



## **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 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 revised policy.
- 1.2 An asset is defined as buildings 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 will 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 or basic school need for the property which would be financially disadvantageous to meet in any other way.
  - c) The property has already been identified<sup>1</sup> for utilisation under a Place Review<sup>1</sup>.
  - d) Grant conditions for capital expenditure on the property prevent the property being transferred or prevent a change of use within a specified timescale.
  - e) The proposed use and terms of the transfer would result in a liability upon the County Council to repay grant monies
  - f) The condition of the asset is not deemed fit for purpose without substantial capital investment.

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<sup>1</sup> Under the Governments One Public Estate Agenda, the County Council will be undertaking Place Reviews with other public sector partners, local councils, community organisations and other service delivery organisations to consider the best means to maximising the use of all the public assets in a locality and release any surplus assets.

### **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. A decision will be made to either reject the proposal or invite the interested party to submit a detailed business case.
- 3.2 The County Council will consider the transfer of the asset on terms to be agreed. This will be subject to the County Council being able to financially justify that the proposal better serves the community than an open market lease or sale and that the business case can demonstrate all of the following:
- a) There is no other local building from which the community/voluntary organisation could reasonably provide the same service.
  - b) The proposal makes good use of the asset.
  - c) The proposal represents good value, taking into account the expected social, economic, and environmental wellbeing benefits.
  - d) Supports the County Councils Corporate Plan.
  - e) There is evidenced need and demand for the proposal and it has local support.
  - f) The proposal is financially viable and sustainable.
- 3.3 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 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 the Council will judge each proposal 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. (In the absence of comparable evidence this is usually derived by assessing commercial rents in the vicinity and applying a discount of 50% to reflect the restricted use).

- 4.3.2 A length of term over 7 years is treated as a disposal and will need to comply with the provisions of the Local Government Act (1972) General Disposal Consent 2003<sup>2</sup> and State Aid rules<sup>3</sup>. Leases over 5 years will usually be subject to a rent review clause increasing the rent in line with the Retail Price Index (RPI).
- 4.3.3 The County Council will typically 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 if the property is still surplus to the Council's requirements but a new business case will be required to be submitted in accordance with the Council's Asset Transfer Policy applicable at that time.
- 4.3.4 The permitted use within any lease will be limited to a use which is for the benefit of the local community. The agreement will provide for the lease to be terminated if that use ceases.
- 4.3.5 The tenant will be expected to assume responsibility for the full running costs of the building, including repairs and maintenance. It may be appropriate to limit repairing obligations within the lease to a Schedule of Condition which will record the condition of the building at the time the tenant takes over responsibility. The tenant will commit to maintain in no worse condition. The County Council will prepare the schedule but the cost will be the responsibility of the prospective tenant if they subsequently withdraw from completing the lease.
- 4.3.6 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.
- 4.3.7 The tenant will be responsible for maintaining the property in keeping with statutory compliance and good practice (e.g. in relation to health and safety).
- 4.3.8 The Asset is to be returned at lease expiry in good tenantable repair in accordance to the lease terms and all alterations removed (unless the landlord states otherwise) and any damage made good.
- 4.3.9 Alterations – non-structural alterations are permitted. All structural alterations and changes to services are not permitted.
- 4.3.10 The tenant will be permitted to hire out space 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.
- 4.3.11 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.

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<sup>2</sup> The Local Government Act 1972 imposes a legal obligation not to dispose of assets at less than best value (excludes tenancies of over 7 years) unless approved by the Secretary of State. The General Disposal Consent 2003 provides Local Authorities to transfer at less than market value provided the undervalue is no more than £2million 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.

<sup>3</sup> State Aid refers to forms of assistance from a public authority, which has the potential to distort competition and trade in the EU.

4.3.12 Assignment is not permitted.

4.3.13 Sub-letting is permitted subject to Landlords prior consent and the rent must not exceed the passing rent. However where the proposal is to charge the sub tenant a rental which is higher than the passing rent under the Head Lease, OCC will consider 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.

4.3.14 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 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 2003<sup>2</sup> and State Aid rules<sup>3</sup>.

4.4.2 The County Council will determine the market value on the basis of the potential use of the asset. The County Council will take 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.

4.4.3 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.

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 subsequently 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 the requirement to relocate items to another location to meet a statutory need.

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

5.3 Where the County Council identifies opportunities to reduce its assets properties identified as surplus will be subject to this policy.

5.4 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.

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

5.6 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.

## **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.
- 6.2 The County Council will use this information to assess the proposal against the policy and if it meets the criteria will invite submission of a detailed business case to support the proposal.
- 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.
  - e) The capabilities to manage the maintenance of the asset including compliance with statutory requirements.
  - f) Details of any proposed capital expenditure.
- 6.4 Encouragement is given to the submission of innovative proposals that enable the proposed service to be delivered in a more effective and efficient way.

## **7 The Decision Process**

- 7.1 All proposals for community asset transfer will be considered by the County Council's Cabinet or its delegated governance platform 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 located on a school site and there is a recognised educational / curriculum need for the asset (this could include requirement for a free school), or the demise of the asset cannot be separated from the school for use by another occupier, then the County Council reserve the right to transfer to the school. This will be 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.
- 8.2 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.
- 8.3 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 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](http://mycommunityrights.org.uk)
  - c. [Buildingcalculator.org.uk](http://Buildingcalculator.org.uk) which provides a tool to help organisations understand likely operating and maintenance costs.
- 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)
  - Current condition survey where available.

**Oxfordshire County Council**  
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## Appendix 1

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

<b>Landlord</b>	Oxfordshire County Council
<b>Tenant</b>	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>
<b>Property</b>	Building 'x'
<b>Demise</b>	Area to be leased if part only of a property
<b>Term</b>	'x' years; contracted out of Landlord and Tenant Act 1954 Part II – no automatic right to renew.
<b>Break</b>	Tenant option to break at any time after first 2 years, subject to 6-12 months' notice. Landlord's option to break to reflect any known future requirements for the building at the time of leasing the building
<b>User</b>	The premises shall be used for the provision of 'xxxx' services and associated activities.
<b>Forfeiture</b>	Landlord can end the lease for material breach of lease covenant, including breach of the user clause.
<b>Rent</b>	£x per annum; (rent reviews in line with RPI every 5 years if negotiated term is longer than 5 years)
<b>Premises Costs</b>	Tenant to pay all rates, utility costs and other running costs.
<b>Building Insurance</b>	Tenant to insure contents. Landlord to insure building (costs recharged).
<b>Insurance</b>	The Tenant must hold third party liability to a total of £5M in any one claim.
<b>Repair</b>	Tenant to be responsible to maintain and repair in existing condition; a Schedule of Condition will be attached to the lease (prepared by OCC and agreed by the tenant).
<b>Loose Equipment</b>	A list of the loose items/equipment to be handed over with the building will also be provided and identify whether these items are to remain in the ownership of the County Council and therefore to be maintained/replaced as necessary.
<b>Alterations</b>	Tenant permitted to make non-structural alterations with Landlord's consent in writing, not to be unreasonably withheld.

<b>Alienation</b>	Tenant is 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.
<b>Repayment of Grant</b>	Where a property is subject to a grant limiting the permitted use of the asset, if the tenant changes use without Landlords permission as defined under the lease then the tenant will be responsible for the payment of the outstanding grant if there is a claim for the claw back.
<b>Ad Hoc Hiring</b>	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.
<b>Yielding Up</b>	At the end of the term the Tenant will yield up the premises in the repair and condition prescribed in the lease.
<b>Costs</b>	Each party to bear their own costs.