



WAVERLEY BOROUGH COUNCIL

COMMUNITY ASSET TRANSFER POLICY

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1. Introduction

The Council needs to fully consider the benefits and risks of asset transfer as part of its overall corporate asset management process, while ensuring that it protects its community assets for the future. Due to the diverse nature of the Council's property holdings, one policy will not cover all circumstances. However, a number of common themes will apply before contemplating the transfer of any asset, including the nature and capacity of the applicant; adoption of robust option appraisals (including financial implications to the Council); contribution to corporate objectives; assessment of risks and sustainable business cases. The Council therefore needs a clear policy framework against which to judge any request for transfer of community assets.

2. Purpose of this Policy

The purpose of this Community Asset Transfer Policy is to set a transparent and consistent framework to enable (where appropriate) asset transfer from the Council to community organisations. To achieve this it is necessary to demonstrate how community asset transfer supports both the Council's and wider community objectives.

3. National policy context

The Local Government Public Involvement Act 2007 and Localism Act 2011 brought about a number of public sector reforms aimed at creating strong, prosperous communities and delivering better public services through a re-balancing of the relationship between Central Government, Local Government and local people by giving residents a greater say over local services.

One element of is the transfer of property assets to the community, based upon the view that there are realisable benefits to be obtained from giving the community a greater say in their area. Asset Transfer is defined by Department of Communities and Local Government as "passing ownership or management of a building or piece of land from a public sector body to a third sector organisation".

The clear lead from Central Government is that local management and ownership of assets makes for strong communities.

4. Local policy context and links to other strategies

The operation of this Policy will need to have regard to the desired outcomes in other Council strategies, including:

- Waverley Borough Council's Corporate Plan [LINK]
- [ADD]
- [ADD]
- [ADD]
- [ADD]

5. Aims of Community Asset Transfer

The Council's Property Portfolio includes land, buildings and other structures held to support direct service delivery, support delivery by partners including the voluntary sector, stimulate economic activity and regeneration, support the Council's budgets and also acting as custodian of community assets. Through the ownership of assets the Council achieves a variety of different economic, regeneration, social, community and public functions. For some of these assets, community management and ownership could deliver:

- benefits to the Council and other public sector service providers (Benefits to public sector providers can arise from: the creation of a new partner able to tap into additional resources; the ability to engage with a more cohesive local community; new service provision complementing and augmenting statutory services)
- benefits to the local community (Benefits to the community can arise from: building confidence and capacity; attracting new investment and reinvigorating the local economy; and securing stronger, more cohesive and sustainable communities)
- benefits for the community organisation taking over management/operation of the asset (Benefits to the organisation include: financial security; increased recognition; power; management capacity and organisational development, and opportunities to expand and diversify).

The Council has the opportunity under the General Disposals Consent 2003 to sell or lease General Fund assets at less than best consideration in cases where it can demonstrate and attribute value to wellbeing benefits that would arise. Any disposal for less than best consideration would need to be transparent justifiable and have the appropriate Executive approval.

Under this Policy the Council will, amongst other aims, be seeking the following benefits from asset transfers;

- Benefits to the Council in terms of delivering services;
- Community empowerment;
- Area-wide benefits for the residents of Waverley Borough;

- A sustainable third sector;
- Economic development and social enterprise;
- Improvements to local services;
- Value for money;
- Delivery of the Council's Corporate Priorities.

6. Principles of the Council's asset transfer policy

The Council's policy on community asset transfer is underpinned by the following principles:

- The overriding principle is for the Council to protect its land and property assets, which are vital for the development and reinforcement of strong and vibrant communities.
- Any proposed asset transfer must support the aims and priorities of the Council as set out in its adopted policies.
- Recognise the Council's dual but independent roles as a supporter of the third sector but also as a steward of publicly owned assets.
- All Council Services will endorse and help to deliver this Policy.
- The Council will take a Strategic approach to Corporate Asset Management Planning by reviewing its portfolio and undertaking option appraisals which will include examining the transfer potential of its assets.
- The Council will adopt a transparent corporate process for asset transfer which will include a clear point of first contact and clear stages and timescales for each party.
- The Council will adopt an agreed method of assessing the benefits of the transfer (linked to the Council's Corporate Priorities) which allows a comparison with open market disposal.
- If any disposal at less than best consideration is pursued it will be accompanied by a legally-binding Service Level Agreement (SLA) or other appropriate legal agreements identifying the benefits and how these will be monitored and measured, together with the remedies available to both parties if the SLA or other mechanism is not met.

7. Criteria to be adopted for considering requests for Community Asset Transfer

The asset transfer decision involves the assessment of a number of criteria, including considering the options arising from:

- Benefits to respective parties (e.g. The Council, the local community, the third sector) generated by the transfer of the asset to the community.
- Loss of any existing income.
- Gain of any additional income from leases/licences.
- Potential loss of opportunity costs arising from the transfer.
- Retention of assets for service delivery.

Requests for the transfer of Council-owned assets will be considered where all of the following criteria are met.

The Applicant must be:

- Community-led, i.e. its governance arrangements must ensure that it has strong links with the local community and that members of the community are able to influence its operation and decision-making processes;

and/or

- A voluntary and community organisation - i.e. it must be a legal entity which:-
 - (i) Is non-governmental - not part of the statutory sector;
 - (ii) Must exist for community / social / environmental benefit;
 - (iii) Is non-profit distributing - it must reinvest any surpluses to further its social aims / community benefits;
 - (iv) Has community benefit objectives.

The applicant must also be:

- Appropriately constituted, for example, a registered charity; a Community Interest Company or a Charitable Incorporated Organisation; a Not-for-Profit company; a Co-Operative. Such constitution must allow the management /ownership of buildings and/or provision of services.
- Demonstrate good governance by operating through open and accountable processes, with adequate monitoring, evaluation and financial management systems.
- Can demonstrate it has the skills and capacity within or available to its managing body to effectively deliver services and manage the asset.

- Embrace diversity and work to improve community cohesion and reduce inequalities.
- Engaged in economic, environmental or social regeneration within Waverley or is providing a service of community benefit in line with the Council's core priorities.
- Demonstrate management experience and/or expertise.
- Management proposal includes a specific plan on health and safety issues and compliance with relevant legislation and any statutory requirements arising from ownership or management of the building and/or running a service.
- Applicant has demonstrated how they will address any capacity-building requirements within their organisation.
- Provide copies of the accounts of the organisation.
- Number of years established and/or track record of delivering services or property management.
- The organisation has a clear purpose and understanding of the activities it wishes to deliver.

b) The Asset

- A legal interest owned by the Council from which the transferee can demonstrate community benefit.
- The asset is in the freehold/leasehold ownership of the Council.
- An options appraisal has been carried out and approved by the Council's Asset Advisory Group to identify that the asset is suitable for community transfer as the sole or one of the viable options. This process will be adopted in response to requests, or in the case properties identified through internal reviews.
- The asset is not currently needed or identified for future investment value or use for service delivery, which could best be provided directly by the Council rather than through the community.
- The transfer will deliver the strategic priorities of the Council.
- The asset is fit for purpose and would not impose an unreasonable liability to the community organisation or the Council.
- Transfer or management of an asset would not be contrary to any obligation placed on the Council.

c) Proposed use

- The proposed use will demonstrably help in the delivery of the Council's community strategy, corporate needs and facilities for the use by the residents of Waverley.
- The proposed use will ensure extensive and inclusive reach into the community and will be open to all.
- The proposed use will maximise opportunities for income generation to ensure sustainability, for example, through social enterprise and the hiring of space and facilities.
- There is both a need and demand for the activities being proposed and consideration is given whether or not this is being satisfactorily addressed by another organisation.
- The applicant has established how much space it requires to deliver its proposals, and how they will make good use of the facilities.
- Clear management structure demonstrating how premises will be managed on a day-to-day basis.

d) Business Plan and Finance

Fundamental to the success of any transfer is the applicant demonstrating to the Council that they have a clear rationale backed by a robust business case of their ability to effectively manage the asset. This needs to include an assessment of the financial and organisational capacity of the organisation. The Council will consider the following factors in this respect:

- How the need for proposed transfer and use of asset has been identified, and what needs the transfer would meet.
- The Benefits case as a result of transfer.
- The capacity of the community organisation to acquire and manage the asset.
- The business case for future uses for the asset e.g. cashflow forecasts.
- The type of transfer sought, and why.
- Statement from current owning Service within the Council supporting the proposed transfer.
- Terms of any legally binding Service Level Agreement or any other legal agreement.
- Details of how the proposed use of the asset will be monitored and details of 'fall back' arrangements should the transfer prove to be unsustainable

In terms of proposing a business case for consideration by the Council, applicants will need to clearly identify:

- At least 5 years revenue or capital funding plans and projections of managing and operating the asset.
- How it will invest in and maintain the asset including a specific plan as to how all health and safety responsibilities will be met.
- The planned outcomes and benefits to result from the asset transfer.
- Demonstrated a community governance structure with capability to sustain asset transfer and has identified necessary capacity-building requirements within their organisation.
- Where transfer is requested at less than market value, either freehold or leasehold, the applicant has justified and quantified the benefits to the Council and the community to justify the subsidy. The Council will separately need to satisfy itself that any transfer is within its legal and financial powers.
- Any sources of finance the asset transfer will release or attract.
- Track record of delivering services and/or managing property.
- Financial sustainability and forward planning.
- Have established how much space is required and its potential usage

8. Consideration by the Council

In view of the diverse nature of assets within the Council's ownership, there is no single disposal method that suits all circumstances. However, the Council's policy will be that Community Asset Transfers will be by means of leases or licenses.

Freehold transfer will only be considered in exceptional circumstances, and must be the subject of a specific report to full Council to gain approval. The nature of tenure offered will be determined on a case-by-case basis having regard to the particular circumstances of the project, strength of the applicant and sustainability of the business case (etc.). The length and terms of any leasehold transfer will be determined by having regard to, and balancing, the applicant's access to funding and its ability to raise finance, together with the needs of the applicant, its management abilities and the Council's own needs and requirements in respect of the particular asset.

The asset transfer process be initially managed by the cross-service internal Officer and Member group – the Asset Advisory Group.

In cases where two or more community organisations are interested in a property, a staged selection procedure will need to be adopted. All transfers will be subject to open and public invitation to make an informal expression of interest. The initial consideration of the case would be by the Asset Advisory Group, who would report the options to the Corporate Management Team for consideration. The final decision will be taken by the Executive.

A critical aspect of this Policy will be the mechanism to measure the capacity of the community organisation in managing any Community Asset Transfer and, separately, the community impact and benefits of the asset transfer in terms of economic, social, or environmental wellbeing of the community.

Payments for use of the Assets

The decision whether to charge an open market consideration for the benefit of an interest in an asset will be determined on a case-by-case basis. Factors influencing such a decision will include; proposed uses, extent of revenue-generating opportunities; benefits to the community. In all cases involving transfer of ownership or occupation, appropriate

legal mechanisms will be put in place to protect the Councils financial position. Any proposed Community Asset Transfer at less than best consideration will be subject to formal valuation in accordance with the Royal Institution of Chartered Surveyors Valuation Standards.

Legal Issues

Issues arise or may arise with regard to:

- Domestic law applicable to disposals at an undervalue
- EC law applicable to procurement issues, treaty obligations and state aid
- Domestic law relating to judicial review
- Domestic law applicable to employment contracts

All of the above will need to be considered on a case-by-case basis and advice obtained from Legal Services wherever appropriate.

9. Risks to be addressed

It is important that both the Council and the community organisation are sufficiently equipped to understand, assess and manage the risks that are inherent in the process of Community Asset Transfer. The following risks have been identified by the Council, together with related potential solutions.

Risk	Potential Solution
Community organisation does not have the capacity/skills to take over and manage the asset	Agree expectations document at the outset
Community organisation cannot raise the funds needed to purchase or refurbish the asset offered	Identify extent of repair costs by detailed survey, prepare detailed business plan, identify and secure funding sources, phased transfer in line with finances available
The ability of the Council to support a particular project is limited by state aid rules or other restrictions or legal constraints which will impact on the community organisation's operation of the asset impact	Identify up front any issues that need to be addressed and allow time in programme for resolution
Inability of the community organisation to manage the asset effectively	Robust business plan identifying secured revenue streams, agreed organisational development plan, skills audit and training development plan
Asset not used in public interest, taken over by an unrepresentative or unaccountable minority, access to the asset is not inclusive	Adoption of ongoing expectation document, legally-binding Service Level Agreement or other legal agreement, Council board members. The Council to ensure management group reflects diversity of local community interest
Community organisation is not able to invest in the asset to meet its longer-term liabilities for upgrading and cyclical maintenance	Robust long-term business plan. Agreed organisational development plan. Community organisation has demonstrated appropriate financial skills or access thereto. Minimise liabilities through

	appropriate legal structures.
Reliance of smaller receiving organisations on volunteers through lack of resources or professional/ support staff	Adequate support/advice on organisational structure /management. Use of role descriptors for trustees.
Fragmented ownership of assets across an area could impair strategic objectives of local authority and/or its partners	Council adopting strategic approach to use of its asset base.
Confusion and lack of awareness over roles, responsibilities and liabilities between Council and community organisations	Use of expectations document at the outset setting out roles and responsibilities of each party.
Community empowerment objectives of the receiving organisation are vague, weak, or not aligned to those of the Council	Organisation needs to undertake community needs survey to assess the needs /interests of the community; working in partnership with other groups
The Council does have sufficient capacity either financially or through personnel to support the initiative	Support for the community should be part of a broader partnership with the community. Role of the Council to be set out in expectations document

It is proposed at the outset of each request from the community that the Council agrees an Expectation Document with the proposed transferee. Such a document would clearly set out the respective roles and responsibilities of each party together with appropriate milestones to address the risks identified above and outcomes to be delivered by each project. It is important that an exit strategy should also form part of this document. The nature of tenure offered would be linked to milestone events.

The Council will manage these risks by using one or more of the following:

- Legally-binding Service level Agreement or other legal agreement;
- Form and length of tenure to be offered;
- Lease restrictions;
- Adoption of good practice learnt from others and the previous transfer of Council's assets;
- Clawback arrangements.

10. The Asset Transfer Process

The following process will be applied by the Council in respect of any application for Community Asset Transfer.

Asset Transfer Process		
Stage	Responsibility	Timescale
1. Asset identified for potential transfer	Local partners and community.	
2. Assets for potential transfer and needs assessment arising from the above.	Council following asset review.	
3. Once an asset has been identified as potentially suitable for management / transfer, initial consideration undertaken by Asset Advisory Group to identify whether proposal would be in accordance with adopted Council policy. If so, discuss expectation document and complete initial business case.	Asset transfer group /Community Groups.	
4. Complete initial assessment– establish level of discount (if any applicable)	Asset Advisory Group refers recommendation to Corporate Management Team.	
5. Recommendation on transfer – yes, report to Executive; no, provide full feedback to applicant	Officers make recommendation.	
6. Decision on transfer	Executive (full Council if freehold	

	transfer is proposed)	
7. If yes, negotiate terms and legal documentation.	Council's Legal Services and Estates and Valuation teams and community organisation.	
8. Agree legally binding SLA and/or other legal agreement and monitoring arrangements - successfully transfer asset	Council's Legal Services and Estates and Valuation teams and community organisation.	