specifications should be refined to enable changes or improvements to be included in the documentation for re-tendering the service on termination of existing contracts.

● A full list of support services that can be included in a PFI scheme is contained in the Department of Health's guidance manual on the PFI ('Public-Private Partnerships in the National Health Service: The Private Finance Initiative').

Building maintenance

5.21 Property managers should have records available indicating the condition of land and property and maintenance schedules. The records should also clearly identify the locations of services such as cables, pipes, ducts etc. Where that knowledge is lacking, a survey should be commissioned.

5.22 Property managers should undertake budgeting and space utilisation exercises to identify where existing standards are adequate and where improvements can be made. An assessment of lease liabilities will also be a factor in planning maintenance programmes.

5.23 Having assembled the basic information, a planned maintenance schedule should be drawn up for a particular time period – usually between three and five years. For historic or listed buildings a quadrennial/quinquennial conservation survey is required.

5.24 Changes in service provision as well as legislation will require regular reviews of the maintenance programme. A routine for carrying out such reviews should be established.

Risk management

5.25 Management of risk is a vital aspect of property management. Measures should be introduced that:

- a. identify the risks arising from the ownership/rental of land and property, plant and equipment and from the uses of those assets;
- b. assess those risks for potential frequency and severity;
- c. eliminate or reduce the effect of those risks;
- d. monitor the effectiveness of risk control measures.

5.26 Areas that should be addressed include:

- security arrangements;
- all aspects of health and safety;
- the pooled insurance arrangements;
- fire risks;
- maintenance of land and property, plant and equipment and the consequences of breakdowns;
- waste storage and disposal;
- environmental management;
- transport plans;
- contingency planning.

Security

5.27 Security proposals must be tailor-made to your site, considering its location, use, design and the perceived risk.

5.28 The type of security risk (assault, theft, vandalism, terrorism, trespass and arson) must be analysed and appropriate measures identified and implemented. Different areas (for example vacant property, car parks and hospital/clinic drugs stores) will have specific security problems that should be highlighted when carrying out the overall security review.

5.29 The safety of staff, patients and visitors can often be improved relatively cheaply by improved lighting, changes to the landscaping, fitting of security cameras, staff identity badges, and a general increase in awareness.

5.30 Methods of access, control and security patrols should be considered. In the long term, relocation of rights of way should also be considered. Trespass and encroachment problems can be alleviated by a regular inspection of boundaries, gates, and accurately sign-posted rights of way.

5.31 A checklist of vacant land and property issues (key holder, mothballing/maintaining services, perimeter security, building security etc) will help to ensure most problems are avoided. The case for demolition on grounds of savings on security, capital charges or rates should be assessed against other grounds including alternative use and planning.

5.32 Informal arrangements for the use of vacated land and property should be avoided. It is generally preferable to have land and property kept in use through formal arrangements (lease or licence), in part and/or temporarily, rather than left unused.

Note:

It is highly advisable to employ in-house risk management specialists. It is also helpful to seek advice from specialist risk management consultants although it may take time and patience to find consultants with the right expertise.

• 'Risk management in the NHS' published by the NHS Executive in 1993, and HM Treasury's 'Procurement Guidance No 2: Value for Money in Construction Procurement' contain guidance on risk management. Primary Care Trusts should also refer to the December 1999 PCT guidance pack.

Health and safety requirements

5.33 You should have a written health and safety policy and procedures document, which should be issued to all your staff. Consideration should be given to the use of a health and safety consultant to advise on statutory health and safety regulations that relate to the use, occupation and management of your land and property. This is not, however, intended as a substitute for properly trained and experienced in-house staff, but rather should add value to in-house expertise. The major insurers in this field provide risk management services that can help in establishing a health and safety policy. It is vital that all contracts pass on all responsibility for health and safety regulations to the contractor. Records of tests must be maintained and monitored to ensure that they are being completed.

5.34 The differing needs of staff, patients, visitors and contractors should be taken into account when considering fire safety, security, general safety and welfare, and dealing with the disposal of clinical and other hazardous waste. Access for all, but especially the disabled, needs to be addressed.

Insurance arrangements

5.35 NHS organisations do not purchase commercial insurance, but (since April 1999) have joined the NHS pooled insurance scheme.

5.36 Following the identification of risks, including damage to or loss of assets, claims from third parties, professional liability etc, an estimate should be made of possible losses, and how often these losses may arise. Against this can be measured the cost of commercial insurance, to determine if there is a financial benefit in purchasing this type of insurance.

5.37 Exceptional circumstances may justify the purchase of commercial insurance. For example:

- a. buildings insurance where insurance is a condition of the lease, and the landlord will not accept an indemnity. Insurance is usually taken out by the landlord who then demands reimbursement of the premium or due proportion. Every effort should be taken to persuade the landlord to accept an indemnity;
- b. overall site insurance. Where sites are shared with others and/or where the shared cost is small, commercial insurance may be cheaper than each party insuring, or self-insuring;
- c. in respect of lifts and boilers that involve periodic expert inspection designed to reduce the risk of loss or damage.

5.38 In other cases where commercial insurance is considered necessary, HM Treasury approval must be obtained.

NHS trusts and PCTs

5.39 NHS trusts and PCTs do not take out commercial insurance for non-clinical risks. Rather, two risk-pooling schemes were set up under Section 21 of the 1990 NHS & Community Care Act, and are being operated by the NHS Litigation Authority.

5.40 These schemes will provide cover broadly equivalent to the commercial insurance previously held by NHS trusts.

5.41 Cover for buildings and contents, up to delegated limits for capital building projects, is available. NHS trusts and PCTs make contributions to the risk-pool based on actuarial advice. The cost of making good any losses in excess of the delegated limit are dealt with by agreement between the claimant

Note:

Contravention of legislative requirements can lead to claims that can have serious consequences on your budget and reputation.

Full details of the steps to be taken, and handling matters, are contained in HSC 1998/174 'Insurance in the NHS' and HSC 1999/021 'Insurance in the NHS: Employers' public liability and miscellaneous risk pooling'.

and its RO, HA, Department of Health and Ministers. Further details may be obtained from the NHS Litigation Authority.

5.42 Risk assessment is required in respect of the operation of the pool schemes.

5.43 For PFI developments, a private sector consortium is normally responsible for taking out all commercial and business risk insurance, the cost of which is recharged to the NHS partner. However, where NHS trusts and PCTs are asked to co-insure the property against appropriate risks, this may be done where refusal to do so could threaten the future of the project. Any pressure to indemnify the private sector partner should be resisted, and only taken out exceptionally and only with the approval of the appropriate Department of Health RO.

5.44 It used to be normal practice to take out commercial business interruption insurance. This class of insurance is now covered within the pooled scheme subject to NHS trusts and PCTs completing their income generation pro-forma and submitting it to the scheme's actuaries. If this type of cover is not readily available on a stand-alone basis or where the activity is incidental to the provision of a healthcare service (for example using spare capacity to meet the needs of other NHS trusts and PCTs), the NHS Litigation Authority may provide for this cover at a cost additional to the main risk pool contribution.

Leaseholds

General points of landlord and tenant law where NHS organisation is landlord

5.45 You must get good quality commercial advice since landlord and tenant laws offer significant pitfalls. For example, as a landlord:

- except where a short fixed term (up to six months) is appropriate, a tenancy should be the subject of a court order that excludes the security of tenure provisions of the Landlord & Tenant Act 1954;
- except where special benefits to the provision of healthcare result, a tenancy should be at a full open market rent on normal commercial terms, with rent reviews every three or five years.

5.46 The aim to obtain good commercial terms should be balanced with the need to operate an effective hospital, healthcare facility or administrative premises. The imposition of terms, for example to protect your business, may reduce rent, but will, nonetheless, be necessary. Advice from suitably qualified property consultants and legal companies is vital.

5.47 Value Added Tax implications should be considered.

5.48 Except in the case of short-term leases, or leases of land and property in poor condition, the terms of a lease will normally provide for the premises to be adequately insured and kept in good repair at the tenant's expense. The tenant has a duty to comply with the requirements of relevant statutory acts and regulations including the Town & Country Planning Act 1990, for example securing planning permission for change of use. In the case of a long lease (10–25-year term), there should be provision for upward-only rent reviews at specified intervals (usually every three or five years). A schedule of condition should normally be prepared at the start of a lease.

5.49 The duration of the lease will depend on individual circumstances, but it should be restricted to the life of the property, or to a time when you will require the property again, or it is to be disposed of.

5.50 When renting out premises on leases or sub-leases, arrangements should be made to ensure that the tenant complies with the terms and conditions of the lease (particularly in relation to repairs). Any notices in connection with rent reviews, tenant defaults etc must be issued in good time and strictly in accordance with the written terms of the lease.

5.51 Tenants should not be given possession before the terms have been agreed by solicitors and all other formalities completed, including the signing and exchange of documents, otherwise a tenancy may be established by law that is different from that which was intended, and prejudicial to the landlord.

5.52 Rent review notices should be issued promptly and in accordance with the terms of the lease.

5.53 Where the tenant intends to carry out alterations to the property, it should be ensured that the works will not harm the structural integrity of the property and that they are completed in accordance with all necessary permissions. Solicitors should prepare the appropriate form of landlord's approval for the tenant works. Works by the tenant may be protected by the Landlord & Tenant Act 1954, and should not be reflected in the rent reviews for 21 years.

5.54 Before the term of the lease ends, fresh terms for a new lease period should be sought. If, however, the land and property has become surplus to

Note:

A landlord's decision to charge VAT that is non-recoverable effectively adds (currently) 17.5% to the rental cost.

Note:

As tenants, you should ideally seek internal repairing-only clauses.

your requirements, vacant possession should be secured to ensure that there is a saleable interest that can be sold in the open market.

5.55 Where the lease does not provide for renewal on stated terms, and where it is intended that the lease is to be renewed, take advice from your solicitor on the steps to be taken to ensure that your interests are protected.

5.56 Rent payment (cash or in kind) should not be accepted after the expiry of the lease, as a new periodic tenancy not having the benefit of the court order can be created by accident.

5.57 A schedule of repairs (dilapidations) should be prepared, if required, before the end of the lease term. This should be submitted to the tenant for action in good time (that is, an accepted and agreed plan of action should be submitted before the lease term ends.)

5.58 On termination of the lease, subject to the repair terms, it is usual for the land and property to be reinstated to its original condition. Alternatively, if appropriate, you may negotiate a cash settlement in lieu. Such negotiations will usually need to be completed in a timely manner.

5.59 Licences relating to business premises do not fall within the provisions of the Landlord & Tenant Act 1954. Avoid granting licences where there would in effect be exclusive possession of accommodation (for a term at a rent) since this might well give rise to a tenancy by mistake, with all the disadvantages of protection.

NHS organisations as landlords

5.60 Where land and property is temporarily unused, or where part of a site is unused and disposal would not be feasible or desirable, it may be leased out until such times as it can be brought back into use or disposed of. However, such arrangements should be cost-effective, and the financial benefits of any lease should be considered carefully as it is often a management-intensive exercise. The use of licences should normally be avoided as they are often converted into protected leases by mistake.

5.61 Where temporarily vacant or surplus land and property is let, you will assume the role of “landlord”.

5.62 It is important to ensure that you take legal advice on the Landlord & Tenant Act 1954.


5.63 It may be necessary to obtain planning permission if the letting creates a new planning unit and the use cannot be regarded as ancillary to the main property use (that is, hospital, clinic, offices etc).

5.64 Leases should only be entered into once you are satisfied that the tenant has the financial status sufficient to enable them to perform all their obligations under the lease. A suitable form of guarantee of that performance should be sought, or alternatively a suitable deposit.


Letting concourse shops

5.65 When letting concourse, or similar, shops:

- a. consider restrictions on items to be sold;
- b. consider imposing mandatory opening times in order to provide an appropriate service to staff, patients and visitors;
- c. consider an all-inclusive rent rather than service charge arrangements, which may be contentious;

 *This section does not apply to staff residential accommodation. See [Appendix VIII](#) for further details.*

- d. consider a concessionary rent where the service is one that is of great value to your staff, visitors and/or patients (for example banking or hairdressing) but would not be viable if a full market rent were charged;
- e. consider a turnover rent as this may better reflect the commercial value to the tenant's business of your operation;
- f. special consideration should be given to insurance arrangements (pooled premium recovery or commercial insurance taken out by the tenant);
- g. ensure that a full risk assessment is made, especially the need for any special fire precautions, to take account of occupation of parts of the site by non-NHS organisations (commercial or charitable tenants).

 See section on concessionary leases, paragraphs 5.93–5.99.

Joint ventures

5.66 When letting land and property where joint ventures (for example laundry, computer suite, boilerhouse, incinerators, car parks) with others are involved, the following points should be noted:

- a. the term of any lease should be consistent with the term of the service contract;
- b. special insurance arrangements may be required;
- c. it may be advisable to include a landlord's break clause, exercisable in the event that the service contract terminates early.

Note:

Conventional forms of joint venture cannot be entered into. Therefore, professional advice should be sought when entering into a contractual agreement form of joint venture.

Aerial leases

5.67 Aerial leases fall within the provisions of the Telecommunications Act 1984. When letting space for aerial leases:

- a. the premises let will be the air-space occupied by the aerials plus any equipment storage area;
- b. the lease should require that the tenant ensures that the aerials are not readily accessible by members of the public, and should be appropriately located and secure;
- c. long-term leases should be avoided (five years is normally sufficient);
- d. a landlord's break clause should be included to exercise when the land and property becomes surplus or aerials begin to prejudice operational requirements;
- e. all equipment should be compatible with your electronic apparatus;
- f. operator's standard lease documentation should be used with caution as it is often written in favour of the operator;
- g. ensure that the tenant complies with all statutory regulations covering use before and during the tenancy, including the securing of appropriate planning permissions.

Note:

Do not underestimate the opportunity for securing a substantial rental. Specialist advice should always be sought, especially as this is a unique opportunity.

The Telecommunications Act 1984 restricts the landlord's right to the removal of apparatus. Particular care must be taken in locating sites for aerials and in drawing up lease agreements.

Letting of advertising hoardings

5.68 When letting space for advertising hoardings:

- a. impose restrictions on advertising texts to avoid politically sensitive or controversial areas or health risk products such as tobacco or alcohol;
- b. take advice on market rents. The first offer should seldom be accepted;
- c. ensure that the tenant complies with all statutory regulations covering use before and during the tenancy, including the securing of appropriate planning permissions.

Letting of health centres

5.69 The management and legal structure of tenure within health centres can be complicated by the number of possible formats and potential conflicts of interest. Before embarking on any strategy it is advisable to consult specialist solicitors.

5.70 Many health centres were set up on the basis that General Practitioners (GPs) would occupy part of the premises under the terms of a licence, together with a wide range of community services (dentists, pharmacies, opticians). Where GPs, who are often the main occupants, have no formal documentation, written agreement formalising their occupation should be obtained. Licences should have reserved a payment equivalent to capital charges (although GPs pay rates set out in the Statement of Fees & Allowances – the “Red Book”) and a service charge to cover operating and maintenance costs. Legal advice is required if there is any question about a GP’s current status. The British Medical Association (BMA) has issued a model lease, but this form of lease should be approached with caution.

5.71 FHSL(97)20 sets out advice regarding GPs’ occupation of health centres. General Practitioners are very reluctant to commit to paying for any service that is not recoverable under the formulae set out in the “Red Book”.

5.72 Market rents can be less, or more, than capital charges – a factor to be taken into account when considering the lease/licence.

5.73 Ownership of a health centre that provides accommodation for a GP should be considered in the light of income generation powers, where you occupy the majority (that is, more than 50%) of the accommodation. If a GP occupies more than 50%, ownership should be reconsidered.

5.74 A health centre, clinic or other suitable premises may be sold to any current tenant, or possibly a third party developer, if you occupy a minor part of the premises. You can continue operating from the premises by taking a lease for a suitable period (say 15–20 years) at open-market rent.

5.75 In any sale of a health centre to a third party, protection of all occupiers should be ensured. For GPs, rental rates should be reimbursable by the HA or PCT, unless the GP is content to accept a risk that the future passing rent on review may exceed the amount the HA or PCT can reimburse.


5.76 Where the leaseback is taken at a peppercorn rent, this factor will be taken into account in the value of the land and property sold. This could result in a lower capital income from the sale but would reduce operating expense.

5.77 Commercial land and property considerations should be balanced with the need to secure sensible working relationships with health service occupiers.

5.78 Income generation possibilities should be considered (for example lease to a pharmacy).

Note:

If your occupation is not minor (that is, less than 50%), a sale could constitute a sale and leaseback, which is generally not Treasury compliant.

 See [Appendix VI](#) for further information on income generation powers.

Arrangements with other NHS organisations

5.79 Formal leases need not be entered into between NHS organisations. Written memoranda of terms and conditions will suffice.

5.80 Accommodation should be made available to other NHS organisations on the basis of open market rent, plus a service charge. However, recovery of capital charges, plus a service charge, may be agreed – the open rental value approach provides a more realistic approach to land and property holding issues.

5.81 As part of the process of asset transfer, occupation agreements may have been created between NHS organisations or between the Secretary of State and an NHS organisation. These should apportion responsibility for repairs, insurance and compliance with statutory requirements and are usually restrictive on use and assignment provisions. Such information should be recorded in the estate terrier. Where such memoranda of occupation terms exist:

- a. “rental” arrangements in most cases have been based on an apportionment by floor area of capital charge appropriate to the premises let;
- b. some, however, reserve a “market rent”, or a nominal rent;
- c. where either the freehold or the leasehold interests subsequently pass into the private sector, it is advisable beforehand to ensure that the memorandum is amended to provide for a money rent that is reasonably close either to the market rent or the “capital charge” rent to be paid.

Disputes between NHS organisations

5.82 Disputes between NHS organisations on the interpretation of memoranda, or indeed in respect of any land and property-related matter, must be resolved within the NHS without reference either to formal arbitration or the courts. NHS Estates will advise parties to a dispute as required.

Arrangements with other organisations

5.83 Leases to housing associations, charities or other voluntary care groups or nursing homes will be business leases so court orders excluding security of tenure should be obtained.

5.84 Note the following:

- a. consideration should be given to making a lease coterminous with any corresponding management or service agreement;
- b. concessionary rental terms can only be given to voluntary organisations where equivalent healthcare benefits are obtained;
- c. it will usually be advisable to make the user clause specific and restrictive;
- d. sales could be made to a housing association or the voluntary sector assisted by a s28A grant (normally secured by way of a legal charge);
- e. leases (or sales) can be agreed subject to restricted user clauses. This may have the effect of reducing the rental value (or sale price) of the land and property and should be the subject of scrutiny. If adopted, monitoring is necessary to ensure that the occupier uses the land and property in accordance with the user clause, or pays additional rent (price) to bring it back to the full OMV.

Note:

Where a disposal involves land and property that has a non-NHS organisation as occupier, such as PPP/PFI (see [Appendix VII](#)), a formal lease may become appropriate since the occupation will no longer be between NHS organisations.

5.85 Where premises are required for exclusive occupation by Local Authorities for social services, education, or public health functions, a business lease will generally be granted on open market terms.

5.86 Where new-build premises for the Local Authority are required (for example a special school on NHS land) the relevant land can be sold (at OMV) or let on a long lease (for the life of the building) at a ground rent.

5.87 Where other NHS organisations or carers provide services on-site on a sessional basis, it would not normally be appropriate to create a landlord-and-tenant relationship. A licence for the specified times should be created as part of a service level agreement.

Arrangements for university medical school facilities

5.88 Where a joint hospital and university medical school development takes place, the arrangements with the university will vary as follows:

- a. where you purchase a new site for the development, the university should pay either:
 - (i) a share of the site costs plus a nominal rent; or
 - (ii) a market rent; together with a proportionate share (usually based on floor areas) of the total building costs;
- b. where the development is on your existing site, the university should pay both:
 - (i) a proportionate share of the building costs; and
 - (ii) a market rent for the land;
- c. where your existing premises are to be used, the university should pay:
 - (i) an open market rent, which may be capitalised if the parties so desire.

5.89 Terms and conditions for the lease of land and property should be as normal but with the following additional provisions:

- a. the term should normally be for 99 years with provision for a break clause, subject to alternative premises, if needed, being provided;
- b. where a market rent is payable, the lease should provide for periodic rent reviews;
- c. at any time after the tenth year of the term, the university may be allowed to give a year's notice of intention to cease using the property for the purpose for which it was erected;
- d. on receipt of such notice you should have the option, to be exercised no later than six months before the notice expires, of taking over the site on payment to the university of a fair price, in which case the lease will terminate;
- e. if the option is not exercised, the university should have the right, after expiry of the notice, to use the property for some university purposes other than that for which it was erected, subject to your consent (such consent not to be unreasonably withheld);
- f. in the case of a shared site, you may manage and recover a proper proportion of expected costs by way of a service charge.

Note:

Licences are not appropriate if the occupier has exclusive possession of premises, as a lease may be established in law.

5.90 Where existing accommodation is leased to the university (or from the university for NHS use) and the arrangement is intended to be on a fairly permanent basis, generally it will be appropriate for you to grant a long lease – perhaps 21 years and upwards, depending on the life of the building.

Arrangements with educational establishments (embedded accommodation)

5.91 Following the decision that trust status was not available to colleges of health in EL(92)70, HAs were requested to determine the most appropriate management arrangements for colleges; ensuring the involvement of interested parties and that a consensus decision was achieved. New arrangements are now in place with the education sector to manage education provision. Regions are free to determine the most appropriate arrangements for this provision, as envisaged in EL(92)70.

5.92 Normally education facilities will not have been transferred to the NHS unless these facilities were embedded or were an integral part of buildings that were transferred. The following guidance should be taken into account in order to facilitate contracting for educational provision:

- a. where existing educational facilities are required for continued use, they should be retained and preserved for that purpose;
- b. educational facilities should be leased to the educational sector that is managing the education facilities required;
- c. the cost of land and property occupancy should be reflected in the price charged by the education sector for services provided rather than any concessionary arrangement. Open market rent or capital charge reimbursement plus a service charge should be charged so that both parties understand the occupancy cost and can better assess the value for money of that expenditure;
- d. because of the difficulty in working out accurate apportionment of services, with consequent management time and cost, it may be better to have all-inclusive rents designed to cover the cost of providing services;
- e. if a request is made by the education sector for a “free” transfer of the asset, this should only be considered if the capital source for the original building was non-NHS (that is, provided initially by a school, university or charity specifically for an educational facility). Such disposal should only apply if the accommodation can be clearly separated from the balance of your site, including service provision. A disposal would not be appropriate if it could inhibit your future service plans. In this case a lease remains the appropriate option, but a capital contribution might be considered to relocate the educational facilities if you require and can use the space;
- f. in order to retain the availability of land and property for the provision of education, you should consider the terms that are being negotiated with the education sector for the management of that provision. For example, if a two- or three-year management contract were entered into, it would be inappropriate for a site transfer to take place. The terms of any lease should ensure that the termination of the lease coincides with the management contract ending, allowing the premises to be available for any new management arrangement.

Concessionary leases

5.93 A lease may be granted at a rental that is less than OMV to a voluntary body proposing to use a site for a service that complements your services or would otherwise have to be provided by the NHS.

Note:

In many cases responsibility for nurses' accommodation has been taken over by colleges or universities, or by the private sector.

5.94 A business case should be prepared for a concessionary lease. The value of the concession must be justified by the expectation that any financial loss will be matched by an equivalent financial or service benefit.

5.95 A concessionary lease should generally not be considered for:

- a. Government-funded organisations – who should seek adequate funds from their sponsoring department to pay open market rents;
- b. Local Authorities – who should be covered by joint financing arrangements;
- c. commercial undertakings – unless they provide a service to staff and/or patients (for example a bank) and can demonstrate that the service would be uneconomical if a market rent was charged.

5.96 The leasing of land to a housing association for the provision of staff residential accommodation is an exception to the rule, where it is the most cost-effective means of providing such accommodation.


5.97 Before granting a concessionary lease, a full financial appraisal of the proposal should be made, which should include:

- a current open market valuation of the land and property;
- a statement of the reasons for recommending a concessionary lease, including reasons why the prospective tenant cannot afford to pay the full market price or rent;
- a calculation of the value of the concession;
- any additional relevant information.

5.98 The length of a concessionary lease should not exceed seven years unless there are sound health service reasons for a longer period. Otherwise, terms should be as for a normal lease but with the addition of the following:

- a. the lessee should permit regular checks to ensure that the terms of the lease are being properly adhered to, and that the land and property continues to be used for the purposes of the concessionary lease;
- b. the lease should state clearly what the land and property is to be used for and that the premises will revert to NHS use if they are no longer used, or required, for the purposes stated, or if any attempt is made to change the use to other purposes;
- c. the lease should not be capable of assignment or alienation;
- d. if a concessionary lease is to be renewed, a re-evaluation of the proposal and a fresh authorisation should be sought. The lessee should not be given any prior indication that the lease may be renewed, and any renewal proposal should be considered well in advance so that a firm decision is available by the time the lease expires.

5.99 Where the concession has a value of £250,000 or more, approval should be secured from the Department of Health RO before it is agreed. Proposed concessionary leases that may be novel or contentious should also be referred to the Department of Health for consideration.

 *The same principles apply to any proposed concessionary sale – see [paragraph 8.45](#).*

NHS organisations as tenants

5.100 Where it is not possible to purchase land and property, or where purchase is clearly uneconomic or inappropriate, you may take a lease provided that this is the best course of action in accordance with the business case. Consideration has to be given to the terms and conditions of any leases, and

the appropriate inclusion of break clauses. Proposals to take leases (or extensions of leases) of land and property having a capital value in excess of £1 million, or where the premium for the lease exceeds £250,000, should be submitted to the Department of Health RO with all supporting documentation for their approval. (A £1 million capital value roughly equates to a rental of £60,000 per annum.)

5.101 Any lease that is in the name of the Secretary of State for Health should state that notices from the landlord to the tenant should be sent to the occupier in addition to the Secretary of State. This is to ensure that notices, where time is of the essence, are referred specifically to the occupier, and not delayed.

5.102 Before entering into leases, professional valuation and legal advice must be obtained. Once a lease has been taken, you must ensure that its terms and conditions are complied with. Where a lessor alleges breach of repair obligations and makes a claim for dilapidations, advice should be sought from professional advisers on whether the claim should be disputed. Leases should normally include appropriate break clauses, which allow the tenant assignment, and avoid restrictive user clauses (particularly when leases exceed 10 years).

5.103 Rent review notices must be promptly referred to professional advisers and responded to within the time limits.

5.104 Where the need for the leased premises has ceased, steps should be taken to dispose of the lease by surrender, if possible, otherwise by assignment.

5.105 It is not normally necessary to initiate action to renew a lease unless the landlord serves a notice. Solicitors can provide further advice on the proper procedures that must be followed.

5.106 If the landlord succeeds in opposing a new tenancy on one or more grounds, as set out in paragraphs (a) to (g) of section 30(l) of the Landlord & Tenant Act 1954, you should actively pursue the option of finding alternative accommodation. In these cases the tenant is entitled to statutory compensation.

Tenant's references

5.107 Landlords normally require satisfactory references for tenants, and you may have to provide such references. Sources of references to whom a landlord may apply include other landlords, existing suppliers, banks, and the RO.

5.108 References will normally be given "without responsibility", so that no liability can be imputed to the originator of a reference. However, landlords should understand that you are supported by the Secretary of State for Health (see the NHS Residual Liabilities Act 1996) and, whether the lease is taken out in his name or the name of a NHS organisation, the covenant is exceptional. This factor should also be reflected in the rental negotiations and the lowest possible rental figure secured.

Note:

A schedule of condition should normally be prepared at the start of any lease.

Note:

Advice on the disposal of a leasehold property will be provided by NHS Estates.



See also [paragraph 8.82](#) on surplus leasehold property.

Boundaries

5.109 Deeds are often unclear on the issue of boundary ownership. It is, therefore, usually necessary to go and look at the boundary yourself. In the absence of documentary evidence, there are indications that can be helpful but are seldom conclusive:

- a. the hedge and ditch rule – a ditch will usually belong to the landowner whose land includes an adjacent hedge;
- b. retaining wall – usually built by the party whose use of land created the need for it;
- c. whoever has maintained them in the past.

5.110 The Party Wall etc Act 1996 extended (with some refinements) the scheme of the London Buildings Acts to the whole of England and Wales. The Act came into force (subject to some transitional provisions) on 1 July 1997.

Trespass

5.111 Trespass and encroachment problems can be alleviated by a regular inspection of boundaries, gates, and accurately sign-posted rights of way. Otherwise, a right of way may be created by regular use, and this could prejudice the management of the affected site. A regular check of security measures should be undertaken.

5.112 A regular check of the site should be made to ensure that:

- a. no third party is encroaching, since this could provide access to squatters, and over a period of time give rise to squatters' rights (12 years' adverse possession can give a person possessory title to land);
- b. rights of way on foot or with vehicles are not being established. Check for garden gates being opened into boundary fences. The practice should be either stopped, or permitted by way of revocable licence.

5.113 Regular use of a particular thoroughfare or path can give rise to the acquisition of rights by the public at large. A notice should be erected and maintained stating "PRIVATE LAND – No right of way" in a position clearly visible to potential users. If problems persist, consider also taking steps under the Highways Act 1980, s.31.

How to deal with illegal occupation

5.114 The following steps should be taken to deal with illegal occupation:

- a. ensure that all managers know to whom the presence of trespassers should be reported;
- b. in the case of squatters the appropriate officer, with police support if possible, should visit the offenders and ask them to leave. It is not recommended that names of any occupiers are sought as the Courts would then require them to be personally served, and this may prove extremely difficult;
- c. there are provisions in the Criminal Justice & Public Order Act 1994, s.61, which enable senior police officers to direct trespassers to leave premises in certain circumstances. The police should be involved as early as possible.

Note:

The cost of boundary maintenance should be weighed against the benefits of security involved in ownership of boundaries.

"If the senior officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with a common purpose of residing there for any period, that reasonable steps have been taken by, or on behalf of, the occupier to ask them to leave and that any of those persons has caused damage to the land or to the property on the land or used threatening, abusive or insulting words or behaviour to the occupier, a member of his family or an employee or agent of his, or that those persons have between them six or more vehicles on the land, he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land."

- d. alert the local housing department and social services if action is likely to cause homelessness, and children or disabled or elderly people are involved;
- e. make a written record of all conversations and consultations, types of vehicles and registration numbers (discreetly).

5.115 If the illegal occupation persists, solicitors should be instructed to initiate possession proceedings. They will take the following actions:

- a. issue proceedings in accordance with the current rules of the High Court or County Court;
- b. support proceedings by issuing a statement in support of the proceedings, or if necessary an affidavit sworn by the responsible officer stating the owner's interest in the land and property (details of title should be supplied to the solicitor), the names (where ascertainable) of the offending parties, and the fact that the land and/or property is occupied without consent;
- c. the statement in support of the proceedings should be signed either by the appropriate responsible officer or the solicitor, having obtained all the necessary information on the matter. The statement should include the names of occupiers, if known, otherwise it must confirm that the names are not known. The statement must also confirm that the land and/or property are occupied without licence or consent;
- d. seek a date for hearing the matter in court which will be at least two clear days (or in the case of residential premises five days) after service. Where service is not effected personally on the occupiers but is left on a prominent part of the site in accordance with Court rules, service would not be deemed to be effected until the following day;
- e. arrange for the proceedings to be served personally or in accordance with Court rules.

5.116 The Court is empowered to order immediate possession, and such an order can be enforced by formal eviction by the sheriff or bailiff. However, the Court must be satisfied that the proceedings have been properly served and the occupiers are in occupation without a licence or the consent of the owner.

5.117 The housing department may re-house these people only when a court order for possession has been obtained. Sometimes it may only do so once a date for eviction has been given. Squatters or travellers will often not seek re-housing.

Note:

Source: Criminal Justice & Public Order Act 1994, s.61.

Rights over your land by others

Easements

5.118 An easement is a legal term to describe a right that is enjoyed by a person over someone else's land. An easement can be either permanent or temporary. In the latter case, it may be for a fixed term or may be terminated on giving notice. This will be evidenced in the documentation.

5.119 It is likely that an easement will be created where a utility company is supplying services to land or property, or more generally to facilitate its operations. In such cases there will be a payment in respect of which valuation advice should be taken. In some cases, such as wayleave rental payments, there are national agreements for calculating the price or rent payable.

5.120 The position of any pipes, sewers or cables on your land should be designed and installed so as not to impede any planned or potential development. The laying of gas pipelines will cause land on either side to become sterile: the extent of the sterilisation will depend on the size of the pipes.

5.121 Prior to the privatisation of the utility companies and re-organisation of the NHS, standard form agreements existed, which had been negotiated at national level. No new agreements have been put in place concerning electricity, gas and telecommunications easements. The utility companies have their own standard form of documentation to deal with easements and, where appropriate, conveyances and leases of sub-station sites and transformer stations. Solicitor's advice should be taken about the form and effect of these agreements.

5.122 Points you should consider include:

- avoiding restrictions on the use of your site. Prior to negotiations, it is worth considering the development potential of your site as well as seeking to minimise any adverse effects by the careful positioning and design of any installations;
- obtaining the right to require diversion of a line of pipes etc or relocation of the facility at no cost to yourself;
- ensuring indemnity from the utility companies against any claims arising;
- ensuring all draft documents are checked by solicitors before they are completed;
- ensuring that the main terms of the agreement are included in the terrier and the completed documentation placed with the deeds of the property.

5.123 Where it is necessary to lay drains or other services over a third party's land, negotiations should take place on the understanding that (under the Water Act 1990) the local water companies have requisitioning powers. Compensation payments should not be enhanced to reflect the development values released.

5.124 If an easement is to be granted over your land, the grantee should:

- a. contribute to the cost of maintenance;
- b. pay proper valuation, and costs, for the grant.

Minor user rights following the 1974 reorganisation

5.125 The occupation of many premises rests on user rights governed by Article 5 NHS (Transferred Local Authority Property) Order 1974 (SI 1974/330).

5.126 Points to note are as follows:

- a. rights are enjoyed on the basis of the parties sharing running costs and outstanding loan charges on a fair basis (floor area is the most usual);
- b. user rights are not intended to be of infinite duration, and, if either party wishes to terminate the arrangement or convert it to a lease of fixed term or licence (where there is no exclusively occupied space identifiable), it can seek to negotiate appropriate terms. Disputes that cannot be resolved locally should be referred to NHS Estates;
- c. where you are the major occupier, it is advisable to document the arrangement in the form of a lease and to set rent charges to cover the relevant capital charges;
- d. where a local authority wishes to dispose of its interest in land and property which is the subject of minor user rights, it must negotiate appropriate arrangements (usually re-provision or financial compensation) before you are obliged to give up your user rights.

Note:

User rights are only assignable to the statutory body created to fulfil the function, and use, originally carried out in the property prior to 1974.

Where any dispute arises, it is generally accepted that user rights are now subject to landlord and tenant law.

Use of NHS land and property by Local Authorities

5.137 The Secretary of State has a duty under Section 26(3) of the NHS Act 1977 to make available to Local Authorities the use of land and property, so far as this is reasonable and practicable, to enable them to discharge their functions relating to social services, education and public health. A formal lease, on terms recommended by the DV, is generally appropriate for the use of land and property under such circumstances. The NHS Plan is likely to introduce new arrangements with Local Authorities.

5.138 Where Local Authority social workers are based on your premises to provide a service, for the benefit of the NHS and patients from those premises, it is desirable for you to bear all accommodation costs.

5.139 Where a permanent new building is required for a hospital special school for the education of people with learning difficulties and/or other long-stay children and young people in hospital, land may be leased or sold to the Local Authority. Where social services staff occupy NHS premises, for example in Community Mental Health Services premises, a licence, and a licence fee to cover occupancy costs for those staff, would be appropriate assuming that there is no identifiable exclusively occupied space, otherwise a lease would be appropriate.

Donated property and charity issues

5.140 Now or at some time in the future, you may own donated land or property. It is likely that this will be an asset given for a specific charitable purpose, as opposed to a donation or gift, which can be used for any purpose. Alternatively, the asset may have been purchased with donated charitable money. Where you own such assets in the capacity of a charitable trustee, it will be subject to trust and charity law and must be distinguished from your other assets. Often the donated asset is land, and if so the following points need to be taken into account:

- a. evidence of the purposes for which the land was given must be maintained and any restrictions imposed by the donor on its use or disposal must be observed;
- b. the Land Registry issues guidance on the registration of charitable land to ensure that suitable restrictions are noted on the Register;
- c. separate trustees of the land can be appointed under the provisions of section 11 of the NHS & Community Care Act 1990. Primary Care Trusts should refer to the 1999 Health Act;
- d. Section 36 of the Charities Act 1993 lays down the steps that need to be taken to dispose of such land. In broad terms, the consent of the Charity Commissioners is no longer required (except in the case of a sale to a person or company related, in terms of family or business, to the charity or its trustees), provided a report is obtained from a qualified surveyor and acted upon;
- e. if any change of use is required, advice must be sought and the consent of the Charity Commissioners will probably be needed;
- f. even if such land or any part of it is sold, the proceeds will still be subject to the same trusts and restrictions as were imposed originally on the land or the money used to buy it;
- g. there is special treatment of such property for capital charging purposes.

Note:

There are no exempt charities in the NHS. Any fund will have to be separately registered with the Charity Commissioners if it has the use or occupation of donated land. It will be subject to all accounting requirements and other provisions of the Charities Acts.

Management of the historic environment


5.141 It is important to be committed to the care and management of the historic estate including listed buildings, scheduled ancient monuments, registered parks and gardens, Special Sites of Scientific Interest (SSSIs) and other important and protected heritage sites, and the setting of listed buildings and buildings that contribute to the character and appearance of conservation areas.

5.142 Good management of the historic estate has distinct benefits including improved patient environments, increased disposal values and decreased cost of repairs. Early contact with a Local Authority conservation officer will identify heritage issues, and avoid potential conflicts between the NHS and Local Authorities. English Heritage will also help NHS organisations with advice about the management and repair of listed buildings, and will also help in the preparation of a management agreement.

Background and summary of extant legislation and guidance relating to the historic environment

5.143 Current legislation is contained within the Planning (Listed Buildings & Conservation Areas) Act 1990. Planning Policy Guidance (PPG) Note 15 'Planning and the historic environment' provides supplementary advice on all aspects of the historic environment in relation to the planning system. PPG 16: 'Archeology and Planning' provides supplementary advice on the position with regard to archeology in the planning system.

5.144 'Historic buildings and the health service' was published in 1995 as supplementary guidance in the Estatecode series. This is a joint English Heritage/NHS Estates document providing guidance on historic and listed building matters.

 'Historic buildings and the health service' is available as a stand-alone document.

The care and management of the historic estate

5.145 Since 1991, the management of listed buildings in government ownership has been informed by 'The conservation guide for government departments', issued by the Department of the Environment. The objective of this guidance was to meet the commitment made by the Government in the 1990 White Paper, 'This Common Inheritance'.

5.146 A revised edition, 'The care of historic buildings and ancient monuments: a guide for Government departments and agencies' was published in Spring 1998. This document contains a "nine-point plan of action" for the care and management of historic buildings and ancient monuments. This was issued by the former Department of National Heritage (now the Department for Culture, Media & Sport), and is available from the Government Historic Buildings Advisory Unit at English Heritage.

5.147 You should:

- recognise the importance of historic buildings to the national heritage, and set a good example with regard to the care of your estate;
- consider the appointment of a co-ordinator for conservation action, who can provide a point of contact for information regarding your historic estate to enable effective management;
- obtain quadrennial or quinquennial inspections of historic buildings to identify and prioritise necessary repair and maintenance requirements, enabling work to be managed in a cost-effective way. An inspection and report should be commissioned from a specialist conservation consultant

every four or five years. In addition, a manual should be retained containing information on the historic estate;

- prepare planned maintenance registers (or forward repair plans). These should contain a prioritised and costed programme of work for maintenance and repairs identified at quadrennial or quinquennial inspections. Any works undertaken should be fully recorded in your historic estate manual.

5.148 The Government Historic Building Advisory Unit (GHBAU) provides central advice on, and monitoring of, all conservation matters for the Government's estate. The GHBAU may ask to be provided with copies of all quadrennial/quinquennial reports. You should, therefore, be prepared to provide this information by ensuring that you have good information about your historic estate, but otherwise do not need to take action on the "nine-point plan" unless further advised.

Repairs notices

5.149 If the Local Planning Authority (LPA) (in London, English Heritage) considers that a listed building is not being properly preserved, it may serve an urgent works notice or repairs notice on the owner. This will require the owner to carry out a series of urgent repairs in order to ensure the building is preserved.

5.150 The Secretary for State for Health benefits from Crown immunity for the retained estate. This means that the Local Authority has no power to serve an urgent works or repairs notice. Nonetheless, he is meant to act as though Crown immunity does not apply.

5.151 NHS organisations do not benefit from Crown immunity. You are subject to the same legislation as private owners (as set out in the Planning (Listed Buildings & Conservation Areas) Act 1990) and must respond promptly to legitimate concerns about the condition of your buildings.



Asset Maintenance



Acquisition of Land and Property

The Business Case


7.1 When embarking on capital expenditure you must prepare a business case in accordance with the 'Capital Investment Manual'. This includes the acquisition of land and healthcare operational property, or administrative property (offices). For healthcare operational property, a statement about the intended healthcare benefit will be required.


7.2 Any purchase made in advance of the approval of the business case (the requirements for approval depend on the total capital cost, including land) could pre-empt the approval process and so should not be undertaken, except with the consent of your RO.


7.3 Your business case may identify a need to acquire a new site. This may be either a specified site or a particular type of property (for example staff residences, offices, clinic accommodation or care-in-the-community).

7.4 As part of your business case, you will need to undertake an environmental impact assessment to provide evidence that the development is consistent with the Government's green objectives. Environmental impact assessments are increasingly becoming a requirement of Local Authority planners as part of their planning approval process as well as meeting Local Authority obligations under Local Agenda 21 requirements (that is, sustainable strategy for the Local Authority community). In particular any development will need to address Local Authority transport plans and ensure it will be well served by public transport.

7.5 For all procurements in the NHS that will involve capital expenditure PPP/PFI should be considered. Where a project has little chance of attracting private finance, and where the interests of the NHS would not be served by testing for PPP/PFI, you should put your case in writing to the relevant Department of Health RO. Each project will be considered on its own merits and will not necessarily set a precedent for later schemes. Even where it is demonstrated that a PPP/PFI scheme proves to offer worse value for money compared to the public sector competitor, there is no guarantee that public capital will be available to fund it.

 A business case should be prepared in accordance with the 'Capital Investment Manual'. Schemes with a cost in excess of delegated limits must be approved by the Department of Health.

 A more detailed checklist regarding acquiring office premises is attached at [Appendix X](#).

 See [Appendix VII](#) for further details on PPP/PFI.

Site identification

7.6 A site search should be carried out. Always explore the possibility of re-using existing land and property. Rationalisation, adaptation and/or refurbishment will often be less capital-intensive than new build.

7.7 Land or property from the NHS or civil estate should always be used first unless there are very good business reasons for not doing so, and those reasons are provided in your business case.

7.8 The surplus assets of one NHS organisation should be, in practice, available to another NHS organisation. This applies to surplus land and property that could be used for primary care purposes or other appropriate healthcare provision if required.

7.9 As well as seeking land and property in the open market, explore possibilities with your Local Authority and the utility companies, who may own suitable land and property, or know of land and property that is available.

7.10 A business case requires analysis of many alternatives and appropriate professional evaluation should be secured. Healthcare staff may have the necessary professional skills, but it may be necessary to appoint professional consultants. NHS Estates issues guidance for dealing with professional appointments in this respect. Consultants' skills vary considerably so that the cheapest does not necessarily represent best value.

General points

7.11 When acquiring land either with existing buildings or for new buildings, the following points should be observed:

- a. check the availability and likely price of appropriate land;
- b. check the relative business rates potential liability for each of the options;
- c. ensure that any site to be purchased is capable of being developed as required (that is, services available, ground conditions suitable, density adequate etc), or the buildings are suitable for the required conversion;
- d. check that the scheme is capable of implementation – for example, check with your LPA that planning consent for the required use will be granted. Purchases should not normally be made before planning consent for the use required has been granted. Note that an “outline” planning consent (that is, approval to a use in principle) reserves consent from the details sought in the full planning consent. Local Authorities may place a wide range of restrictions on development at this stage, so they need to be identified as early as possible. There is no point in acquiring land and property unless it can be used for the purposes anticipated. Checks should also be made with the highway authority and utility companies.

Valuation of purchases and projects

7.12 When considering land and property for acquisition, there is no obligation to use a DV but professional advice must be obtained from an external source such as a DV or appropriately qualified private consultants.

7.13 While expenditure on formal valuations normally should not be incurred until your business case has identified which purchase is to be pursued, ensure that the acquisition figures used in your business case are the best possible estimates. It may be helpful to include a DV or private valuer in the business case team.

Note:

To check on the availability of property in the NHS or civil estate, contact the NHS Estates Head of Estates and Facilities (HOEF) based at your RO, or the NHS Estates Information Centre (telephone 0113 254 7070, e-mail: nhs.estates@doh.gsi.gov.uk)

Note:

The greater the number of options, the greater your negotiating power will be. Where there are a number of options, consider inviting vendors to offer their properties at “best price” (reverse tender), at least at outline business case stage.

Note:

The DV must be used whenever required by Directions or Regulations, such as valuation for reimbursement to GPs, or in a disposal that is complex or where the value is likely to exceed £5 million.

7.14 The property market is volatile. It is important, therefore, to be aware of changes that might affect the options explored in your business case, such as asking price reductions, or the opportunity of securing land or property in a distressed market.

Note:

The lowest price may not be the preferred option, but your business case should spell out the reasons for proceeding with the chosen option.

Planning points

7.15 The acquisition/alteration of existing buildings or construction of new buildings will normally require both planning permission (which relates to the use of land or property, and conditions attached to that use) and building regulations permission (which relates to the technical details of the construction, layout and internal content).


7.16 Prior to submitting a planning application, it should be ensured that the vendor cannot withdraw from the transaction unilaterally.

7.17 Planning approval should ideally be secured prior to purchase. Early discussions with planning officers are essential to secure support for the proposed use, but these discussions will not necessarily ensure that planning permission is obtained.

7.18 Planning advice should be sought as early in the process as possible. You may be able to deal with simple enquiries yourself, but specialist technical advice may be required when more complex issues arise. This is essential where a major or controversial scheme is being planned. The appointment of other specialist consultants may be necessary in issues concerning listed buildings, conservation areas, or environmental/ecological matters.

7.19 In the context of town and country planning, HAs and ROs with a strategic overview responsibility should have procedures in place to monitor and influence the content of emerging development plans as these will affect healthcare needs, that is, due to population changes.

7.20 When major developments are identified through development plan reviews, there is likely to be a consequent need to increase healthcare provision. Residential and other developers are required, usually by legal agreement (Section 106 agreements), to contribute to the provision of local services needed to support the development. This can include healthcare facilities, and it is important that you enter into early dialogue with the planning authorities to ensure that this contribution is secured for the NHS.

 See [paragraph 7.35](#) on conditional or [paragraphs 7.36–7.37](#) on option contracts.

Note:

NHS organisations are subject to the usual town and country planning controls, including listed building control.

Section 106 agreements – planning obligations

7.21 A Section 106 agreement is the legal document that encapsulates certain conditions that an LPA may wish to attach to the grant of a planning consent. This agreement will enable your LPA to enforce those conditions, whereas conditions simply attached to the planning consent may be more difficult to enforce.

7.22 The Department of the Environment, Transport and the Regions (DETR) Circular 1/97 'Planning obligations' provides an explanation of the use of planning obligations. You should be aware that planning obligations sought by your LPA must be:

- a. necessary;
- b. relevant to the planning position locally;
- c. directly related to the proposed development;
- d. fairly and reasonably related in scale and kind to the proposed development;
- e. reasonable in all other respects.

7.23 Care should be taken, therefore, not to agree to planning obligations that are unreasonable, and professional advice should be sought before accepting any liability or entering into a Section 106 agreement with your LPA in connection with any planning application for NHS development.

Avoidance of conflicts

7.24 The decision of your LPA should not normally be challenged when it is made in accordance with the adopted local or unitary development plans. Undertaking a planning appeal can waste time and money for both you and your Local Authority. A careful evaluation of the cost benefits must be taken before undertaking an appeal.

7.25 Where early information indicates that there may be a conflict with local or national Government policies, you may be able to resolve this through discussion with your LPA and/or the Government office of the DETR. Discussions should take place before a planning application is made.

7.26 Planning consultants should be aware of national and local policies and should have discussions with the appropriate authorities before advising on the development potential of any site.

7.27 Legal challenges by NHS organisations in the courts for any reason, whether in your name, or the name of the Secretary of State, should not be undertaken without the express consent of the Department of Health.

Compulsory purchase powers

7.28 When you have identified a site for the development of a new capital scheme, and obtained planning permission, if satisfactory terms for acquisition cannot be agreed with the owner, you may, as an exception, consider acquiring the site under compulsory purchase powers.

7.29 Compulsory purchase powers may only be used after approval has been obtained from the Secretary of State for Health. Any order must subsequently be confirmed by the Secretary of State. Proposals for use of this power should be submitted to the Department of Health as soon as it is envisaged that it is likely to be required. Approval will only be given in exceptional circumstances. It is unwise to incur substantial costs by relying on the availability of compulsory purchase powers. Nonetheless, the existence of these powers may ease the process of negotiation.

7.30 The basis for payment of compensation for the acquisition of a site is complicated. Properly qualified professional advice should be taken at an early stage of the option appraisal process. Negotiations should, however, be conducted on the basis that you have compulsory purchase powers.

Negotiating the purchase

Price

7.31 The price of any acquisition will be a factor of the market and can rise or fall according to current market conditions. Do not pay more than would be payable under the current statutory code for compulsory acquisition. The price being paid for any acquisition should, therefore, be kept under review until contracts for the purchase have been exchanged. (This normally means current OMV together with certain additional payments, such as allowances for disturbance.) You should seek advice from your professional valuers.

Freehold covenants

7.32 Negotiations at the outset should uncover all positive or negative covenants attached to the site to be acquired. Also check responsibility for:

- boundary/fence maintenance;
- service diversions, shared access etc.

7.33 When acquiring freeholds, avoid imposition of restrictions on use. They should only be accepted where:

- the price is reduced to reflect the restriction;
- on the acquisition of part of a landholding, some restriction is genuinely required to protect the use or value of the vendor's retained estate;
- the restrictions are part of a scheme to regulate the management of, say, a trading estate or business park.

7.34 Where the site is subject to existing restrictive covenants, these will be binding unless the site is newly acquired by compulsory purchase.

Conditional contracts

7.35 The purchase of a site may be dependent on the availability of planning permission for healthcare use, and often on the acquisition of improved access or drainage rights etc. To ensure that a site can be purchased on the terms and conditions on which your business case is based, a conditional contract should be considered. In negotiating such contracts you should make sure that:

- the steps required to satisfy the condition are clearly stated;
- the condition/conditions can be waived by you;
- there is an agreed period to obtain satisfaction of the conditions and they are sufficiently well described that, if they cannot be met, the contract can be terminated.
- it is you who determines whether or not the conditions have been satisfied, and not an independent third party or the vendor. If the conditions of the purchase cannot be met you may not wish to proceed with the contract, so you need to control the conditionality issues.

Note:

You should take legal advice with regard to covenants.

*A "positive covenant" is an agreement to do something relating to land (for example build and maintain a fence), the benefit and burdens of which are **not** readily capable of being passed on to successors in title to the original contracting parties; a "restrictive covenant", however, is an agreement restricting the use of land **not** involving the payment of money. It is capable of benefiting and binding the successors to the original contracting parties.*

Note:

The Secretary of State's power to override covenants under the NHS Act 1977, s.87, is not available to NHS organisations. If you wish to modify or discharge a covenant, an application must be made to the Lands Tribunal under the Law of Property Act 1925, s.84. This will only be granted if the Lands Tribunal is satisfied that the covenant "impedes some reasonable user of the land for public or private use" (s.84 LPA 1925). This can be complex and time-consuming, so proper professional advice is required.

Option contracts

7.36 An alternative to a conditional contract is an option contract. The vendor may prefer the commitment involved in a conditional contract, but an option contract gives you greater discretion on whether or not to proceed. This is particularly useful when:

- there are several sites available;
- your business case is not completed or approved;
- there are any other doubts about whether the purchase will proceed;
- a major capital project is to be carried out on a site not currently in NHS or civil estate ownership;
- the timescale from identification of your target site to the approval of your business case may be protracted.

7.37 In these situations it is prudent to seek an option to purchase from the landowner. Much time and money is involved in the preparation of a business case and in securing planning consent and, while the negotiation of an option involves cost, the reduction in risk may make it good value for money. Points to watch for in negotiation are:

- period of option – while it must cover the time for business case approval, the longer it is, the higher the likely option payment and the more uncertain the price payable;
- option payment – seek to have this offset against the land price if the option is exercised;
- land price – in the context of a short-term option (say up to two years) it may be possible to fix the price. If the vendor wants the payment linked to inflation, this may be preferable rather than linking to market value. Market values can be volatile and excessive rises in the land cost could abort the project.

Withdrawal of property from the market

7.38 Whenever an agreement to purchase has been reached, it should be stipulated that the vendor agrees to withdraw the property from the market.

Note:

The grant of an option substantially restricts the freedom of action of the landowner.

Timetable

7.39 The conveyancing process will normally take a minimum of eight weeks (four weeks to exchange of contracts and another four weeks to complete). If either party wishes to depart from this timetable they can either negotiate a variation at the outset or rely on their surveyor or solicitor to accelerate the process. However, many factors can cause the process to be more protracted, including:

- the vendor's ability to give vacant possession;
- problems arising from survey;
- unforeseen issues arising from local searches;
- problems on title.

The decision to lease

7.40 The results of business cases usually show that re-using an existing site or purchasing a site secures best value. However, leasing should be chosen where it represents best value, for example in cases where land and property is required for a short term only or the location (for example in a business park) renders a freehold acquisition impossible.

7.41 In Government funding, the cost of a freehold will be fixed in capital terms at its acquisition cost, and in revenue terms at the cost of funding the capital. The cost of a leasehold will be a rent that reflects the landlord's costs of acquiring, developing and financing the land and property (unless a market over-supply allows otherwise). A rent is likely to exceed the Government's finance costs and will usually be subject to upward review at three- to five-year intervals. At the end of the lease the tenant can walk away from the premises with no further liability (beyond a liability for dilapidations, if any) for land and property holding, maintenance and risk expenditure, disposal or management expenses, and possibly losses on disposal.

7.42 It is usual for leasing to be the preferred option where:

- the most suitable land and property is only available on lease;
- the requirement is relatively short-term, and does not justify the risk of making a capital outlay;
- it provides a means of transferring risk, and provides best value.

7.43 Approval from your RO is required in cases where the premium exceeds £250,000 on the grant or taking of an assignment of a lease, or where the value of the land and property leased exceeds £1 million.

7.44 Where land and property is taken on lease, you should ensure that procedures are in place to ensure that the terms of the lease are clearly known and complied with. Penalties for non-compliance must be avoided. You should comply with all landlord and tenant legislation.

Negotiating the lease

7.45 Specialist advice should be sought relating to landlord and tenant relationships. When negotiating terms as a tenant, you should consider what is acceptable in relation to:

- repair liability;
- length of term;
- rent reviews;
- break clauses;
- any works of alteration required;
- permitted use;
- alienation provisions;
- any option, or options, to renew;
- Value Added Tax liability;
- contracting out of the Landlord & Tenant Act 1954.

Note:


Particularly for office requirements, but also for clinic/health centre developments, you should consider Developer Build Schemes. The developer acquires a site, contracts a building to your specification and leases the finished property to you. The developer normally then sells on the property to a third party investor subject to the terms of the lease.

Note:

Tenant improvements should be excluded from rent review calculations.

7.46 As an NHS organisation, you will be regarded as an exceptionally good covenant – that is, a tenant well able to pay its rent and deal with its other obligations. The retained valuer should use this to try to seek terms that:

- include favourable rental levels;
- include rent-free periods/contributions to fitting-out works;
- allow release from liability on permitted assignment;
- avoid upward-only rent review clauses;
- include break clauses giving flexibility of occupation;
- include break clauses following rent reviews (where rent reviews fix rentals higher than acceptable in business terms, to enable a relocation to cheaper premises once the reviewed rent is known).

 In instructing the DV/outside surveyor to negotiate rental terms from a prospective landlord, reference should be made to the 'Investment appraisal' section in the 'Capital Investment Manual', which demonstrates how relative annual costs of renting versus purchasing can be assessed.

Site survey

7.47 Before acquiring land for a new building, a site investigation report should be commissioned to ensure that the site is “clean” in environmental terms and has no characteristics (such as poor ground, contamination or in-fill) that would increase building costs.

7.48 The Valuation Office Agency’s minerals surveyors are able to provide reports on mining subsidence. It should be ensured that any adverse ground conditions are fully reflected in the price and construction estimates.

Services/utilities

7.49 Check that building works (including access arrangements) will not involve unforeseen service diversion costs:

- a. if services cross the site and need to be diverted, check the terms of any relevant wayleaves. They may stipulate that the utility company has to divert these at its own cost on notice but is more likely to be an expense for you as the developer;
- b. check the availability of services without expensive off-site works. Explore availability of requisitioning powers of water authorities for drainage connections before expensive payments are made to third-party landowners for easements.

Structural survey

7.50 Before acquiring land with existing buildings intended for use, a structural survey must be carried out before any commitment is made. This is to ensure that only realistic estimates of repair costs and dilapidations are included in your business case (unless the existing buildings are to be demolished and a new-build scheme implemented). This applies to freehold or leasehold acquisition.

7.51 A survey should cover:

- the structure of the property including the walls, foundations, roof etc;
- the condition of the woodwork, including window frames as well as structural timbers;
- mechanical and electrical installations;
- drainage and other services;
- compliance with building regulations and planning permission;
- compliance with fire regulations and health and safety issues;
- the condition of boundary walls and internal access ways;
- the presence of asbestos or other contamination.

7.52 When conducting a structural survey, make sure:

- the surveyor is given full access to the property. A purchaser (or tenant) needs to know about porous roofs, rotten timbers, wet or dry rot or woodworm, even if they are hidden by heavy furniture or for other reasons cannot be easily accessed;
- the survey is addressed to you, otherwise it will not be possible to make a claim for losses arising from a surveyor’s negligence.

7.53 While a full structural survey is not required where premises are acquired on an internal repair and decoration-only basis, the internal condition should be surveyed to determine the likely expenses that you may incur as tenant during

Note:

Professional indemnity insurers require comprehensive wording to exclude liability for a number of matters.

When acquiring a new building, consider how to protect against latent defects (that is, those that will not be revealed by the survey).

the term of the lease. As prospective tenants you should also be aware that repair works carried out by your landlord may disrupt your use of the property. It is advisable to carry out a joint landlord/tenant inspection just before the start of the lease, to agree a schedule of existing condition.

Heads of terms

7.54 Having completed the business case, and selected a site from those available that represents best value, a “heads of terms” for agreement between the vendor and purchaser will be drawn up. This will form the basis for instructing solicitors, and will include:

- a description of the site;
- the names and addresses of the parties and their solicitors;
- the price;
- the timescale for exchange of contracts and completion;
- any conditions (for example subject to obtaining planning permission, subject to satisfactory ground condition survey);
- any obligations on vendor (for example works to be carried out prior to completion, obtaining vacant possession);
- the tenure;
- if the terms are leasehold, details of the proposed lease;
- a location plan.

Note:

A site within the NHS or civil estate should, if available, always be chosen unless there are very good reasons why not, and the costs should include the holding costs of NHS or civil estate sites not selected, to demonstrate best value for the exchequer overall.

The solicitor's role

7.55 The solicitor's role is to ensure that:

- all planning permission and building regulation consents are in place and conditions complied with;
- roads and sewers serving the site are maintained at public expense;
- there are no major redevelopment proposals in the immediate vicinity (for example motorways) which might affect the suitability of the site for its intended use;
- there are no unforeseen third-party rights affecting it (for example public footpaths, rights of light or other covenants);
- the negotiated terms are incorporated in the contract;
- the vendor has title to transfer the site;
- the transfer is completed on the required date.

7.56 Although the solicitor will provide a copy of local searches, it is still beneficial to contact your LPA to check for development proposals affecting the site.

7.57 In the case of a major site acquisition/development you should involve a solicitor at an early stage. Any legal constraints can then be addressed, or the purchase abandoned, thus avoiding high abortive costs. In cases where compulsory purchase is being considered, as much time as possible should be allowed.

Key points

7.58 Written confirmation of the terms of a transaction should not be given to the vendor without appending the words "subject to contract".

7.59 Once a solicitor is instructed, points in dispute should not be negotiated without reference to him/her.

7.60 Once contracts are exchanged, both sides are committed to the terms of the contract as signed. In the exceptional circumstances where the contract needs to be amended after exchange, do not attempt to vary the terms, other than through the solicitor. Even an accurate written expression of an agreed variation can nullify the whole contract.

7.61 From the date of exchange of contracts the risk of holding the site normally passes to you as the purchaser. Even if the property burns down, the cost of reinstatement will have to be met by you. Ensure that all the usual risks are assessed and appropriate action taken.

7.62 Make sure that when documents are signed (contracts and tenancy agreements of up to three-year terms) or sealed (conveyances, transfers and leases over three years) standing orders are observed. Signature by an unauthorised officer can bind the purchaser if it seems to the other party that he/she has ostensible authority to do so.

Post-completion

7.63 When the purchase has been completed:

- make sure that the records system and estate terrier are updated;
- tell your solicitor what information is needed and the form in which it is required so that he/she may report accordingly;

- apportion uniform business rates, and advise your Local Authority of the new ownership for rating purposes;
- consider reviewing the rating assessment;
- check the accuracy of the completion statement (a draft of which should be prepared prior to completion).



Disposal of Surplus Land and Property

Introduction

8.1 Only land and property that is required to enable you to fulfil your function as a healthcare provider should be retained. Changing patterns of care and regular reappraisal of assets will inevitably mean that some sites become surplus. This section is designed to deal with the issues arising once land and property has been identified and declared surplus.

8.2 Once a site has been identified and declared surplus, it should be sold as soon as possible unless there are unusual circumstances preventing this. In unusual or exceptional circumstances, the powers given to you by s.7 of the Health & Medicines Act 1988 may be used to secure an income from the development of your land and property. Ideally a site sale should be completed immediately upon it becoming vacant. This means that the disposal process should be planned as early as possible, even if only as a contingency.

Principles of disposal

8.3 Any decision-making process should take account of relevant codes of conduct, accountability and probity. All disposals should be fully supported by a clear business case for the transaction and a clear record of the process carried out in completing the transaction. Full and appropriate records of all matters relating to a disposal must be recorded on file. This should include relevant telephone conversations and discussions at meetings, and should show a prompt response to incoming correspondence and enquiries.

8.4 Legal and professional advice must be taken regarding proposed land and property disposals. If, exceptionally, you wish to act contrary to that advice, you should first seek the approval of your RO.

Note:

Land and property that was originally acquired compulsorily, or under threat of compulsion, that is, most NHS land and property, may need to be offered back to the former owners or their successors under the Crichton Down rules.

The object of disposal should be to secure completion of the sale immediately upon the site becoming vacant.

Managing the professional team

8.5 Professional advisers must be aware of the policies and procedures set out in this document.

8.6 You should have a clear policy on the acceptance of gifts and hospitality to avoid conflicts of interest and probity breaches.

Routine disposals

8.7 The sale of a self-contained site may require only the appointment of a solicitor and a selling agent. Appoint both at the outset.

Major or complex disposals

8.8 Specialists from relevant professionals should be employed at the outset. The number and type of specialists required will depend on the complexity and value of the site in question.

8.9 A senior manager should always be an informed client, and should be appointed as project director to ensure that the vendor's interests are adequately protected and managed. The project director will appoint a project team comprising a lawyer, a valuer, a marketing agent, a planning consultant and a highways/transport consultant. Disposals of large or complex historic sites can be assisted by a planning brief (normally presented by your LPA) and supported by an authoritative and independent analysis of the site's heritage significance undertaken by a conservation specialist.

8.10 The project team should produce preliminary reports looking at:

- title (to identify title problems or adverse covenants);
- planning constraints;
- value;
- infrastructure constraints (highways, water, drainage etc);
- contamination.

From this information you will know the likely optimum value, the hurdles to be cleared, and the cost and timetable involved in clearing those hurdles.

Note:

Refer to NHS Estates for guidance on considerations applicable to the appointment of professional advisers.

Note:

Additional costs may be incurred by delaying the appointment of any one of the members of the project team. For example, failure to appoint a solicitor at the outset may delay discovery of an easement in favour of an adjoining owner, which may prevent the intended alternative use, irrespective of the grant of planning consent.

Note:

Where a sale is complex, the potentially most valuable alternative use is unclear, or the sale proceeds will exceed £5 million, you must obtain professional valuation advice independent of the appointed marketing agent (the DV would be an alternative to a surveyor in private practice).

Where a disposal of land is likely to achieve a sale price in excess of £5 million (outright sale, joint venture, lease or deferred payments, or contiguous parcels which cumulatively exceed this amount), the transaction must have the approval of the DV.

8.11 The project team should establish the tasks to be carried out and the timetable, and set up a pattern for team meetings to review progress. At this stage it should be decided whether further specialist help is required. A cost benefit analysis of disposal options should be carried out.

8.12 It is advisable to regularly monitor potential receipts against potential sale costs (for example, consider the costs of a planning inquiry against the chances of success and the potential added value), as well as potential receipts against anticipated receipts by reference to changes in market conditions.

Note:

If the site includes buildings of historic interest, there may be a requirement for a conservation adviser, and also consultants on contamination issues or environmental impact.

The role of NHS Estates

8.13 NHS trusts, PCTs and HAs must notify NHS Estates' ROs of any proposal to dispose of surplus land and property. The HOEFs at your RO will act as the informed client in relation to any disposal.

8.14 Acting as the informed client, the HOEFs will:

- recommend whether the trust/HA should manage the disposal process or whether it should be managed externally;
- provide advice and guidance on all aspects of the disposal;
- assist in the selection and appointment of external advisers;
- agree the strategic considerations and programme for each disposal following, where appropriate, a cost-benefit analysis of the options;
- regularly review progress through meetings or written reports, agreeing amendments to the strategic direction as necessary and ensuring relevant guidance has been followed;
- endorse or otherwise recommendations by external advisers, or by the trust's or HA's own staff, to their Accounting Officer.

8.15 The level of the informed client's involvement will depend upon the complexity of the disposal, and is centrally funded.

8.16 Heads of Estates and Facilities will want information about the disposal regarding:

- strategic fit – that is, that the disposal is appropriate given the service need/potential future operational requirements, and the trust's/PCT's or HA's own business, service and estates strategies;
- beneficial option – that is, that the most appropriate/valuable site is being released for disposal given potential alternative service reconfigurations;
- the impact on the future development potential and value of land and property that is being retained in NHS ownership;
- access to land and property for disposal and/or land and property retained;
- environmental and contamination issues;
- ability to grant vacant possession.

Priority purchasers

NHS organisations

8.17 Consider whether land and property surplus to your requirements can be used by another NHS organisation or public body. This applies to any health-related user, including Care in the Community and GP premises, and other Government departments. Before embarking on a formal disposal process check with your local NHS organisations, and also with Property Advisers to the Civil Estate (PACE).

8.18 Land and property that you have formally declared as surplus to requirements must be revalued to OMV for alternative use in your books and asset register. This valuation then becomes the Net Book Value (NBV) and is the price that another NHS organisation will pay. This is to avoid accounting entries that make a profit or loss.

8.19 Property that is not surplus to NHS requirements but is sold to another NHS organisation should be sold on the basis of Existing Use Value (EUV), if known, or at NBV (that is, the buyer is taking over operational responsibility for a service previously provided by the seller).

8.20 Where an asset was revalued to OMV at a time when no other NHS use was envisaged, but was subsequently sold to another NHS organisation, the price will be at OMV. If the sale is to a non-NHS organisation (including the sale of a health centre, clinic or other property to a GP, providing that the GP is the majority occupier), it should also be on the basis of OMV. In these cases the value can be negotiated between the parties, or the DV can be asked to settle on the market value for the transaction. The sale should be completed in the same way as a private sector sale.

8.21 Response times should be limited to avoid delays to the disposal process (giving a maximum of two to three months to agree to purchase may be reasonable).

Surplus residential property

8.22 Where residential property currently occupied by tenants (whether employees or not) is declared surplus, you are normally obliged to act as if the “right to buy” legislation contained in the Housing Act 1985, as amended, applies. Further clarification is available from NHS Estates. (Contact the Information Centre, e-mail: nhs.estates@doh.gsi.gov.uk telephone: 0113 254 7070.)

Former owners’ rights (Crichel Down Rules)

8.23 Most NHS land and property has been acquired by, or under the threat of, compulsory purchase. The Crichel Downs Rules require public bodies to offer land and property that has become surplus, to the original owners under certain circumstances (the Rules). You must, therefore, ascertain if there is a requirement to offer to sell your surplus land and property back to the original owner. This also applies to land and property acquired under blight provisions.

8.24 The rules do not apply to:

- a. land and property that was up for sale at the time of acquisition;
- b. agricultural land that was acquired by a Government body prior to 1 January 1935;

Note:

PACE is responsible for co-ordinating Government departments’ property requirements and for advising NHS Estates of those needs.



This procedure is different from a sale to a selected purchaser for non-health-related purposes where the proposed sale is intended to be in the wider public interest.

See paragraphs 8.46–8.47.

Note:

The difference between OMV for alternative use and the sale price will be a profit or loss on disposal. In transactions between NHS organisations there will be no profit or loss on disposal.



See Appendix XI for further information on “right to buy”.

Note:

Application of the Crichel Down rules can be complex. Solicitors, or NHS Estates, should be consulted to determine whether they apply.

- c. land and property that was acquired more than 25 years before disposal;
- d. land and property whose character has materially changed during the period of your ownership, for example by development or extensive alteration. The cost of reinstatement will be a factor in determining this issue;
- e. disposals comprising a development site of two or more former land holdings, or part of a site which has been materially changed, and a sale in parts would not achieve best value;
- f. disposals that are, effectively, *de minimis*;
- g. various circumstances, with specific ministerial approval, where the land is still required for some other public sector purpose.

8.25 If the Crichel Down rules do apply, you should:

- a. establish the identity of former owners or their successors and locate them;
- b. assess the terms of the offer and the method of fixing the price;
- c. give former owners two months to agree basic terms and a further six weeks to agree the price (with such extensions as are appropriate). If agreement is not reached within the timescale, the land and property may be sold in the open market.

8.26 Special consideration will apply where best value can only be determined by extensive planning work or by exposure to the marketplace.

8.27 Under Section 66 of the Planning & Compensation Act 1991, where land and property acquired by, or under threat of, compulsory purchase after 25 September 1991 subsequently has the benefit, within 10 years of acquisition, of planning permission other than for the purpose for which it was acquired, the original owner should be reimbursed with the added value.

The Business Case

8.28 It is essential that the estate records of all land and property under consideration are checked so that the potential proceeds from sales/savings in overheads arising from the disposal of different sites can be compared. Where leasehold properties are involved, potential dilapidations claims should be taken into consideration, as well as user and other clauses that might affect the ability to assign.

8.29 If the receipt of land and property is a key part of meeting re-provision costs, consideration should be given to obtaining a preliminary report covering market conditions, planning constraints and legal title in the context of the planned disposal before your business plan is finalised. Covenants affecting the land and property may prevent its sale for its anticipated or higher value.

Note:

This guidance does not attempt to cover the issues involved in the development of the business plan leading to your land and property becoming surplus. The process should be in accordance with HImPs and PCIPs.

Planning points

8.30 In the context of town and country planning, you should have procedures in place to monitor and influence the content of emerging development plans, as these will affect the prospects of securing planning consent for the development of suitable sites for NHS use, and the commercial re-use of surplus land and property that will generate the highest receipt from disposal. NHS Estates has a national “Development Plans Monitoring” service, which provides information on timescales for development plan reviews by all LPAs across the country. Information about this can be obtained from the NHS Estates team in your local RO.

8.31 Always seek suitable professional advice on development potential that would maximise the value of your surplus land and property, and be pro-active in the local plan process. Involve your LPA, councillors and the public at the earliest possible time.

If there is development potential, any sale should reflect that through either:

- a. an allocation in the relevant development plan; and/or
- b. a development brief for the land agreed with your LPA; and/or
- c. planning permission.

8.32 If there is uncertainty concerning the ability to achieve increased value through the planning process or where land and property is disposed of before uncertainties about planning permission have been satisfactorily resolved, consider selling the land and property without planning permission reserving all, or a substantial share, of the development value subsequently realised (“overage” or “clawback”).

8.33 Sales in these circumstances require approval by the Department of Health. Such provisions should be made in any deal where there is the possibility of enhanced value being secured by the purchaser in the near/medium future. It is justifiable in these circumstances to receive a proportion of that enhancement.

Note:

The benefits associated with securing planning permission should outweigh the costs of obtaining planning permission, taking into account holding and opportunity costs, and potential overage.

Setting the sale price

Valuation

8.34 Before land and property is offered for sale, you must secure a professional valuation of the property to establish a price guide. This can be undertaken by suitably qualified in-house staff, the DV, or a suitably qualified private sector valuer.

8.35 Where a sale is complex, the potentially most valuable alternative use is unclear, or the sale proceeds will exceed £5 million, you must obtain professional valuation advice independent of the appointed marketing agent (the DV would be an alternative to a surveyor in private practice). See below for the functions of the independent adviser.

8.36 Where a disposal of land and property is likely to achieve a sale price in excess of £5 million (outright sale, joint venture, lease or deferred payments, or contiguous parcels which cumulatively exceed this amount), the transaction must have the approval of the DV.


8.37 The adviser, independent of your selling agent, should be appointed at the outset of the disposal process. The functions of the adviser should include:


- a. establishing the initial price guide;
- b. advising, in consultation with your selling agent, on the final reserve price in sales by auction or tender;
- c. advising on the acceptability of offers and bids received within the sale deadline;
- d. advising on any authentic late or revised bid received after the closing date but before the sale has become legally binding, which is higher than bids received within the deadline;
- e. where the final sale is at a price below the initial price guide, certifying, jointly with your selling agent, that it is the best offer reasonably available.

8.38 If you want to dispose of land and property by private treaty to a selected purchaser (for example to a “heritage” body such as the National Trust, a charity or a Local Authority), where the professional advice is that sale by tender or auction might produce better results, you should first secure independent valuation advice from both the DV and an independent private sector valuer. If both valuers agree to the sale value, the sale can proceed.

8.39 Whenever a disposal involves a negotiated sale (that is, a sale to a selected purchaser including a charity), the probity of such a sale must be demonstrable, and the process justified. This type of sale must have an “advantage over sale by auction or tender”. A “solus” transaction (that is, negotiating a sale with a single prospective purchaser) should only be used in exceptional circumstances and when recommended by the professional adviser.

8.40 Maximisation of receipts should not be the overriding aim in cases involving the disposal of historic buildings: disposal strategies must be consistent with Government policies for the protection of historic buildings and areas. This policy may limit opportunities for the realisation of development value.

 See paragraph 8.47, which discusses the criteria for considering a sale below OMV.

 See 'Historic buildings and the health service' and [Appendix XII](#) 'Disposal of surplus historic buildings – sales at a concessionary price'.

Sale at best price

8.41 Ensure that surplus land and property is sold at the best net price reasonably obtainable in the open market (the optimum value). The sale process adopted should demonstrate that this is the case (but see paragraphs 8.45–8.47). The best price will take account of all the factors (market condition, planning position, legal constraints etc), especially holding costs.

8.42 Land and property with potential for development should normally be sold with the benefit of planning permission for alternative use.

8.43 An outright sale will normally secure the optimum value from your land and property. However, you may consider sales of long leases with stepped ground rents, or leases for commercial purposes or development, provided appropriate professional advice is obtained.

8.44 Consider the acquisition of adjoining sites, or joint disposal with neighbours, where an enhanced marriage value of the combined site may be realised. Note, however, that “speculative” purchases should not be made.


Note:


Beware of rogue “high bids” from “men of straw”, or those who may be likely to negotiate concessions, and a lower price, after their offer has been accepted.

Sales to selected purchasers or at a concessionary price


8.45 The disposal price of surplus land and property must not be less than the best price reasonably obtainable in the open market, except in the circumstances discussed below, and where approval is given by your Department of Health RO.

8.46 Regional Office approval is required for any disposal to a selected purchaser, unless professional advice is given that the sale price exceeds that which might reasonably be obtained in the open market. This is because a sale to a selected purchaser has not had the benefit of testing in the open market. However, a neighbour, or another selected purchaser, may be willing to pay “well over the odds” to buy a particular site. Thus, if the professional advice is that the offered price exceeds likely OMV, it can be accepted. If not, a sale to a selected purchaser at any given price can only proceed if approved by your RO, and would be on the basis of a “deliberate concession” (that is, no certainty that OMV has been achieved).

 See income generation powers – [Appendix VI](#).

 See also paragraphs [8.38–8.39](#).

8.47 Exceptionally, it will be reasonable to consider wider issues and accept a price lower than OMV for the public benefit. This should only be done if the Accountable Officer and, where appropriate, a Health Minister, is prepared to defend it as a deliberate concession. In these cases the benefits which are expected to result from the disposal must be clearly identified. Approval is also required from the Department of Health who will brief the Minister if support is needed (further advice is available from NHS Estates). An overage (clawback) provision is recommended in case the purchaser subsequently sells at a higher price.

 Concessionary sales should be considered in the same way as “concessionary leases” (see paragraphs [5.93–5.99](#)).

Sale methods

8.48 Always seek professional advice on alternative methods of sale. Land and property should normally be sold by auction or competitive tender.

8.49 Land and property, apart from houses, should only be sold by private treaty in exceptional circumstances (for example where there is a special purchaser such as a sitting tenant, GPs in a health centre, or on the specific advice of your selling agent). In these cases, a valuation is required that will certify that the price paid is at least equal to OMV and that there would be no benefits obtainable by putting your land and property onto the market.

8.50 In some circumstances a sale by auction or competitive tender may not reflect current market conditions and may not achieve best value. For example:

- a. Between 1990-92, most house builders were not prepared to take part in auctions or formal tenders for the purchase of land for residential development. The process was too expensive and the private treaty method, with a subsequent informal tender, produced better results.
- b. Plans to build superstores and other specialist valuable sites are often controversial. In such cases, a limited number of potential buyers may be invited to present their proposals. Selection of a purchaser will be based on a combination of best price, best proposal and best prospect of obtaining planning permission.
- c. The method of sale adopted will depend on the type of property, planning considerations, and the state of the market. Adopting a policy of selling by auction or formal tender may be done with a view to avoiding criticism rather than necessarily obtaining best value.

8.51 Ensure that your advisers are aware of public accountability requirements and that they proceed in accordance with these requirements.

Formal tender

8.52 Your property should be widely advertised for at least eight weeks prior to the tender date and will be open to all potential bidders. Based on the advice of your marketing agent (in consultation with an independent valuer from the DVO when the proceeds are likely to exceed £5 million) a reserve tender price should be set. All interested parties should be sent an information pack covering legal, planning and infrastructure issues and, if available, a ground condition report. On acceptance of the best tender offer, a binding contract for sale will be put into effect.

8.53 Advantages are:

- your land and property will be available to a wide market;
- public accountability is self-evident;
- a purchaser with a particular interest in your land and property may submit a high tender bid (for example one tender may be considerably greater than any other, whereas at auction the price will only be one bidding step above the last highest offer);
- a price above the estimated market value may be achieved (you can be reasonably satisfied that the best possible price has been obtained);
- the sale is certain in that a contract is established on the day.

8.54 Disadvantages are:

- the tender procedure, involving large numbers of interested parties, can be time-consuming and expensive;
- some potential purchasers do not like tendering and may not bid.

8.55 This option is likely to be widely used for the sale of land and property with no obvious constraints to development and beneficial use, and for which there is an active market.

Limited formal tender

8.56 Based on the advice of your marketing agent (in consultation with an independent valuer where the proceeds are likely to exceed £5 million) a reserve tender price should be set. Your land and property should be advertised, focusing on the most likely purchaser group. Tenders may be requested from a smaller number of selected potential purchasers when, for example, your land and property has a specific alternative use (superstore or nursing home). The list of potential purchasers should be based on the recommendation of your professional advisers.

8.57 Advantages are:

- the costs involved in the tendering action will be reduced;
- opportunist bidders with inadequate financial standing can be excluded;
- the bids made are more likely to be meaningful because potential purchasers know that they have a reasonable chance of success;
- the sale is certain in that a contract is established on the day.

8.58 Disadvantages are:

- having a limited number of potential purchasers means that you cannot be absolutely certain that you have obtained the best possible price;
- questions of public accountability may arise over the selection of potential tenderers.

Informal tender

8.59 This procedure is very similar to formal tender. However, the purchaser does not make a binding offer and negotiation can take place regarding the terms and conditions of the offer. The successful bidder is invited to sign a formal contract of sale and purchase within a short period of the offer being accepted.

8.60 Advantages are:

- it gives greater flexibility to the purchaser as to the terms of his offer;
- it gives you greater flexibility to clarify and, if required, negotiate the final terms of the sale.

8.61 A disadvantage is:

- the purchaser is not bound to proceed at the price offered.

8.62 Suggested uses are:

- as a follow-up to a private treaty sale campaign, which produces several interested parties at a similar price;
- on large complex sites where a straight cash sale will not necessarily produce best value;

Note:

Formal advice should be taken for reasons of public accountability.

This option is seen as being useful where your site is very large and complex or where best value will be obtained from a specialist market in which there are few operators.

- where full site or planning investigation would be too expensive to allow purchasers to put themselves in a position to bid on a formal tender basis.

Private treaty

8.63 Private treaty sales involve negotiating a sale with a single prospective purchaser ("solus sale") or a range of prospective purchasers secured as a result of advertising culminating in an agreement to sell to the highest bidder. In certain circumstances a solus sale to a selected purchaser may be negotiated.

8.64 Your marketing agent should widely advertise your land and property for sale, for a reasonable period. The sale should be negotiated between the purchaser and your professional advisers, who will make a recommendation about which offer terms and conditions should be accepted.

8.65 Advantages are:

- administrative costs are minimised;
- a quick sale can sometimes be achieved;
- in a difficult market your selling agent will have more scope to negotiate;
- flexibility;
- your agents are obliged to report all offers they receive.

8.66 If marketing results in keen competitive interest, a formal limited tender or an informal limited tender exercise can be commenced.

8.67 Disadvantages are:

- the best possible price may not always be seen to have been achieved;
- questions of public accountability can arise over the selection of the potential purchaser;
- there is no firm contract at the point of offer and acceptance.

8.68 Suggested uses are:

- single houses or flats: low-value land and property;
- in a buyer's market (consider combining with subsequent informal tender);
- where there is a special purchaser;
- where there is to be an element of joint venture (for example clawback or profit sharing).

Late bids

8.69 Although late bids, or revisions to tenders, should not normally be allowed, a late bid or tender may be received after a closing date but before the sale has become legally binding. If the offer is significantly higher than those received before a deadline, careful consideration should be given to it, with appropriate professional advice on whether the bid should be taken into account.

8.70 Account should be taken of your duty to secure the best possible price when disposing of surplus assets against the possibility of your original bidders withdrawing their offer. If it is decided that an authentic late bid should be taken into consideration, or your land and property has been sold subject to contract but you have not exchanged contracts with your buyer, all tenderers (including the current prospective purchaser) should be given the opportunity to improve

their bids. Sufficient time should be allowed for the necessary enquiries into any late bidders' financial credentials to be completed.

8.71 Clear documentation of the reasons for pursuing a late bid, or not pursuing it, should be in the transaction file.

Public auction

8.72 Your land and property should be widely advertised and your marketing agent (in conjunction with an independent valuer where the proceeds are likely to exceed £5 million) should be asked to recommend a reserve price, which will be confidential and known only to you and the auctioneer (and the independent valuer if appointed).

8.73 Advantages are:

- your land and property will be available to a wide market;
- conditions of public accountability are seen to be satisfied;
- you can be satisfied that, on the day, the best possible price was obtained;
- the element of competition can lead to a price in excess of the estimated market price;
- the sale is certain in that a contract is established on the day.

8.74 Disadvantages are:

- a failure to sell at auction can blight a site;
- some potential purchasers dislike auction procedures and their bid might, therefore, be lost;
- "rings" can be formed by interested parties who then deal with your land and property between themselves after one has purchased in the auction room. This could eliminate competition, and thus reduce the selling price.

8.75 Public auctions are best suited to disposals of smaller sites (for example houses), properties which present difficulties (for example where no planning consent has been forthcoming) or when it is difficult to establish a clear idea of value, or where it is reasonable to expect keen interest from prospective purchasers.

Simplified disposal process for residential property

8.76 Simplified disposal procedures exist for surplus residential property consisting of ordinary dwelling-houses and flats. Use these procedures at your discretion. They are intended to speed up the disposal process, but retain public accountability. The main elements are:

- a. if, following professional advice, it appears that there is no likely development potential that could increase the value of surplus ordinary dwelling-houses or flats, you may consider a sale to a housing association, Local Authority or Registered Social Landlord (RSL), providing OMV can be established with reasonable certainty;
- b. where there is a dispute about the OMV of your property, an independent professional valuer (acceptable to both parties) should be appointed to provide a valuation, allowing for both parties to make representations. The DV can carry out this work;
- c. if there is any possibility of an increase in value resulting from development at some time in the future, the sale should be subject to a clawback provision;
- d. this procedure may be used as an alternative to “right to buy” procedures that may break up existing blocks and thus reduce likely interest from housing associations;
- e. consideration should be given to the current key worker provision initiatives, and must be given to the possible re-use of blocks of houses or flats for key worker accommodation within or outside the NHS.

Adjustment to sale price

8.77 Ensure that your surplus land and property is sold at the best price reasonably obtainable in the open market. A sale to a housing association or social purchaser should not affect this requirement. However, where a prospective purchaser is able to offer services in kind, this value may be taken into account. For example, a housing association may be able to offer guaranteed nomination rights to your own staff for whom you have housing responsibility. In such a case, the full market value should be brought to account as a cash receipt, with any subsidy or discount element accounted for as an expenditure. A full financial appraisal in these cases is essential to ensure that such a proposal represents good value for money.

Disposal of partially surplus sites

8.78 Where only part of your site is declared surplus, consider whether disposal of that part of the site (by sale or lease) would:

- a. remove flexibility for future operational developments;
- b. limit the achievement of best value from a sale of the balance of your site.

8.79 Where an outright sale may be undesirable, consider using your income generation powers given by s.7 of the Health & Medicines Act 1988 to grant a long ground lease.

8.80 Where a sale of part of your site is to go ahead:

- a. make provision for the separation of services;
- b. consider imposing restrictive covenants to prevent uses that would be incompatible with the operational use of your retained site;
- c. make provision for maintenance of shared facilities such as access roads and services;
- d. take care to ensure that the purchaser is not given any control over the future use and development of your retained land, or ransom potential;
- e. provide for the creation of new boundaries and their future maintenance.

Note:

The sale of property on a site's frontage, or close to its access, could prevent or limit any redevelopment of the retained site.



See [Appendix VI](#) for further information on income generation powers.

Disposal of surplus historic sites

8.81 Reference should be made to 'The Disposal of Historic Buildings: Guidance note for Government departments and non-departmental public bodies', issued by the Department for Culture, Media and Sport in 1999 following consultation with HM Treasury. This guidance sets out the following recommendations:

- before deciding to vacate a historic building, the feasibility of adaptation and alternative uses should be considered; most older buildings, with sensitive adaptation, can give long-term, cost-effective service. In making financial assessments of alternative options, full account should be taken of the cost of responsible disposal, including any potential costs and risks incurred in maintaining and protecting the building if it becomes vacant;
- all surplus historic buildings – and particularly those that are vacant or only partially used – should be disposed of expeditiously: this may point to particular methods of disposal;
- all vacant historic buildings should be regularly inspected and maintained in a secure, safe and stable condition pending disposal;
- methods of disposal other than open market sale by auction or competitive tender may need to be considered where these will increase the chances of securing appropriate ownership and use of historic buildings;
- in cases of uncertainty, departments should ensure that they assess any potential for realisation of development value by a purchaser, and safeguard taxpayers' interests by the use of clawback covenants or other means;
- sites containing groups of buildings should be considered as a whole; they may need to be marketed as a single development package in order to avoid isolating historic elements of the site and potential damage to their setting;
- disposals of large or complex historic sites can be assisted by a planning brief; this should be informed by an authoritative and independent analysis of the site's heritage significance;
- maximisation of receipts should not be the overriding aim in cases involving the disposal of historic buildings. The aim should be to obtain the best return for the taxpayer that is consistent with Government policies for the protection of historic buildings and areas; these policies are likely to limit opportunities for the realisation of development value;
- appropriate professional advice should always be taken on the disposal of historic buildings, from advisers with proven experience;
- early consultation with all interested parties will assist in overcoming any difficult or controversial issues.

Surplus leasehold land and property

8.82 Professional advice is needed in respect of landlord and tenant issues, but the following are some of the principal points to note.

- When does the lease end contractually?

Ensure vacant possession and compliance with all lease terms is accomplished prior to the lease expiration date.

- What are the lease terms? Do you have the option early on in the lease to give notice (break clause) and, if so, what is the length of notice required? If not, is the lease assignable and is there a market?

If there is no break clause, you may be able to assign or sublet to a third party (whether or not another NHS organisation) subject to the landlord's consent. That consent should not be unreasonably withheld or delayed.

- What are the repairing obligations and have they been complied with?

Ensure that all work on dilapidations is accomplished prior to the lease expiration date, or that a cash payment in lieu of dilapidations has been agreed.

- Are there any existing breaches of lease terms?

Often, alterations have been made without formal consent. Tenant improvements have to be removed and/or the land and property put into the same condition as existed when the lease commenced.

- Are there any subtenants or licensees in possession?

Possession must be given up to the landlord. Your subtenants or licensees may require notice from you to give up possession. It is better to secure possession earlier than required by the lease to ensure you do not have difficulty in getting possession.

- What are the restrictions on users?

The marketability of the premises may be reduced because of a narrow user clause. The landlord may permit alternative uses, but consent may be withheld, although possibly not unreasonably so.

- What is the position on planning?

Regardless of the user clause, it may be difficult to obtain planning permission for a non-health use of part of a site when the rest of the site has planning permission for hospital use.

- Is a rent review imminent or outstanding?

Uncertainty in this respect can put off a prospective assignee. Seek to resolve the review issue at the earliest possible time.

- Is it possible to protect against future default by the assignee?

If not, make sure that the assignee and any persons standing as guarantors for the assignee will be good for rent payments and other tenants' liabilities under the lease. Seek to take direct covenants from the assignee's guarantor for your own benefit. Reserve the right to consent to any further assignment (again, to protect against the possibility of default by that tenant, giving rise to a claim from the landlord).

- Is the passing rent above current market levels?

If so, a reverse premium may have to be paid to the assignee. Watch out for VAT implications. Sub-letting may prove difficult. Take advice early.

Note:

If you are unsure of the meaning, or implication, of any of the terms of the lease, you must secure advice from the relevant professional adviser (for example valuer, lawyer etc).

Note:

There are circumstances where dilapidations do not have to be carried out, or where a cash payment in lieu of dilapidations can be made. Take professional advice when negotiating a schedule of dilapidations.

- Is the passing rent below current market levels?

If so, a premium might be offered by an assignee. Check with your professional valuer. A surrender to the landlord might alleviate any possible future contingent liability.

Financial credentials

8.83 The creditworthiness of bidders should be examined in sales by private treaty, formal tender or limited formal tender and, where feasible, in sales of land and property by auction before any bid is accepted.

8.84 Where agents are used to establish the creditworthiness of bidders, ensure that any recommendations are obtained in writing, including the basis on which the recommendations are based. This is important, in respect of both the recommended bid and any higher bids that are rejected because of doubts about the bidders' financial credentials.

Note:

As bids accepted at auction result in a binding contract and the purchaser has to pay a 10% deposit immediately, it is not normal to check on bidders' creditworthiness in such cases except for very large disposals. Even in these cases it will only be feasible to carry out such checks where the identity of bidders is known in advance.

Disposals that reserve a participation in development profit

8.85 In commercial developments the profitability of a scheme will depend on occupier demand, market rents and investment rates on conclusion of the development. It is not your role to speculate on the value of your land and property, therefore, a minimum price equivalent, at worst, to market value on an unconditional sale basis must be secured. The removal of this downside risk may decrease the potential profit in the long term, but a minimum price is necessary for public accountability.

8.86 Disposal terms should normally be kept as simple as possible. Sale costs will be reduced, and there will be less risk of putting off purchasers by complex contract terms. There will, however, be occasions where public accountability requires a disposal whereby you reserve a share of subsequently realised development value.

Contracts conditional on planning permission

8.87 Best value will usually be obtained if your land and property is sold with planning permission that fully reflects its development potential. However, it is necessary to weigh up the improved sale proceeds against monies risked in the planning process (a complex public enquiry can cost £100,000 plus).

8.88 Where planning issues are complex, or an outcome too uncertain for you to risk your own money in pursuing planning permission, you can consider a sale by way of a conditional contract, or granting an option.

Note:

A developer who takes the risk, under an option or conditional contract, to buy your land and property without planning permission will usually only pay 80-90% of the OMV of your land and property; the percentage will depend on the perceived element of risk. This OMV will not reflect any special purchaser considerations that may have been drawn out in competitive tender or auction upon getting planning permission.

8.89 The prospective purchaser whose proposal is recommended as achieving the best return, and as having the most likely chance of success, will be selected. Points to consider in this type of negotiation will include:

- whether a deposit should be paid and whether or not it should be returnable;
- how specific the contractual conditions should be as to the nature of the development sought (for example, should housing numbers be specified?; should a detailed planning application for a foodstore be required?);
- how long the developer should be given to obtain permission;
- whether you should retain some control in the planning process to ensure that reckless behaviour by the purchaser does not irredeemably prejudice your land and property value;

Note:

Returnable deposits should not provide for interest rates above 6%.

In inflationary times or in the case of a contract with a life of more than, say, two years, the price should be increased to reflect intervening changes in the market value.

- who judges the acceptability of planning conditions or planning obligations;
- whether the purchaser should be obliged to appeal if the planning application is refused or no decision made within the statutory time limit;
- whether the contract should specify a time frame for action;
- whether the responsibility for repair, maintenance and/or insurance should pass to the purchaser under a conditional contract.

Phased-sale contracts

8.90 On sites where the development period is likely to extend beyond two years, you can suffer in one of two ways: the price may be discounted by the purchaser to reflect the holding and interest costs; and the price may not reflect increases in value, which may arise through market changes during the development period. Consideration should be given to the price reflecting interest payments on the outstanding balance. Where, however, a phased sale shows best value, consider the following options:

- a sale in separate lots over a period;
- stage payments with later payments linked to an appropriate index where, for example, the up-front infrastructure costs are too great;
- stage payments as the development progresses by way of percentages of sales, for example as house prices are realised. This will provide a share in rising house prices and any value arising from an improved planning permission.

8.91 Before embarking on phased sale contracts it should be determined that the Net Present Value (NPV) of the deal represents better value than an outright sale. The following should be addressed:

- a minimum sale price must be assured;
- retain title to the land and property not paid for in full by granting a building licence to the developer prior to completion. Title will be transferred to the developer, or purchaser of individual houses if applicable, upon payment in full for each plot or phase. Consider taking a suitable form of mortgage, or legal charge if a more satisfactory approach cannot be identified;
- the creditworthiness of the purchaser should be ascertained. Where the viability of later stages, and thus the value of any retained security, is dependent on compliance with terms of a planning agreement or installation of expensive infrastructure, it is vital that the purchaser has the ability to meet these obligations;
- seek a parent company guarantee or a suitably backed performance bond. This may be expensive but should be explored;
- holding costs and capital charges.

Overage (clawback) provisions

8.92 Overage and clawback are similar terms, meaning reserving the right to further payments if certain circumstances occur.

8.93 Wherever your professional advisers are not satisfied that your land and property is being sold with the best planning permission that might be obtainable in the future, consider negotiating a clawback clause. This will be designed to reserve for you all, or a substantial share, of any increase in your

Note:

While on paper the removal of such a liability (particularly in the case of a listed building) may seem very attractive, the benefits can prove illusory because of monitoring and enforcement difficulties.

Note:

In considering options that involve stage payments, account should be taken of all holding costs including loss of interest on capital not received, capital charges and the cost of administering and monitoring your interest in the scheme. This amount should be deducted from the NPV of the sum of the stage payments over time, in order to compare this with an outright sale.

land and property value obtained by virtue of the purchaser improving the planning permission after the sale.

8.94 Alternatively an overage, or profit-sharing, formula based on the actual outcome of the open book basis may be applied. Receipts from all disposals will then be divided between the parties, for example:

- the developer pays actual development costs;
- the developer receives a development profit based on a percentage of costs incurred (say 10-15%);
- the residual profit (overage) is shared with you on an agreed percentage.

8.95 Special care has to be taken whenever the sale price is to be determined by a formula. If poorly drafted, the purchaser can significantly depress the final receipt. Disposals should always secure a minimum (base) price plus overage that is clearly stated, readily quantifiable, secured and legally binding. Exceptional cost reductions should normally be avoided (risks transferred to the purchaser rather than retained by you).

8.96 Be realistic on overage. The legal documentation is complex, and monitoring of development costs difficult. If you are entitled to too high a share of overage there will be no incentive for the developer to control development costs and every incentive to pick holes in the legal documentation.

8.97 Alternatively, contract to receive a percentage of the amount by which the value of the completed development exceeds an agreed amount.

Joint venture with neighbour

8.98 Where a greater value from your land and property can be realised by combining it with land and property of third-party owners, for example for supermarket developments, consider a joint disposal programme. In these circumstances, consideration should be given to the following:

- a. where possible, have a legally binding arrangement, to avoid one party withdrawing unilaterally;
- b. cross-options to purchase;
- c. where the third party's land and property is relatively minor, consider buying it outright or purchasing it on the basis that the vendor receives an agreed percentage of total proceeds;
- d. the allocation of proceeds should reflect any ransom value that you enjoyed over the third party's land and property.

Forward sale of land and property

8.99 A purchaser may provide a replacement health facility in lieu of cash, as consideration for your surplus land and property. Such schemes are complicated by the need to tie in planning on both the replacement facility and the development of your surplus land and property. The need to obtain best value in terms of land and property value and build price is not easily satisfied given the relatively limited number of purchasers in the market who are both developers and contractors.

Note:

These provisions are legally complex if they are to be enforceable and they can depress the original sale price. Beware of losing money at the outset for a potentially illusory overage payment. The overage clause may not generate sufficient additional receipts to pay for the cost of negotiations, documenting and monitoring them. It is advisable to be able to demonstrate that you have sought an overage and why it has been abandoned if that is the eventual outcome.

Note:

Considerable effort should be made to ensure that best value is obtained. An "exchange" of assets seldom provides best value against an outright sale of your land and property and a new build.

8.100 Where surplus land and property is being sold and the infrastructure (for example roads, drains, landscaping, open space) for that land and property will also be required to serve retained land and property, the purchaser must be obliged to carry out those works in an agreed timescale. This obligation should normally be secured by a bond from the purchaser.

8.101 The reasons for pursuing forward sale of land and property and any conditions that may apply should be documented by your disposal team.

Note:

Always reserve rights of entry onto the sold land and property to carry out the works, if required, as a last resort.

Forward sale of land and property requires approval by the Department of Health.

Decommissioning

8.102 Where your site ceases to be operational, consideration should be given to decommissioning. The extent of the works will depend on future plans for your site (for example re-use for health purposes, sale, demolition) and also on legal requirements.

8.103 Practical considerations include:

- prevention of damage by the elements;
- avoidance of damage by dry rot, woodworm etc;
- prevention of incursion, access and damage by vandals;
- storage of keys and records concerning the management of the site, and mechanical and electrical installations within it;
- revaluation for rating purposes;
- reduction of running costs by adapting plant or renegotiating service supply agreements;
- the provision of an appropriate level of heating to prevent physical deterioration;
- retaining some occupation and use of the site whilst waiting for completion of the disposal process;
- the maintenance of essential security and fire detection systems;
- the isolation of all but essential electrical circuits.

8.104 Legal considerations include:

- avoidance of injury to third parties coming onto the site, legally or otherwise;
- compliance with health and safety legislation, which remains applicable even though the site is vacant;
- compliance with the Defective Premises Act 1972;
- compliance with any requirements for conservation of buildings under the Planning Acts, particularly if the property is listed;
- compliance with the Petroleum (Regulation) Acts;
- terms of supply of gas, water and electricity;
- rights of third parties in respect of access and services crossing the site, including fire escape routes;
- giving due warning to third parties of the presence of asbestos.


Asbestos

8.105 When disposing of a site, you should ascertain whether asbestos (other than asbestos cement products, such as roofing and guttering) is present and, if it is, whether it constitutes a significant potential health hazard. Accessible asbestos insulation should already have been identified.

8.106 If asbestos is known or suspected to be present, potential purchasers must be warned by a specific reference to that effect in the sale particulars. They should be given such relevant information as is known, and their attention should be drawn to their obligations under the health and safety legislation for dealing safely with asbestos, especially if demolition is envisaged. Prominent

Note:

A full, detailed decommissioning checklist is available from Capitec offices.

 *For further information see Safety Information Bulletin SIB(84)16.*

warning notices should be fixed immediately inside the entrance(s) to buildings when they are vacated.

8.107 Should a potential purchaser enquire about the presence of asbestos in a building where no warning has been given in the particulars of sale, a reply in the following terms should be given:

“The building has been inspected for health hazards due to asbestos. The vendor is not aware of any such hazard but no assurance is given that such hazard may not exist or may not arise in future.”

Contamination issues

8.108 Whenever you sell surplus land, with or without buildings, it is essential that you address the issue of contamination. If it is decided that you will not clear up your land before sale (which is an option to be considered), five key questions need to be asked:

- a. What is contaminated land?
- b. How is it identified?
- c. Who is responsible for cleaning it up?
- d. What standard of remediation is required?
- e. What are the procedures for preventing future liability?

8.109 Where your land is known to be contaminated, you should alert all purchasers to this fact. If there is a possibility that land may be contaminated, you should invite prospective purchasers to carry out their own tests. Appropriate reference to any contamination should be included in the special conditions to the sale contract.

8.110 If you sell land which, at a later date, is found to be contaminated, you could be liable for covering the costs of clearing the contamination if you failed to provide the purchasers with sufficient information and/or did not secure suitable indemnities from them.

8.111 It is essential that you maintain clear records giving details of the contamination audit, how the contamination has been dealt with, what information has been given to prospective purchasers, and what indemnities have been sought.

Note:

Part IIA of the Environmental Protection Act came into force on 1 April 2000.

Note:

A simple standard clause inserted in each sale contract may not protect you from future liability.



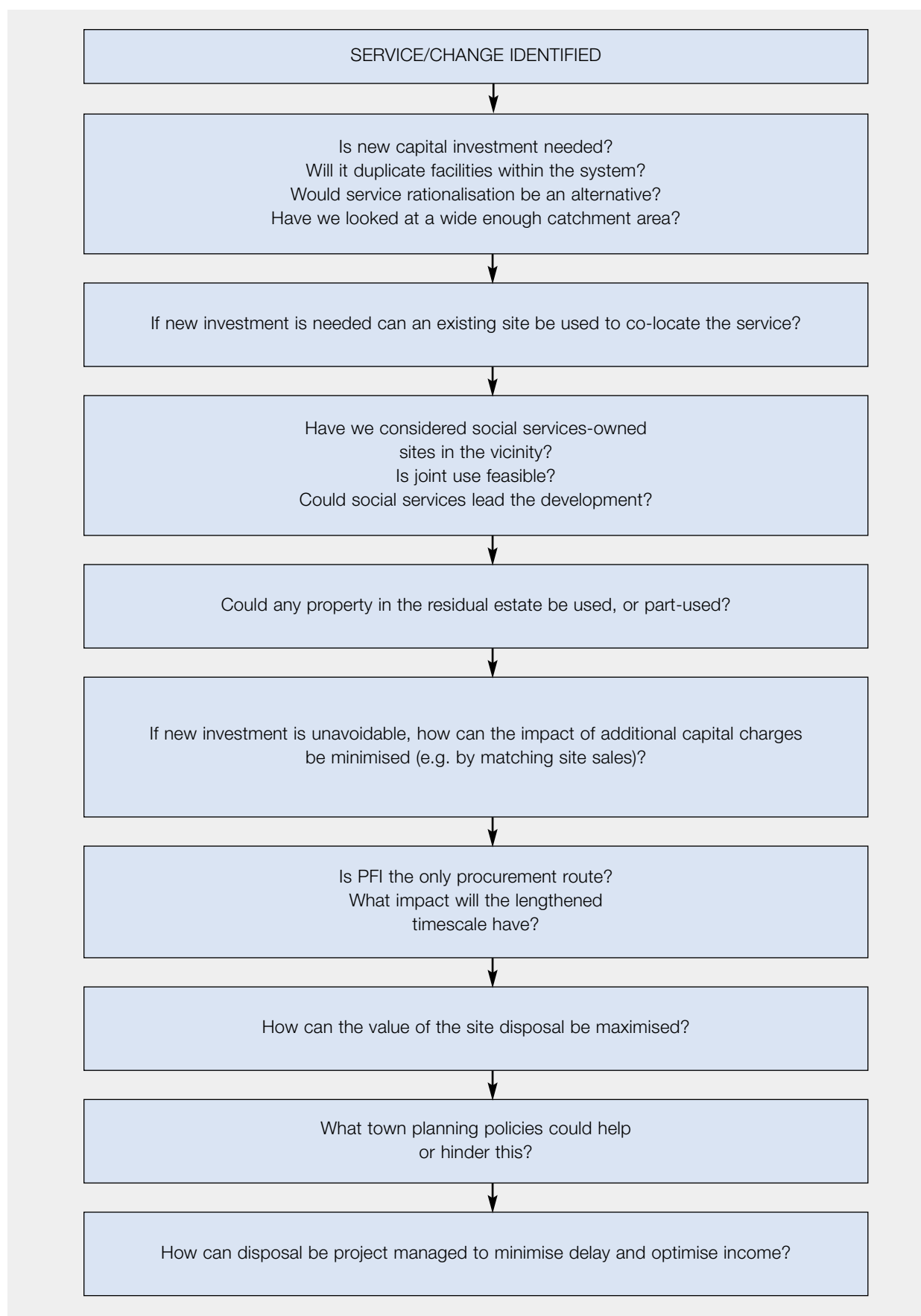
Appendices

Appendix I:

A Health Authority-wide estates review

- 1.** If such an exercise is undertaken it is important to be clear about its objectives and its limitations. The output is likely to be a framework document that sets out the parameters within which capital investment and estate rationalisation decisions can be made by the relevant organisations. These decisions should follow the priorities for service change set out in the health improvement programme of the Health Authority. Each constituent trust would then be expected to reflect the framework decisions within its own estate strategy.
- 2.** In order to create a useful framework it will be essential to be clear about the strategic direction and service priorities on a health system-wide basis. This requires clear and agreed directions of travel from the Health Authority's constituent PCGs; from this the future pattern of the estate can be determined, partnership opportunities can be explored and investment and disinvestment priorities can be established.
- 3.** The content of the framework document might include the following:

 - purpose and aims of a system-wide estates framework;
 - the strategic direction of the local health system in summary form;
 - contextual issues such as regional capital investment priorities, town planning issues, national policy issues;
 - principles and priorities governing capital management decisions across the patch, and on a care group basis;
 - using the framework to assist in the forecasting and management of risk;
 - implementation, including developing a system-wide information base, forming an estates steering group and establishing a decision process.
- 4.** A flowchart of the issues that the framework should highlight is set out on the following page.



Appendix II:

Data collection forms

A second version of this data collection form is included on [page 112](#) to illustrate how the data fields are intended to look when completed.

Six-facet survey: data collection form

BLOCK:

FLOOR:

Sq m:

1 Physical condition				
	Building	Mechanical	Electrical	Total
Score each out of 10				
Category (A 25+; B 20–24; C 14–19; D under 14)				
Cost implications				
2 Functional suitability				
	Internal space relationships	Support facilities	Location	Total
	How efficient is the relationship of the internal spaces to each other?	Are there adequate services supporting the function?	Is it well sited for access points and key departments?	
Score each out of 10				
Category (A 25+; B 20–24; C 14–19; D under 14)				
Cost implications				
3 Space utilisation				
	Current use	Use over time		Total
	How intensively is the space being used now?	Does use vary over the working week?		
		Rating for a busy day	Rating for a quiet day	Average rating
Category (Empty – E; under-used – U; fully used – F; overcrowded – O)				
Cost implications				

4 Quality					
	Amenity	Comfort engineering	Design	Total	
	Privacy, comfort, working conditions etc.	Heating, cooling, lighting, noise, odour etc.	Colour scheme, signposting, art, plants, landscaping, view etc.		
Score each out of 10					
Category (A 25+, B 20–24, C 14–19, D under 14)					
Cost implications					
5 Statutory and non-statutory requirements					
	Fire	Health and safety		Total	
Score each out of 10					
Category (A 18+, B 13–17, C 8–12, D under 8)					
Cost implications					
6 Environmental management					
	Energy performance	Water consumption	Waste management	Transport management	Total
Category (ABCDX)					
Cost implications					

BLOCK NOTES SHEET:

FLOOR:

- 1** e.g. – problems in specific rooms;
– generic problems that affect the whole block;
– explanations for C or D assessments in more detail.

2

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10

This pro-forma has been filled in with dummy data to illustrate how the data fields are intended to look when completed.

Six-facet survey: data collection form – *EXAMPLE PRO-FORMA*

BLOCK:

FLOOR:

Sq m:

1 Physical condition					
	Building	Mechanical	Electrical	Total	
Score each out of 10	8	6	5	19	
Category (A 25+; B 20–24; C 14–19; D under 14)					C
Cost implications	–	50,000	120,000	170,000	

2 Functional suitability					
	Internal space relationships	Support facilities	Location	Total	
	How efficient is the relationship of the internal spaces to each other?	Are there adequate services supporting the function?	Is it well sited for access points and key departments?		
Score each out of 10	8	6	7	21	
Category (A 25+; B 20–24; C 14–19; D under 14)					B
Cost implications					–

3 Space utilisation					
	Current use	Use over time			Total
	How intensively is the space being used now?	Does use vary over the working week?			
		Rating for a busy day	Rating for a quiet day	Average rating	
Category	F	O	F	F	F
(Empty – E; under-used – U; fully used – F; overcrowded – O)					
Cost implications					–

4 Quality					
	Amenity	Comfort engineering	Design		Total
	Privacy, comfort, working conditions etc.	Heating, cooling, lighting, noise, odour etc.	Colour scheme, signposting, art, plants, landscaping, view etc.		
Score each out of 10	7	6	4		17
Category (A 25+, B 20–24, C 14–19, D under 14)					C
Cost implications	–	40,000	40,000		80,000
5 Statutory and non-statutory requirements					
	Fire		Health and safety		Total
Score each out of 10	9		8		17
Category (A 18+, B 13–17, C 8–12, D under 8)					C
Cost implications	–		–		–
6 Environmental management					
	Energy performance	Water consumption	Waste management	Transport management	Total
Category (ABCDX)	B	B	B	–	B
Cost implications	–	–	–	–	–

Appendix III:

Detailed guidance on six facets of land and property appraisal

1. You should use national guidance as a basis for ranking the six facets of land and property appraisal. There should be explicit agreement on any operational constraints that may affect the standards to be applied.
2. As a preliminary to the exercise, plans of the appropriate scale should be obtained for all your properties.
3. The blocks into which your properties have been subdivided for surveying purposes should be clear. As far as possible ensure blocks encompass whole functional groups or departments.
4. You should begin by surveying on a block, departmental or whole-building basis, and work up to a whole estate assessment. It is usually easier to make general judgements once some understanding has been gained of the conditions in specific situations.
5. Data should be assembled in such a way that it can be aggregated to give whole-building, whole-site and, if possible, whole-care-group assessment.
6. Clear and concise presentation of the end result is vital if the material is to be of maximum use for both strategic and operational estate management purposes.
7. It is essential to the validity of the appraisals that double counting is avoided. The following approach has proved useful in practice:
 - if the physical condition and/or the functional suitability results in a breach of statutory or safety requirements, the defect should be recorded against safety and statutory requirements;
 - if the physical condition is reasonable but the functional performance is poor, the cost should be attributed to functional suitability;
 - if poor condition leads to low functional performance the cost should be attributed to physical condition.
8. Consistency of appraisal across a wide range of properties is essential if useful cross-comparisons are to be made.

An approach to space utilisation review

9. An approach that has proved useful for reviews at block and departmental level makes use of “on the spot” observations of under-used areas. The results of these observations should be brought together on a plan to identify the full extent of under-utilisation, and the potential savings that can be made in property overheads.
10. Often people will react to the plan by trying to justify or defend the present situation – indicating how impossible it would be to release such space because:
 - a. it is made up of a collection of zones that are small in area, or dispersed over a wide area, and therefore not worth bothering with; or
 - b. the space is locked into unusable positions by virtue of its relationship to the structure of the building, external or load-bearing walls, stairwells etc.

11. In most situations such spaces can only be “unlocked” if functions are radically reorganised. Often a more determined and radical approach will give greater rewards. Feasibility studies, followed by option appraisals, should be carried out to indicate the most promising and practical possibilities, taking into account the benefits and costs involved.

12. This technique may make it possible to relocate a function or service into the released space. Even where some minor capital investment is needed, this approach can generate actual revenue savings, or avoid cost increases.

13. Revenue savings can be made from reductions in property overheads, which consist of:

- engineering maintenance;
- building maintenance;
- energy and utility;
- grounds and gardens;
- rent and rates;
- capital charges;
- domestic cleaning;
- other support services (security, portering etc).

14. In addition there may be capital income realised from the redundant building site, or additional revenue obtained from letting spare accommodation to other users.

Ranking definitions

15. To ensure consistency a national scheme of ranking should be adopted.

“A” ranking:

This indicates that the surveyed portion is either in full compliance with, or exceeds, the appropriate nationally published guidance and has a “full life” expectation. No expenditure, except for routine maintenance, is required.

“B” ranking:

This means that the surveyed portion is reasonable and adequate even though it does not have a “full life” expectation or does not fully comply with the national guidance. A portion with this ranking is, in most cases, perfectly acceptable for the provision of healthcare. No capital expenditure is required to improve the building. Repair and normal maintenance are adequate to sustain the portion at “B”.

“C” ranking:

This is assigned to a portion that is below the standard “B” and requires capital expenditure to upgrade it to grade “B”. This expenditure should not exceed 50% of the replacement cost and should provide the portion with an expected remaining life comparable with that of a new provision.

“D” ranking:

This is assigned to a portion that is below “C” grade. The capital expenditure required to achieve a grade “B” will exceed 50% of the replacement cost but should be less than the total replacement cost and should provide the portion with an expected remaining life comparable with that of a new provision.

“X” ranking:

This ranking, appended to “C” or “D”, indicates that attached to:

- “C” the portion could not be upgraded so as to provide a remaining life comparable with a new provision;
- “D” the capital expenditure required to raise the standard to “B” exceeds the replacement cost or the portion could not be upgraded so as to provide a remaining life comparable with a new provision.

Note:

The replacement cost should be based on the Departmental Cost Allowance Guidelines issued by NHS Estates for the provision of the same number of functional units. An average allowance for on-costs or abnormals should be added and sums for equipment costs should be included.

The surveyed portion will be a block or block portion.

Appendix IV:

Detailed assessment of the quality of the healthcare estate

Figure 11

QUALITY					
AMENITY (function)		COMFORT ENGINEERING		DESIGN (appearance)	
Criterion	Score (1–10)	Criterion	Score (1–10)	Criterion	Score (1–10)
Well-functioning main entrance/reception area/departments		Artificial lighting enhances overall design		Colour is creatively and therapeutically used for definition and variety	
Privacy and dignity issues are addressed		Comfort conditions are achieved in heating		Landscaping is attractive	
Confidential conversations can be held satisfactorily		Comfort conditions are achieved in ventilation		Planting is optimised for all seasons	
Toilet facilities are well provided		Acoustic privacy is achieved		Natural daylight is used to optimum effect	
Appropriate storage provision has been made		Noise levels are acceptable		Appropriate finishes are used for floor, ceiling and walls	
Disabled users are catered for		Persistent odours are absent		Furniture co-ordinates well with overall design	
Appropriate facilities are provided for children				Art and craft work is integrated into overall design	
Seating and waiting areas are sufficient				Interior is reassuring and non-clinical where appropriate	
Appropriate safety and security measures are in place				Wherever possible patients and staff have pleasing views from both inside and outside the building	
Wayfinding is visible, legible and consistent				First impressions of entrance/reception areas are welcoming	
TOTAL (max. 100)		TOTAL (max. 60)		TOTAL (max. 100)	

Each element should be scored and the aggregate score rated as follows:

- A 220–260
- B 170–219
- C 120–169
- D Under 120

For background information reference should be made to the Design Quality Portfolio CD-ROM.

Appendix V:

Estate terriers

1. An estate terrier must contain details of all site or property addresses, indexed in alphabetical order. It should be constantly updated. The register should highlight all details and complications that exist on each site, and ensure that they are taken into account in the event of any development or disposals occurring. Purchases of property over time combine to make a larger site, but with different roots of title, each presents different issues or problems. A master plan will show the entire site. Leasehold or freehold ownership should be clearly identified.
2. A typical estate terrier will describe the following particulars about the property:
 - a. OS reference/postcode;
 - b. site reference number – a unique number issued by the Department of Health that identifies the site. Further information is available from the Organisation Codes Service;
 - c. type of occupation – freehold (owned)/ leasehold (leased)/licensed (used under licence);
 - d. summary of rights – details about rights enjoyed by the owner/tenant or by other parties on or adjacent to the site, for example rights of way;
 - e. summary of restrictions – details of any restrictions affecting the property, for example covenants limiting the use;
 - f. planning details – information about planning permissions obtained, planning policy applicable to the site, and information about limitations to further development, for example highway and drainage difficulties;
 - g. summary of wayleaves – details about wayleaves granted to other authorities for passage of services through the site, as well as beneficial wayleaves granted for the passage of services from the site across adjoining land;
 - h. list of transactions – details of dates and addresses of properties acquired and sold;
 - j. statutory authorities – names and addresses of all the statutory authorities associated with the site;
 - k. details of any VAT election;
 - m. rating assessments – descriptions in the valuation list, and separate residential or commercial property assessments;
 - n. tree preservation orders;
 - p. if the property is located in a conservation area;
 - q. full details of any heritage designations, that is, listed buildings, scheduled monuments, conservation areas, landscapes included in English Heritage's Register of Parks and Gardens, SSSIs, war memorials etc.

Appendix VI:

Income generation powers

- 1.** Section 7 of the Health & Medicines Act 1988 and s.15 of the National Health Service & Community Care Act 1990 give powers to HAs and NHS trusts to acquire land and property by agreement and to manage and deal with land and property in order to make money available for improving the health service. However, the income generation activities must not interfere with the duties of a trust nor, to any extent, with the performance of its NHS work (s.5(9) of the 1990 Act). The 1999 Health Act increased the scope for income generation.
- 2.** Land and property may be acquired to enhance disposal proceeds of surplus land and property (for example by improved road access, or making a site large enough for a specific use).
- 3.** The power to sell long leaseholds rather than freeholds may be advantageous where:
 - a. green belt land is sold for institutional use at a much lower price than would have been achieved had redevelopment been available. A leasehold can be an effective overage mechanism;
 - b. granting a development lease to a commercial developer allows a flow of income that reflects the realised development value.
- 4.** Specialist legal surveying and marketing advice must be obtained in all cases.
- 5.** Where an individual scheme results in an annual turnover of £25,000 or more a Memorandum Trading Account (MTA) must be maintained. MTAs are also recommended for smaller schemes.

Appendix VII:

Public–Private Partnerships/ Private Finance Initiatives

1. Schemes involving private finance must comply with current guidelines on the use of private sector finance.
2. Any option appraisal should include one option involving private finance.
3. There are essentially two broad criteria against which all schemes are assessed: best value and affordability. The transfer of risk principle applies specifically to privately financed projects, and will be assessed on the effectiveness of the transfer of risk to the private sector.
4. Novel and contentious schemes are encouraged, but require approval from the Department of Health.
5. The Capital Investment Manual is the definitive guidance on PFI/PPP projects.

Appendix VIII:

Management of NHS staff accommodation

General management policy

1. Residential property should be properly managed. The NHS Plan recognises the importance of the provision of suitable staff accommodation in the recruitment and retention of staff, and several initiatives are in hand, including an Accommodation Bureau for central London (may be expanded), and negotiations to provide additional housing units. This advice is likely to be amended during 2001.
2. HSG(92)1 said NHS trusts should:
 - identify surplus residential accommodation and dispose of it without delay;
 - set and meet targets for voids of 12% for bedsit/hostel accommodation, 10% for shared accommodation (flats or houses), and 4% for self-contained accommodation (houses or flats), as well as the trust's own requirements;
 - monitor the performance of their residential estate against these targets;
 - set the full costs of providing staff accommodation against annual income and expenditure targets, utilising a cross-charging system whenever appropriate;
 - take full advantage of opportunities for co-operating with housing associations and other developers in providing and managing both new and existing residential accommodation, and transferring risk to the private sector;
3. HSG(92)1 also said that HAs should satisfy themselves that each NHS trust with which they place major contracts has:
 - a clear strategic plan for its residential property;
 - a policy about who should be accommodated;
 - a plan for supply to meet its estimate of demand;
 - a long-term financial plan; and
 - a plan for keeping or bringing its properties up to a reasonable state of repair and decoration.
4. Advice and guidance on land and property transactions, including management issues, is set out elsewhere within this document. NHS trusts and PCTs are owners of their own land and property. Decisions about land and property management should be financially sound, and satisfy public accountability.

A strategic plan for residential accommodation

5. A strategic plan for residential accommodation should:
 - reflect the trust's recruitment, employment and retention policy;
 - provide good quality staff accommodation in a quality environment, which can help attract high-calibre staff;

- consider whether the NHS has to own or manage staff accommodation.
6. Does the trust need to provide staff accommodation at all? If so, is it by direct or indirect provision that will:
- maximise the use of the property;
 - provide the best value for money;
 - secure adequate maintenance of the residential portfolio; and
 - explore PFI opportunities.
7. Staff accommodation vacancy rates are bound to reflect employment peaks and troughs, and flexibility is essential. But leaving land and property vacant, even when awaiting a decision about its future, is an inefficient use of assets. When there are many people homeless, keeping residential accommodation vacant, even temporarily, without good reason is unacceptable, particularly if the accommodation is off-site, or access and security are not a problem.

Financial costs

8. The financial cost of having land and property vacant is not simply the loss of rental income. Empty property depreciates faster. Protecting the land and property against vandals or squatters, and repairing vandalism, can be costly. Land and property that has been vacant for some time is also likely to achieve a lower sale price, or rental.
9. Wherever possible, arrange short-term lettings of vacant land and property, be it houses, flats or hostel rooms. Residential accommodation can be let for short periods on an assured shorthold tenancy without giving any security of tenure. Changes to the Housing Act, which came into effect on 28 February 1997, have made residential lettings simpler than before. However, take care to get legal advice and comply with all landlord and tenant legislation.
10. Staff accommodation can be put to other uses for short, or longer, periods, depending on the trust's overall estate strategy.

Management arrangements

11. There are a number of options for in-house or external management of staff residential accommodation. For example, housing associations not only have the management expertise, but also a wider market from which to draw to maximise occupancy rates, reducing overall costs to the trust.
12. Using a housing association, or a private sector letting management facility, may help to avoid financial conflicts. The income from, and maintenance, security and holding expenditure on, staff accommodation can be separated from the general financial management of the trust.
13. NHS trusts using in-house management should keep proper records of all occupancy rates, costs and income. Basic information for each property should be held by a named person responsible for its sale or rent. The basic information includes its location, size, tenure, condition and occupancy, and its operating and holding costs. If it is vacant, this information should also include the date it became vacant, whether or not it is surplus, if it is available for either sale or rent, and the anticipated sale price or rental income.
14. To get the best from housing associations or private landlords, the trust may need to co-ordinate requirements, to meet the individual housing needs of its staff. Medical staff recruited from overseas are likely to need help with British landlord/tenant terms and conditions.

Rental levels

15. Trusts have discretion to set their own rent levels. Rentals should be based on comparisons with private and social rents available in the market locally. The NHS rent rebate scheme ceased in April 1991, and housing benefit may be available to NHS staff. If subsidised accommodation is part of the trust's employment, recruitment and retention policy, the cost should be clearly identified, and tested regularly for value for money.

Sale or rent of surplus land and property:

16. Land and property should be held if it is required for operational purposes. Surplus land and property should be disposed of as quickly as possible for the best price. Where it is not possible to dispose of land and property, all possible steps should be taken to avoid property standing empty.

17. Land and property that is for sale can be let temporarily if the correct form of tenancy agreement is made, if the tenant is able and willing to show the land and property, and if maintenance is adequate. The arrangement needs to allow for a quick sale should one be offered. A lower rental rate in return for maintaining and showing land and property for sale, and being prepared to move on short notice, may be economic and useful.

18. The NHS is required to obtain the best price possible in disposing of surplus land and property. In a depressed market a reduced asking price may become necessary. Land and property remaining unsold for some time is likely to lose value. The final price may be below one previously refused. Vendors should be realistic and take advice from their professionals about market conditions.

Sale by auction

19. If surplus land and property remains unsold after six months, consider selling by auction, or short fixed-term leasing for social housing until there is a better opportunity for disposal.

Simplified disposal process

20. Where the surplus residential property comprises of blocks of ordinary houses and flats (rather than individual ones), a simplified disposal process may be used (described at [paragraph 8.76](#)). This is intended to speed up a disposal process to save time and cost, but needs documenting to show clearly that it offers the best value for money. The process is discretionary, but where it appears that professional advice offers a firm valuation (assuming no redevelopment potential), and a Local Authority or a housing association is interested, a sale can be negotiated without formally offering the property on the open market.

21. This facilitates quick sales to housing associations and/or Local Authorities. Leasing properties for social housing, including the grant of an option to purchase to the housing association tenant, can also secure immediate re-occupation and cost-free maintenance, with eventual disposal of homes kept in good condition at the expense of the lessee.

Other considerations

22. While a sale at best price should be the first objective, it is worth considering a lower price where the purchaser offers, as part of the deal, services or supplies for which the vendor would otherwise have to pay. This might be in management, repairs or other services. The contribution in kind should be accounted for, as with all concessionary leases, as a capital value to

pre-purchase those services. A full financial appraisal is required to ensure it offers good value for money.

23. Ensure that a sale does not harm the trust's overall estate. Try at least to cover capital charges out of income from leasing on-site property. Think about possible future problems of access, security or inappropriate division of the trust's estate when selling property. Avoid sales that would restrict trust's site development or prevent eventual redevelopment for alternative use.

24. Management and maintenance of staff housing is a financial burden for the NHS. It ties up capital that could be used for improving healthcare facilities. Sometimes it may be justified; but consider the sale of staff residential accommodation to the private sector, particularly housing associations. Transferring management responsibility to a housing association releases capital, reduces maintenance liability, and utilises private sector expertise in the management and provision of readily available, cost-effective, high-quality residential accommodation to meet the trust's staff requirements.

25. If you require any further information on this matter, or property management issues generally, please contact NHS Estates.

Appendix IX:

Management and disposal of burial grounds and war memorials

Burial grounds

- 1.** Special considerations apply to the management and development of consecrated land and burial grounds. Sections 238–239 of the Town and Country Planning Act 1990 apply. The local planning authority, therefore, has full control over the alternative uses to which the land can be put.
- 2.** Such sites need to be dealt with in a sensitive way to take account of local circumstances. Sites may be, for example, fenced off to create “gardens of rest”, especially when there are known relatives of the deceased who might visit the grave from time to time.
- 3.** It is inappropriate for the NHS to retain such property if it is no longer operational, and it should be included in any sale of the principal site, or sold to the local authority or local interest groups who would then maintain it. The sale price would be open market value, and can be determined by the DV.

War memorials

- 4.** War memorials may feature within the estates of many NHS organisations, and may range from plaques to small buildings. Many are publicly recognised and in a good state of repair, but some have been neglected or are within sites that are earmarked for disposal.
- 5.** The Home Office has drafted a code of practice for custodians of war memorials. This is likely to be issued during 2001. In the meantime it is important to recognise the need for sensitivity when war memorials feature on your estate.
- 6.** Any physical object erected or installed to commemorate those killed as a result of conflict or military service should be regarded as a war memorial. You should undertake a survey of the location, description and condition of memorials within your estate (this may be done by interested local or national voluntary groups – the Friends of War Memorials (tel: 020 7259 0403) may assist you to find local contacts).
- 7.** You should not normally clean or restore memorials without the assistance of appropriate conservators or other suitably qualified persons (again contacts may be provided by the Friends of War Memorials).
- 8.** Where memorials form part of a listed building or curtilage, they are afforded statutory protection. Otherwise, if a disposal of a site that includes a war memorial is contemplated, careful consideration should be given to its future. It may be possible that a purchaser will maintain and preserve the memorial. Otherwise, the memorial could be relocated elsewhere – particularly where there are local connections – either on NHS-owned property, or on property owned by Local Authorities or other interested local groups.
- 9.** Where it is proposed to relocate or dispose of war memorials, you should give at least six weeks written notice to the Friends of War Memorials (4 Lower Belgrave Street London SW1W 0LA) who may be able to assist in finding new locations. Once a memorial has been relocated or disposed of, you should inform the National Inventory of War Memorials at the Imperial War museum, All Saints Annex, Austral Street, London SE1 4SL. Tel: 020 7416 5281).
- 10.** Full guidance will be issued once it has been made available.

Appendix X:

Acquisition of office accommodation

1. Where you need to acquire office accommodation, you should prepare a business case for that need. This should take account of the overall cost of each option. All costs associated with the disposal of any accommodation becoming surplus as a result of acquiring alternative accommodation should be taken into account. Consideration should be given as to whether surplus land and property should be retained rather than disposed of. This will depend on rent levels, outlays for dilapidations and the degree of capital loss.
2. It is essential that adequate professional valuation and legal advice be sought before any negotiations or lease agreements are entered into. Adequate space planning advice should also feature, as should flexibility. A private finance option should be examined as with all business cases for acquisitions.

Note:

For further information on the acquisition of land and property refer to Section 6, as well as the Capital Investment Manual.

Identification of need

3. Your business case should identify the type of office accommodation needed. This will include:

- type of office needed – for example cellular and/or open plan offices, meeting rooms/conference facilities, filing, storage, archiving, catering facilities, disabled access, IT facilities, computer cabling, networking;
- space requirements – this can be based on approximately 14 sq m (150 sq ft) per staff member. Meeting rooms might be provided off-site or privately, thus reducing these requirements;
- car parking needs (business park versus city or town centre location) and associated costs;
- consideration of energy efficiency (“environmentally friendly”) issues;
- consideration of HSE requirements.

Note:

Careful evaluation, perhaps by a specialist space planner, can secure significant reductions in space needs, and thus achieve cost savings.

Identification of options in the Business Case

4. An appraisal of the various options should be carried out to identify the preferred option. This should consider:

- the “do nothing” option;
- purchase versus build versus lease options;
- whether there is an adequate range of office accommodation available within the NHS, the civil estate and the open market;
- implications for staff;
- savings from disposal of surplus office accommodation;
- cost/benefit evaluation;
- risk/sensitivity analysis;
- Private Finance Initiative – for example leasing.

Location analysis

5. A more detailed appraisal should be carried out for your preferred option. This should include an analysis of the office location to determine its accessibility. Travelling time will have a significant impact on costs. Road, motorway and rail links (including tramways, underground etc) should be considered.

Financial appraisal

6. A financial appraisal should also be carried out for the preferred option. This should include:

- discounted cash flow analysis to give net present cost of the property (generally over a 25-year period) multiplied at the Treasury discount rate;
- the cost of purchase or lease rentals including opportunity costs of existing accommodation if it is to be retained or holding costs until it is disposed of;
- the cost of upgrading or refurbishing space;
- maintenance costs and other expenses – for example gas, water, electricity, telecom, security, rates, cleaning or service charges etc;
- relocation or redundancy costs where appropriate;
- travel costs;
- liabilities such as dilapidations, repairs etc;
- additional potential expense of using a Listed Building.

Note:

For further information see the Business Case Guide in the Capital Investment Manual.

Approval of the Business Case

7. The Department of Health needs to approve all business cases for leases of property that have a vacant possession value in excess of £1 million.
8. For non-HAs/SHAs or NHS trusts/PCTs, the Department of Health needs to approve the business case. This will normally be the branch head (previously a “Grade 5”) of the unit responsible for the management of the body applying for approval. The business case should be submitted by your chief executive, or his/her equivalent.
9. For HAs/SHAs, the approval process will be in accordance with their individual standing orders and delegation from the Secretary of State and their own board/executive. The level of approval for the case will depend upon their own internal delegations and procedures, and departmental requirements. The relevant finance branch may also need to be consulted to ensure that there are adequate funds available, particularly if new additional funding is required.
10. In all cases:
 - the choice of office accommodation must represent the most economic solution for the exchequer as a whole. Preference must, therefore, be given to existing vacant space on the NHS or civil estate, particularly if there is no other foreseeable use or disposal of that space. Any business case to lease property must address this issue;
 - the business case must, therefore, explore the availability of vacant NHS accommodation (through NHS Estates) and vacant civil estate accommodation (through PACE). A very robust business case must be made to take new space whenever NHS or civil estate is available;
 - the business case should contain the heads of terms and, for a commercial lease, an assurance that a professional opinion had been secured confirming that the terms represent value for money. This is normally provided by a solicitor for the legal side of the agreement, and the professional valuer or the DV in respect of value. A comprehensive survey of the property (particularly if outside the NHS, and the lease provides a repair liability) should be secured.
11. In the case of non-HAs/SHAs, NHS Estates and/or PACE should be given the opportunity to comment on the final case, particularly if the recommendation is for a new commercial letting involving additional cost to the Exchequer. Any department will need to take account of those comments when deciding to approve the case or not.
12. For HAs/SHAs external professional advice (possibly the DV) should recommend the terms of the proposal.

Note:

Some high-cost business cases need HM Treasury approval in addition to Department of Health approval.

Note:

The level of effort in preparing the business case must be proportionate to the expenditure.

Signing and sealing leases

- 13.** The way in which a lease, or any other land transaction document, is signed and sealed depends on the extent of delegation given to the NHS organisation. The extent of delegation is normally contained in Directions. Depending on those Directions, a document might be signed and sealed by those of you given delegated authority, or if the transaction exceeds the delegated authority, by the Department of Health.
- 14.** The lease may be signed by your chief executive (or equivalent) following approval by the authority in accordance with Directions, or individual delegation. In all cases, those signing documents on behalf of the Secretary of State for Health should, preferably, be members of the senior civil service (previously a Grade 5 civil servant). Alternatively the lease may be signed by your branch head giving business case approval. The lease should only be signed when all proper procedures have been complied with, including approval of the terms and conditions of the lease by the valuer or the DV, and the solicitor.
- 15.** If a lease requires sealing by the Secretary of State, the signed lease should be submitted by the branch who has approved the business case, together with a copy of the DV's report and solicitor's report, to the NHS Estates policy unit at Trevelyan Square, Leeds. The lease will then be sealed and either returned to the applicant for onward transfer, or may be sent direct to the solicitors employed.
- 16.** Alternatively, the transaction may be managed by the RO HOEFs, who can arrange to sign and seal the lease following approval of the business case by the departmental head.

Appendix XI:

“Right to buy” procedures

The procedures below are to be followed when dealing with the sale of occupied residential properties where the “right to buy” (RTB) may apply.

Identify whether the current occupier qualifies for Department of Health RTB scheme.

Tenant qualification

A tenant of the SofS is qualified for RTB if he/she was an employee of the NHS prior to 1 April 1991 and was in occupation of this or any other NHS house/flat prior to 1 April 1991 under any type of agreement except where the agreement was specifically intended to be of a temporary nature. See Estatecode (1989). The tenant should not be in arrears, or otherwise in default under the terms of occupation.

If the Department of Health RTB scheme does not apply, investigate the tenant's intentions.

If the tenant wants to remain:

- give the tenant the option to purchase (at a small discount to take account of reduced vendor costs);
- otherwise, offer for sale with sitting tenant based on existing lease terms.

If tenant does not want to remain:

- negotiate terms to secure vacant possession;
- sell with vacant possession.

If the current occupier does qualify for the Department of Health scheme:

- If occupier qualifies but does not want to consider purchase:
 - negotiate terms to secure vacant possession;
 - sell with vacant possession;
 - if it is not possible to negotiate vacant possession, notify tenant and sell subject to existing tenancy (see “General” below).
- If occupier wishes to consider purchase:
 - follow guidance in this document. Obtain DV's valuation of OMV and determine appropriate discount. Details of the current discounts applicable can be found on www.detr.gov.uk/index/housing.htm (from main index choose “Housing”; from home link choose “Housing Policy”; scroll down to link titled “Home Ownership including leasehold reform”; choose the link “Right to Buy”; scroll down to see second link called “Changes to the maximum discount under right to buy”).
 - make offer to tenant on DV's terms;
 - make offer conditional on acceptance within two months, subject to contract;
 - make offer conditional on completion within six months from date of offer;

Note:

No employee has any rights to buy property that they occupy. The Departmental policy is entirely voluntary. Therefore under no circumstances can cash be paid to an employee in lieu of their being qualified to benefit from this policy.

- make offer also conditional on there being no further opportunity to purchase (property will be sold subject to tenancy);

If occupier agrees to buy, instruct solicitors to proceed based on the above conditions.

If occupier completes within six months of initial offer – complete.

If occupier delays, and is not in a position to complete within six months:

- review circumstances to determine if it would be reasonable to continue with a sale;
- if not, give two weeks’ written notice that offer will be withdrawn (notice to have effect no earlier than the initial six-month time limit);
- after expiration of two weeks’ notice, subject to tenant making no further representations, sell property subject to existing tenancy.

General

The following general provisions should apply in all cases:

- whenever houses or flats constitute a “block”, consider sale to a housing association under the “simplified disposal” process (as set out at [paragraph 8.76](#)). Set a reasonable time limit to receive expression of interest, and disposal (that is, three months, then a further three months to complete). Seek to protect tenant’s RTB;
- consider opportunities to re-establish “blocks” if estate is now broken up (move tenants around). Also consider offering blocks of property in various locations (batching);
- offer blocks of property to housing associations in the first instance. Only if housing associations are not interested, consider sale of blocks to RSLs;
- deal sympathetically with negotiations with tenants who are NHS employees (or ex-employees);
- commercial considerations nonetheless will apply;
- do not evict tenants (unless the tenant was given a short-term tenancy specifically with the knowledge that vacant possession would be required at the expiry of the tenancy) to improve sale value – however, negotiations to secure vacant possession, or relocation to secure vacant possession, are commercial options;
- ensure that sitting tenants have appropriate tenancies, whether assured shorthold or secure, before a sale – that is, normally continue existing tenancy. If Assured Shorthold Tenancy (AST), sell with ASTs, if not (and tenant would have security of tenure but for Crown Immunity), establish new secure tenancy;
- sell by auction if not sold to tenants, housing associations or RSLs.

Any enquiries in respect of this policy should be raised with NHS Estates.

Appendix XII:

Disposal of surplus historic buildings – sales at a concessionary price

Reference should be made to 'The Disposal of Historic Buildings: guidance note for Government departments and non-departmental public bodies', issued by the Department for Culture, Media and Sport in 1999. This states that:

"It is Government policy that the maximisation of receipts should not be the overriding objective in heritage disposals. The aim should be to obtain the best return for the taxpayer having regard to:

1. the provisions of the statutory development plan for the area;
2. Government policy for historic buildings and areas and archaeology as set out in PPG 15 and PPG 16;
3. in particular, the clear recognition in these documents that the most appropriate long-term use for a historic building (when account is taken of the need to protect its fabric, interior and setting) may not be the use that generates the optimum financial return;
4. the building's current state of repair, and the likely costs of future maintenance and repair;
5. non-financial and wider regeneration benefits including environmental, cultural and long-term economic impact.

Appendix XIII: Abbreviations

AST – Assured Shorthold Tenancy
BMA – British Medical Association
CHC – Community Health Council
DETR – Department for the Environment, Transport and the Regions
DRC – Depreciated Replacement Cost
DV – District Valuer
DVO – District Valuation Office
EFLs – External Financing Limits
ERIC – Estates Returns Information Collection
EUV – Existing Use Value
GHBAU – Government Historic Buildings Advisory Unit
GP – General Practitioner
HA – Health Authority
HAZ – Health Action Zone
HImP – Health Improvement Programme
HOEF – Head of Estates and Facilities
HSC – Health Service Circular
LPA – Local Planning Authority
MTA – Memorandum Trading Account
NBV – Net Book Value
NPV – Net Present Value
OMV – Open Market Value
PCG – Primary Care Group
PCIP – Primary Care Investment Plan
PCT – Primary Care Trust
PPG – Planning Policy Guidance
PPP/PFI – Public–Private Partnership/Private Finance Initiative
RO – Regional Office
RSL – Registered Social Landlord
SHA – Special Health Authority
SSSI – Special Site of Scientific Interest
VAT – Value Added Tax

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