

Oxfordshire County Council
Community Asset Transfer Policy

1. Introduction

- 1.1. As part of the County Council's commitment to localism and the 'big society' a number of properties are likely to be made available for use by community/voluntary organisations, either on a permanent basis or through a short term lease. This document sets out the policy for transfer of assets made available under the "big society" agenda.
- 1.2. Academy transfers are subject to a separate Academy Transfer Policy being considered by Capital Investment Board (CIB).
- 1.3. These 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 or school need for the property which would be difficult to meet in any other way;
 - c) Grant conditions for capital expenditure on the property prevent the property being transferred or prevent a change of use within a specified timescale.
- 1.4. Once it has been decided that an asset can be made available, the County Council will transfer the asset to the community/voluntary organisation on terms to be agreed, if:
- a) There is no other local building from which the community/voluntary organisation could reasonably provide the same service;
 - b) The proposal is financially viable and sustainable;
 - c) The proposal represents good value, taking into account the expected community benefits; and
 - d) The proposal as a whole, and in particular the loss of a potential capital receipt due to a discounted sale price, is affordable.

2. Assets Available for Transfer

- 2.1. A list of assets available for transfer will be kept up to date and published on the County Council's website as part of the wider register of community assets.
- 2.2. Where the County Council identifies through its Locality Reviews opportunities to reduce its assets these will be added to the list of assets potentially available to communities.
- 2.3. Communities are encouraged to seek advice from the County Council at the earliest possible opportunity before making a formal application.
- 2.4. The County Council will provide advice and guidance to communities as they develop their proposal, specifically:
 - It will provide guidance on the valuation of the asset and/or advise on the rental value;
 - It will provide guidance on the likely scale of future repairs and maintenance for the asset;
 - It will provide advice on the structure of the management body required to support community usage of the asset.
- 2.5. The County Council will test any proposal submitted by examining:
 - a) The statement of proposed 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 Business Case submitted in support of the proposal, including contributions from other funding sources towards the cost of the proposal;
 - c) The proposed arrangements for the management body, including evidence of wider support amongst the local community.
- 2.6. Encouragement is given to the submission of innovative proposals that enable the proposed service to be delivered in a more effective and efficient way.
- 2.7. The County Council's Cabinet will make a decision about whether an asset can be transferred on the basis of the proposal put forward by the community/voluntary organisation within the context provided by this policy.

3. Key Principles of Asset Transfer

- 3.1. The County Council will consider proposals from community/voluntary organisations for purchasing the freehold of an asset as well as proposals for leasing the asset.
- 3.2. The nature of the lease agreement, whether operating or finance, will need to be identified early in the negotiation of a lease. Land and buildings need to be

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treated differently for accounting purposes and the nature of the lease will determine the accounting treatment required. Advice on the process to test which lease arrangement is applicable will need to be sought on a case by case basis through the County Council's Finance Business Partners.

Purchasing the Freehold/Long Leasehold interest

- 3.3. 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 of land or buildings below the market value, it has to obtain the consent of the Secretary of State for Communities and Local Government.
- 3.4. However, the County Council (having regard to the Criche Down rules whereby property must in certain circumstances first be offered back to the original owners) will use its powers under the General Disposal Consent 2003 to transfer land at less than its market value, without the need to seek specific permission from the Secretary of State, provided that:
 - a) The purpose for which the land is to be transferred is likely to contribute to the 'promotion or improvement' of the economic, social or environmental well-being of the area; and
 - b) The difference between the market value for the land and the actual price paid for the disposal (if any) is not more than £2m (also providing that the reduction in price does not breach State Aid Rules).
- 3.5. The County Council will determine the market value on the basis of the potential use of the asset. The County Council will take independent valuation and planning advice that 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.
- 3.6. Where the transfer is on the basis of providing specific community services, the County Council will seek to secure a commitment to the future delivery of those services through an agreement with the community. Where appropriate this commitment will be secured through a Restrictive Covenant.
- 3.7. Provision will be included within the transfer generally secured by a legal charge for the County Council to recoup an appropriate proportion of any uplift in value secured subsequently through each subsequent change of use and/or enhancement in value arising from the grant of planning permission.
- 3.8. A Long Leasehold interest for the purposes of this Policy is defined as a lease where an initial premium is paid (instead of an annual open market rent) on a lease exceeding 7 years in duration.

Leasing an Asset

- 3.9. A lease granted at an open market rent is not generally regarded as an "asset disposal". However, where a lease is granted that exceeds 7 years in duration

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(or is capable of being extended by the tenant to a term exceeding 7 years) then the County Council shall have regard to the provisions above.

- 3.10. Ordinarily the County Council leases its property to third parties at full market rent.
- 3.11. However, as part of its contribution to encouraging successful community/voluntary organisation proposals, the County Council will normally seek a nominal rent for assets provided that:
 - a) The proposed tenant is providing a statutory service on behalf of the County Council; or
 - b) The proposed tenant is contributing to meeting the County Council's corporate objectives; or
 - c) The proposed tenant is providing services that will benefit the local community either socially, economically or environmentally; or
 - d) The service proposed by the tenant is accessible to a wide section of the local community.
- 3.12. The County Council will typically grant leases contracted out of the Landlord & Tenant Act 1954 Part II of up to 5 years in order to provide flexibility for both parties.
- 3.13. The community/voluntary organisation entering into a lease will normally be expected to assume responsibility for the full running costs of the building, including repairs and maintenance. Repairing obligations however would not normally extend to the structure of the building, and responsibility for this will remain with the County Council unless expressly agreed with the prospective tenant. Where elements of the building are in a state of disrepair [or potentially will be in disrepair within a few years], then consideration will be given to the preparation of a photographic Schedule of Condition, which can then be used as a reference point. It may be appropriate to limit repairing obligations to being "in no better condition" than as recorded in a Schedule of Condition. Preparation of any Schedule of Condition will be the responsibility of the tenant.
- 3.14. The County Council will generally wish 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.
- 3.15. 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 community/voluntary organisation. A decision on the part of the County Council to transfer an asset does not guarantee that planning permission will be granted.

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- 3.16. The Business Case in support of a proposal will be expected to demonstrate that the business model is sufficiently robust to give confidence that the obligations for internal repairs and maintenance will be met.
- 3.17. The permitted use within any lease will be limited to the existing use that is for the benefit of the local community. The agreement will provide for the lease to be terminated if that use ceases.
- 3.18. Any capital expenditure on an asset by a third party must be agreed and formalised at the commencement of, and as part of, the lease agreement.

General Conditions

- 3.19. Any transfer will **include** fixtures and fittings.
- 3.20. Any transfer will **exclude** IT infrastructure.

Decision Making Process

- 3.21. All proposals for community asset transfer will be considered by the County Council's Cabinet.
- 3.22. Where more than one proposal is submitted in respect of an asset the County Council's Cabinet will consider these on an equal basis. Encouragement will be given to competing proposals to work together where possible to put forward a joint proposal.
- 3.23. Following the Cabinet's decision to support a proposal there will be a 'cooling-off' period, typically of 8-weeks. During this period the County Council will seek assurance that there are no alternative proposals for the use of the asset that need to be taken into account. During this cooling-off period no interim arrangements can be entered into with the prospective tenant. Solicitors' instructions cannot be confirmed until this cooling-off period has lapsed.
- 3.24. Where an alternative proposal is submitted the County Council Cabinet will consider this within the context of the original proposal considered.
- 3.25. In the absence of any alternative proposal coming forward, the original decision of the Cabinet will be taken forward.

4. **School Sites**

- 4.1. If the asset is located on a community school site and there is a recognised educational/curriculum need for the asset, then transfer to the school will be considered subject to the need being supported by the Director of Children Education and Families. In such cases all revenue liabilities for the property will transfer to the school, excluding non-delegated repairs and maintenance responsibilities

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- 4.2. If the asset is not required for educational/curriculum purposes and it can be separated to allow for disposal the County Council will include it on the list of assets available for community use.
- 4.3. If the community school is interested in taking over the running of the service then their bid will be assessed alongside any other community interest.
- 4.4. Where the transfer is on the basis of providing specific community services, the County Council will seek to secure a commitment to the future delivery of those services through an agreement with the community school.
- 4.5. Any transfer of former education land should consider the provisions of the Academies Act 2010 Schedule 1 Para. 1-2 which enables the Secretary of State to require the making of a scheme to transfer to an Academy any site held by a local authority which:
 - 1) was used for educational purposes in the last 8 years but which is no longer used (or the Secretary of State thinks will cease in future);
 - 2) is subject to proposals to establish a new school.
- 4.6. Where a community asset transfer has Academy (or Free School) implications the County Council's Academy Transfer Policy should be referred to.

5. **Further considerations**

- 5.1 **Alienation** – where leases are granted to Third Sector organisations it is accepted that they will often need to hire out the premises in order to raise income to cover their costs. Leases will, however, contain restrictions limiting the extent to which tenants can assign or sub-let part or all of the property. The aim is to ensure that the original use of the property, i.e. for community benefit, is maintained.
- 5.2 **Standard Heads of Agreement** – Attached at Appendix 1 are standard terms for leases of less than 5 years duration.
- 5.3 **Exceptions** – Any exception to this Policy must be approved by the Director for Environment & Economy in conjunction with the County Council Solicitor and in consultation with the relevant Cabinet Member.
- 5.4 **Costs** - Each party to bear their own legal and consultant fees . *Note:* if the transfer involves Academies this may differ (please see the Council's Academy Transfer Policy).

Standard Heads of Terms for Community Asset Transfer via Leases 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	e.g. <i>Faringdon Youth Centre, Highworth Road, Faringdon, Oxfordshire, SN7 7EG</i>
Term	5 years; contracted out of Landlord and Tenant Act 1954 Part II – no automatic right to renew.
Break	Tenant only option to break at any time after first 2 years, subject to 6-9 months notice.
User	The premises shall be used for the provision of youth services and associated activities.
Forefeiture	Landlord can end the lease for material breach of lease covenant, including breach of the user clause.
Rent	£3,000 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.
Insurance	The Tenant must hold 3 rd party liability to a total of £5M in any one claim.
Repair	Tenant to be responsible to maintain and repair interior of Property in existing condition; a Schedule of Condition will be included in the lease (prepared by tenant and agreed by OCC). A list of the loose items to be handed over with the building will also be provided.
Alterations	Tenant permitted to make non-structural alterations with Landlord's consent in writing, not to be unreasonably withheld.
Alienation	Tenant not permitted to assign or sublet part of the premises; Tenant permitted to assign or sublet whole of the premises with Landlord's consent, not to be unreasonably withheld; sharing of possession or occupation without Landlord's consent permitted through reference to a hiring agreement.

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Yielding up At the end of the term the Tenant will yield up the premises in accordance with the requirements of the lease including the repair and condition prescribed in the lease.

Costs Each party to bear their own costs.