

Community Asset Transfer Policy

1. **Introduction**

- 1.1 As an outcome of the County Council's service transformation plans and part of its commitment to localism and community initiatives the County Council produced an Asset Transfer Policy in February 2012, (revised in 2016) which details how surplus assets can be made available for use by community/voluntary organisations (including Parish and Town Councils), either through a grant of a lease or possibly a freehold transfer. Changes in the Local Authority landscape have meant this policy needs updating and therefore this document sets out the current policy (as amended in 2019).
- 1.2 An asset is defined as buildings and/or land owned by the County Council.
- 1.3 This policy is only applicable to assets that are not subject to an existing lease from the County Council. All existing leasehold interests will remain in place until the contractual end date. At this time (if the lease does not allow for automatic renewal) then the Community Asset Transfer Policy will be referred to and act as a guide when the future use of the asset is being considered, i.e. if the property is still surplus to the Council's requirements then a new business case may be required to be submitted in accordance with the policy.
- 1.4 This policy will enable use of assets by Parish and Town Councils and community/voluntary organisations that are not-for-profit and are registered e.g. a registered charity, community interest company, etc. The County Council will advise if an organisation has any doubt of eligibility.

2. **Exclusions to the Policy**

- 2.1. Assets will be made available for transfer unless one of the following principles applies:
- a) Property revenue savings or capital receipts from the property are needed to contribute to County Council savings.
 - b) There is another County Council need for the property which would be financially disadvantageous to meet in any other way.
 - c) The asset is leased in by the County Council so there is a lease where the County Council is Tenant.
 - d) The property has already been identified for utilisation under One Public Estate.
 - e) Grant conditions for capital expenditure on the property prevent the property being transferred or prevent a change of use within a specified timescale.
 - f) The proposed use and terms of the transfer would result in a liability upon the County Council to repay grant monies.
 - g) The condition of the asset is not deemed fit for purpose or does not meet the current Minimum Energy Efficiency Standards without capital investment.
 - h) The proposed use is not compatible with the existing or intended use of adjacent OCC retained land/buildings.

3. Key Principles

- 3.1 Once it has been decided that an asset can be made available, the County Council will accept expressions of interest from parties outlined in Para 1.4. A decision will be made to either accept or reject the expression of interest.
- 3.2 The County Council will consider the transfer of the asset on terms to be agreed.
- 3.3 The expression of interest will need to demonstrate all of the following:
 - a) The proposal makes good use of the asset.
 - b) The proposal represents good value, taking into account the expected social, economic, and environmental wellbeing benefits.
 - c) Supports the County Councils Strategic Objectives.
 - d) There is evidenced need and demand for the proposal and it has local support.
 - e) The proposal is financially viable and sustainable.
- 3.4 Viability pressures will not be addressed through reduced property costs.

4. The Policy

- 4.1 The County Council's preference is to lease out an asset but will consider proposals for purchasing the freehold or grant a long lease of an asset if there is a strong and justified business case to do so with the assurance that the community use will be a long-term provision. The County Council will consider each proposal on a case by case basis and the terms and conditions agreed will reflect the individual proposal and include such covenants / restrictions upon use as may be appropriate to protect the Councils long term interests. This will not set a precedent for other asset transfer arrangements.
- 4.2 If an asset receives interest from a number of parties then the County Council will encourage collaboration to put forward a joint bid but if this isn't achievable then each proposal will be evaluated against the same set of criteria to determine the successful bid.

4.3 *General Terms for an Asset Transfer Lease*

- 4.3.1 The County Council will charge a rent for the property, which takes account of the restriction for community use and is comparable to rental for alternative premises.
- 4.3.2 A length of term over 7 years is a disposal which requires compliance with the provisions of the Local Government Act (1972) General Disposal Consent 2003¹ and State Aid rules².

¹ The Local Government Act 1972 imposes a legal obligation not to dispose of assets at less than best consideration (excludes tenancies of less than 7 years) unless approved by the Secretary of State. The General Disposal Consent 2003 allows Local Authorities to transfer at less than market value provided the undervalue is no more than £2million established according to the technical annex attached to the consent **and** the purpose for which the asset is to be transferred is likely to contribute to the 'promotion or improvement' of the economic, social or environmental well-being of the area. A disposal of a surplus asset at less than best consideration also requires Cabinet approval further to the Executive resolution of 28 October 2003 which is now due for review.

² State Aid refers to forms of assistance from a public authority, which has the potential to distort competition and trade in the EU. State aid rules can apply to disposals to charities and other public bodies as it is the relevant activity undertaken by the recipient not the latter's identity

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- 4.3.3 Leases over 5 years will usually be subject to a rent review clause.
- 4.3.4 The County Council will grant leases which are contracted out of the Landlord & Tenant Act 1954 Part II which will not provide the tenant with automatic rights to renew the lease at the end of the term. However, the County Council may consider granting a new lease on expiry if the property is still surplus to the Council's requirements, but a new business case may be required to be submitted in accordance with the Council's Asset Transfer Policy applicable at that time.
- 4.3.5 The permitted use within any lease will be limited to a use which is for the benefit of the local community.
- 4.3.6 The County Council will define the responsibility of the repairs and maintenance liability within the lease by evaluating each premises on an individual basis.
- 4.3.7 The County Council will expect to retain its building insurance cover over the building to ensure it is adequately covered. The lease will contain a provision for the tenant to reimburse the County Council for the cost of the building insurance cover. The tenant will be responsible for insuring the contents of the building.
- 4.3.8 The tenant will be responsible for all statutory compliance and good practice (e.g. in relation to health and safety).
- 4.3.9 The Asset is to be returned at lease expiry in good tenantable repair in accordance with the lease terms and all tenants alterations removed (unless the landlord states otherwise) and any damage made good.
- 4.3.10 Assignment (transfer of the lease to another legal entity via a Deed of Assignment) may be permitted subject to Landlords consent and compliance with the Community Asset Transfer Policy.
- 4.3.11 Sub-letting is permitted subject to Landlords prior consent and the rent must not exceed the passing rent based on a proportionate £/sq m basis. However, where the proposal is to charge the sub tenant a rental which is higher than the passing rent under the Head Lease on part or all of the premises, OCC will consider Landlords consent to this subject to reserving the right to review the rent and outgoings under the Head Lease or require a share of any profit rent received, dependent on circumstances.
- 4.3.12 The tenant will be permitted to hire out space on an ad hoc basis within the asset to other community groups as long as the use reflects the permitted user clause and use is regulated under an ad hoc hiring agreement and does not result in the creation of a landlord and tenant relationship. The tenant will be required to provide a summary of income relating to hiring charges each year, if so requested.
- 4.3.13 The County Council would expect the tenant to ensure that any hiring process and agreement has regard to general safeguarding responsibilities including ensuring that the asset is not being used to disseminate extremist views as per the Counter Terrorism and Security Act 2015. The tenant will be provided with the County Council's standard hiring agreement as a basis for their own use if requested.
- 4.3.14 See Appendix 1 for an example of typical lease heads of terms.

4.4 General Terms for an Asset Transfer Purchase

- 4.4.1 In general the County Council is required to achieve the 'best consideration reasonably obtainable' when it is disposing of land or buildings. If it seeks to dispose

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of land or buildings below the market value, it will need to comply with the provisions of the Local Government Act (1972) General Disposal Consent 2003¹ and State Aid rules².

4.4.2 The County Council will determine the market value on the basis of the potential use of the asset. This will consider both the “existing use value”, and “alternative use value” if there is clearly potential for future uplift in value having regard to planning and development potential of the asset.

4.4.3 Where the transfer is on the basis of providing specific community services, this commitment maybe be secured by a restrictive covenant as to use (supplemented by a restriction on title).

4.4.4 Provision will be included within the transfer for the County Council to recoup an appropriate proportion of any uplift in value secured through each subsequent change of use and/or enhancement in value arising from the grant of planning permission.

5 Additional Conditions

5.1 Any transfer will **include** fixtures and fittings unless there is a County Council requirement for the items at an alternative location.

5.2 Any transfer will **exclude** IT infrastructure.

5.3 Where there is a need for planning permission to be secured in order to enable a proposal to be taken forward this will be the responsibility of the tenant. A decision on the part of the County Council to transfer an asset does not guarantee that planning permission will be granted.

5.4 Each party to bear their own legal and agents fees.

5.5 Any exception to this Policy must be approved by the relevant Directorate with responsibility for property in conjunction with the County Council Solicitor and in consultation with the relevant Cabinet Member.

6 The Process for Applications

6.1 Interested parties must apply to the County Council setting out their expression of interest covering the key principles as set out in 3 above. A template form is attached

6.2 The County Council will use this information to assess the proposal against the policy. If it meets the criteria and there is more than one expression of interest or additional information is required the County Council may require submission of a detailed business case to support the proposal. (See 7.1)

6.3 The County Council will test the business case submitted against the key principles of this policy but also expect the business case to provide in detail:

- a) A statement of clear purpose and outcomes that would be delivered by the community use of the asset, including consideration of the extent to which the proposal meets identified local needs as well as broader policy priorities.
- b) The proposed arrangements for the management body, including accountable governance arrangements.
- c) How the organisation will achieve full sustainability, e.g. income generation / funding sources.
- d) Experience / capability to deliver the services in accordance with any associated legislation.

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- e) The capabilities to manage the maintenance of the asset including compliance with statutory requirements.
- f) Details of any proposed capital expenditure.

7 The Decision Process

- 7.1 All proposals for community asset transfer will be considered by the County Council's Property team in the first instance and reported via the County Council's governance process as required and within the context as provided by this Policy.
- 7.2 The County Council will advise the organisation of its decision, outlining the reasons for any refusal. If the proposal has been successful notification will follow, with instructions for the legal formalities to be completed.

8 School Sites

- 8.1 If the asset is not required for educational / curriculum purposes and it can be separated to enable a transfer (via leasehold or freehold) the asset will be subject to this policy however there may be the need for additional safeguarding requirements. The costs of this would need to be reviewed on a case by case basis.
- 8.2 If the school is interested in taking over the running of the service then their bid will be assessed alongside any other community interest. In such circumstances where the school is funded by the County Council, equivalent charges will be applied, generally through a Memorandum of Understanding as opposed to a formal lease.

9 Help and Advice

- 9.1 Community/voluntary organisations (including Parish and Town Councils) are encouraged to seek advice from the County Council at the earliest possible opportunity before making a formal application. There is guidance and help available through a number of sources including:
- a. The Community and Living pages on the County Council's web site.
 - b. The Government portal website for community information and grant programmes mycommunityrights.org.uk
- 9.2 The County Council will provide specific information to communities to develop their proposal, including:
- Site Plan
 - Measured notional building floor plan where available
 - Guidance on the rental value and / or on the valuation of the asset
 - Guidance on current running costs (estimated where actuals are not available)
 - Other available relevant information

Appendix 1

Example of Standard Heads of Terms for Community Asset Transfer via a Lease of 5 Years Duration or Less

Landlord	Oxfordshire County Council
Tenant	Likely to be a management committee/Board of Trustees/charity <i>(to be encouraged to be a Charitable Incorporated Organisation – see Charity commission website)</i>
Property	Building 'x'
Demise	Area to be leased
Term	'x' years; contracted out of Landlord and Tenant Act 1954 Part II – no automatic right to renew.
Break	Mutual break option on 6 months prior written notice
User	The premises shall not be used other than for the provision of 'xxx' services and associated activities.
Forfeiture	Landlord can end the lease for material breach of lease covenant, including breach of the user clause.
Rent	£x per annum; (rent reviews every 5 years if negotiated term is longer than 5 years)
Premises Costs	Tenant to pay all rates, utility costs and other running costs.
Building Insurance	Tenant to insure contents. Landlord to insure building (costs recharged).
Insurance	Tenant must hold third party liability to a total of £5M in any one claim.
Repair	To be agreed
Alterations	Tenant permitted to make non-structural alterations with Landlord's consent in writing, not to be unreasonably withheld.
Alienation	Tenant is not permitted to assign or sublet part of the premises; Tenant permitted to assign or sublet whole of the premises provided no premium is payable and otherwise with Landlord's consent, not to be unreasonably withheld. Any sub-lease must not be at a rate higher than the passing rent based on the £ per sq ft/sq m.

Ad Hoc Hiring	Sharing occupation with other parties under the existing permitted user without Landlord's consent is permitted if the occupation is through reference to a hiring agreement and does not create a landlord and tenant relationship.
Yielding Up	At the end of the term the Tenant will yield up the premises in the repair and condition prescribed in the lease.
Compliance	Tenant must adhere to all current statutory obligations and health and safety requirements in relation to the premises and its use.
Costs	Each party to bear their own costs.