



Property Disposal Policy

Incorporating Community Asset Transfers

Policy Position and Guidance Document

Version 1 (June 2016)

Introduction

The purpose of this Disposal Policy is to update the policy agreed in September 2012 and incorporate the previously separate Community Asset Transfer Policy.

This Disposal Policy should be read in conjunction with the authority's strategic planning documents and Constitution.

Context

The Council Plan for 2016 – 2019 establishes a clear commitment to the council being as effective and efficient as possible, an objective that underpins our priorities as follows:

- To safeguard children and support families and schools so that all children in Cumbria can grow up in a safe environment, and can fulfil their potential;
- To support older, disabled and vulnerable people to live independent and healthy lives;
- To enable communities to help shape their local services, promote health and wellbeing and support those in poverty;
- To provide a safe and well managed highways network, secure infrastructure Improvements and support local economic growth;
- To be a modern and efficient council.

The Strategic Asset Management Plan 2011-21(SAMP to be updated September 2016) supports the commitment made in the Council Plan by seeking to deliver a modern, effective and fit for purpose property portfolio.

To achieve the commitment, the SAMP described the need “to significantly reduce our property portfolio...to enable us to focus our limited resources on our key properties.” In order to achieve this objective, we need to streamline the current processes for all forms of property disposal.

“The Council’s property portfolio consists of over 650 buildings of differing age function and efficiency, estate breakdown detailed below:

1	Schools	319
2	Offices	23
3	Fire & Rescue Service	39
4	Care Homes	28
5	Day Centres	30
6	Highways Depots	13
7	Libraries & Archives	51
8	Residential Houses	23
9	Farms	13
10	Storage Facilities	12
11	Children's Centres	27
12	Miscellaneous	60
13	Surplus Properties	18
		656

In addition the council property portfolio includes land which is surplus to requirements and is being proactively released.

The Council has successfully rationalised assets over the last 5 years through the surrender of leases (38), CAT transfer's (16) and freehold sale (90) making a total reduction of 144 assets which has generated over £27 million in capital receipts.

The challenge for the Council is to make the best use of these assets to enable us to deliver the services our communities want as defined through Area Planning. This may mean improving buildings, changing their use or even selling them and reinvesting the money in our frontline services.

Our ambition is to reduce operational holding costs of surplus properties to as close to zero as possible by planning ahead and completing any external consultation required as early as possible in order that a property can be sold or transferred as soon as it is vacated by the council service.

Why we need a Disposal Policy

The disposal of property needs to ensure the achievement of good practice and where appropriate, that the maximum benefit of the asset is realised. This can be through obtaining the highest sale value or meeting wider community wellbeing objectives supported by the Council.

This policy and the SAMP recognise that Community Asset Transfer (CAT's) is one of the ways in which the corporate priorities can be achieved. The assets that the council owns in local communities may play an important part in enabling voluntary groups to come together to offer communities a range of activities and services that benefit the social and economic wellbeing of an area. CAT's can provide an opportunity to enable communities to help themselves. The CAT process forms part of this Disposal Policy.

The Disposal Policy and Guidance documentation is the method of ensuring that when considering disposal of any form, all factors are taken into consideration, enabling judgements to be made as appropriate in each individual case. It will mean that all communities will have equality of opportunity.

The detailed process for general disposals is outlined within the Open Market Sales Procedure 2016 – Appendix 1)

Community Asset Transfers

It is important to note that local members and Local Committees, in association with Area Managers, have a key role in service reviews which may result in properties being declared surplus.

It is anticipated that Area Managers are also aware of the community groups that need land and/or property in particular areas and are therefore able to support them to develop their outline business cases in advance of a property being declared surplus. For example, if a community needs a community centre, that should be known in advance of a building being declared surplus.

Local members' views will also specifically be sought when a property becomes available for sale or an expression of interest is received for a CAT and prior to marketing, this will be done by details of all properties available for disposal being provided to Local Committee.

In line with the Government Prevent Policy, the council will ensure that disposal of an asset will not be given to any organisation that supports terrorism or radicalisation.

Disposal Policy

Community groups will be allowed 6 weeks to develop an expression of interest and supporting documentation and, if approved by the Corporate Director – Economy and Highways a further 6 months to develop a detailed business case. Subject to the detailed business case proving robust a report will be prepared for decision by Cabinet.

Acceptance of offers following the Open Market Sales Procedure rests with the Corporate Director - Environment and Community Services except where disposals are proposed at less than market value. In this instance the decision rests with Cabinet.

The Corporate Director – Economy and Highways may determine that a property is not suitable for use by the community, (for example but not limited to a farm). In those instances the property will proceed straight to the open market.

The detailed process for General Disposals Appendix 1 and CATs Appendix 2.

APPENDIX I

Open Market Sales Procedure

Date: 08.06.2016

Status: Final

1 *Background and Key Documents*

1.1 The Strategic Asset Management Plan (SAMP) 2011- 2021 (to be updated September 2016) sets out a vision for the rationalisation and investment in the Council's assets. It talks about the need to reduce the size of the Council's estate in line with the reduction in Local authority budgets and for investment in the buildings to be retained to ensure fitness for purpose. This reduction in the Council's estate is an ongoing commitment being undertaken through various key work streams including:

- Area Planning led by Area Managers and supported by Capital Programmes and Property (CP&P)
- Property Review led by CP&P
- The transformational BP4W project established to rationalise the Council's office portfolio

1.2 The SAMP acknowledges that the rural estate including farms and land let on agricultural tenancies and grazing licences does not form part of the operational estate, is therefore surplus to requirements and should be sold off in accordance with an organised programme of disposals. This programme has been successful and it is anticipated that by 31.03.2017 the majority of these assets will have been sold off. Tenanted farms have a specific disposal guidance note.

1.3 CP&P as corporate landlord is well positioned to get early visibility about potential surplus property and can react quickly to deal with disposals, thereby reducing holding costs.

1.4 CP&P are responsible for dealing with the management and subsequent disposal of surplus property following a formal handover from the service department. A handover/ managed shutdown protocol is in place.

1.5

1.6 The Asset Manager together with the Senior Estates Surveyors, and Estates Officer have delegated authority from the Corporate Director Environment and Community Services to authorise sales of surplus CCC land and premises, without limitation. The Head of Legal Services will act on the instructions of the above officers. As is current protocol instructions are sent to the Environment and Property Instructions mailbox for distribution to legal officers.

2 *Establishing and Managing the Sales Programme*

- 2.1 At the commencement of the new financial year, an indicative programme of sales and property transfers will be prepared by the Asset Manager. The programme will identify existing and potential surplus assets which can be brought forward for sale/transfer during the financial year. The programme will include details of:
- intended method of sale
 - estimated Capital Receipt achievable
 - any significant aspects of pre-sale activity which might affect the likelihood of a sale being achieved by the year end.
- 2.2 The programme will have regard to the Capital Receipt Target for the financial year.
- 2.3 The programme will be presented to the Council Leader and Portfolio Holder Environment and Community Services following preparation and any actions followed up.
- 2.4 Further to 2.3 the programme will be duly forwarded to the 6 Area Managers and Local Committee chairs for information and communication to Local Members.
- 2.5 CP&P officers will engage with the Area Managers and Communities Team to take forward any proposed Community Asset transfers or disposals at less than market value in accordance with Well Being Provisions contained within the general consent.
- 2.6 Progress of the programme in terms of receipts will be updated on a monthly basis and the information used to inform Service and Council Plans. Updates will be made available to Capital Finance officers.
- 2.7 The programme will be managed by the Lead Estates Professional reporting to the Asset Manager. Progress on sales, problems and issues with the programme will be discussed regularly with the nominated lead sales officer in legal services, currently weekly.
- 2.8 A BRAG report on the sales programme will be issued to Directorate Management Team at the end of each quarter

3 *Administrative and Internal Pre – Sale Preliminaries*

General

- 3.1 In consultation with Area Managers and Service Leads, as deemed appropriate, consider any outstanding CCC requirements for potential surplus property to be retained for operational purposes. Sufficient capital and revenue budgets must be identified by finance officers before any re-use and capital improvement work can be considered.

- 3.2 The Lead Estates Professional, CP&P in association with The Technical Support Manager to determine whether or not the surplus property should be held for investment purposes in order to generate additional revenue (rent) to support Council plan priorities to make savings and generate additional income. This decision will be guided by the return available on capital.

Managed Shut Down

- 3.3 For Buildings, Estates officer from CP&P lead the managed shutdown of property with the relevant service directorate, ensuring the property is fully vacated in a timely manner and in a marketable state upon handover with all contracts cancelled, meters read and security (if appropriate) arranged. Key handling to be arranged as appropriate.
- 3.4 As part of the shutdown process, the SES will confirm the property to be sold; i.e. extent, boundaries, fixtures and rights of way etc., particularly where other property is to be retained and a site split is necessary. In such cases care should be exercised to ensure that separate servicing/billing is achievable in respect to the surplus area.

Legal Report on Title

- 3.5 The Lead Estates Professional or nominated member of staff will instruct Legal Services (with plan) to produce a Report on Title for the subject property, identifying any issues that would affect the marketability of the property. Upon receipt of the report the case holder will deal appropriately with any onerous or sensitive matters and if necessary take further instructions from the Lead Estates Professional. The Report on Title should be provided within a timescale of 6 weeks from the date of written request and include advice on any obligation to offer back property under the Crichton Down (offer back) Procedures. If Crichton Down rules are deemed to apply the property will be offered back to the original owner at market value.

Surplus School Buildings and School Playing Fields

- 3.6 Surplus School Buildings and School Playing Fields are protected by Department for Education Regulations and cannot be disposed or sold without consent so early consideration by the case holder of the regulations is essential. N.B It can take up to 12 months for DfE to give approval for the change of use/disposal of former playing fields and any application will require a period of advertising to establish local demand for use of the fields. School Buildings regulations are less onerous although still require an application to be made to establish any demand from a Free School or Academy.

4 *Pre –Sale Technical Investigations and Considerations*

Planning Benefit

- 4.1 With a view to optimising sale proceeds, the planning potential of sites and premises will be explored by the case holder prior to any marketing
- 4.2 Establish existing use and consider alternative uses in consultation with the Local Planning Authority and where appropriate; County Planning Officer (Strategic Issues).
- 4.3 Consult adopted and/or emerging Development plans which affect the property including any regional or national planning guidance, Listed Building Status, Conservation Area, Tree Preservation Orders etc.
- 4.4 Consider obtaining independent planning consultancy advice where deemed appropriate/beneficial.

Contamination

- 4.5 If it is considered that there is a risk that the site is contaminated, a desk top evaluation should be carried out by external consultants prior to marketing. Subject to the findings a ground investigation survey warranted to future owners may be advisable.

Development Considerations

- 4.6 With reference to development opportunities undertake standard enquiries with respect to Highways, Services and Utilities, Environment Agency to determine capacity and any significant issues etc., Review responses and consider any action required to add/preserve value and/or overcome obstacles to marketing.
- 4.7 Determine whether to market the site on a conditional contract basis thereby allowing developers time (a long stop date would be appropriate) to satisfy any development issues or whether the property should be sold on an unconditional basis as there is sufficient knowledge and information to be confident about site development issues.
- 4.8 Regard should be had to the use of overage and restrictive covenant provisions dependent upon the circumstances of each case.
- 4.9 When dealing with sites which offer any possibility of long term development opportunities, however remote, it is standard practice to protect the Council interests by placing an overage clause in the sale contract combined with a user restriction. Current recommendation is for a 50% clawback on any uplift triggered by the grant of planning permission, any such clause to be valid for a period up to 85 years.

5 Open Market Sales

Inspection, Valuation and Preparation of details

- 5.1 *Current practice favours procurement of external agents to dispose of property due to fewer internal resources available and to take advantage of agents wider and established markets. Exceptions might include politically sensitive or unusually complex sales. The following activities concerned with marketing surplus properties will therefore mainly be handled by external agents and part of a formal instruction by the case holder.*
- 5.2 Inspect measure and assess a guide price for sale. No sales should be undertaken without the current value of the asset is first established.
- 5.2 Undertake formal valuations where required (not strictly required for marketing properties) to be in accordance with the RICS VALUATION STANDARDS and RICS Registered Valuer scheme (compliance is mandatory for members of the RICS).
- 5.3 Undertake planning and other technical investigations as instructed.
- 5.4 Consider ways of optimising value, e.g. partnership/joint sales with adjoining landowners, alternative developments, etc.
- 5.5 Agree guide price, sales particulars, erection of sale boards and marketing strategy with the instructing case holder.
- 5.6 In relation to the marketing strategy ensure that the Cumbria logo is used in advertising material in addition to the agents own branding. Unless there are exceptional circumstances advertising in the local press should always be undertaken in the first instance and a minimum of 2 adverts are recommended. Specialist property periodicals such as the Estates Gazette should also be considered depending upon the nature of the property to be sold. Where interested parties are required to submit offers/tender documents, the closing date shall be set to fall within a reasonable period from the last advertised date.
- 5.7 Dependent upon the method of sale agreed, the particulars should be accompanied by the appropriate tender forms.
- 5.8 Refer all enquiries from media to the case holder who will liaise internally with the Council's Communications Manager. Agents are advised to inform the case holder of media interest in the first instance and not respond on behalf of CCC.
- 5.9 Where the sale process is undertaken internally all design work associated with sales details and advertising to be compiled in conjunction with CCC corporate branding and standard formatting as advised by the Communications Team.

6 *Exceptions to Open Market Sales*

- 6.1 The duty placed on the Local authority in terms of S.123 LGA 1973 and case law regarding sales is that the Local Authority should obtain best consideration. Consideration is interpreted to mean price. There is no process defined under the Act which dictates how any individual sale should be undertaken, it is an obligation placed on the Authority to determine how best price can be obtained. However, placing surplus property on the market thereby inviting open competition will in most cases clearly satisfy this obligation and this is therefore the Council's standard protocol when dealing with sales, other than farms/agricultural land under -see tenanted farms guidance note.
- 6.2 There is no right of first refusal on sales to any one individual or organisation however it is recognised that there may be instances where the Council would wish for whatever reason to favour a particular purchaser such as a partner authority or large employer.
- 6.3 No direct sale should be progressed without the case holder first undertakes or obtains a formal valuation to establish market value. In the event that the interested party is a special purchaser the valuation report should clearly set out the value on that basis making it clear that this would be the best price obtainable. If this is not the case then the Council would have a difficulty accepting market value unless the bid was either significantly in excess of that figure such that it would unquestionably be best consideration or there were social, economic and/or other reasons which the Council was prepared to take into account as part of any bid.
- 6.4 No direct sales should be progressed without the authority of the AD CP&P. Sales at undervalue can only be approved by Cabinet

7 General Modes of Sale

- 7.1 The following modes of sale should be considered (But not limited to):
- Sale by Auction
 - Sale by Formal Tender
 - Sale by Informal Tender (sealed bids)
 - Direct Sale (Private Treaty)
- 7.2 The method of sale will be determined by the Lead Estates Surveyor in association with the Senior Estates Surveyor, having regard to the individual circumstances. All modes should be undertaken having regard to established CCC procedures and protocols.

Sales by Auction

- 7.3 This is perhaps the most simple and effective way of conducting a sale for certain classes of property which have perhaps failed to sell under

other methods or where there is an unknown or uncertain market. The instructing Surveyor will have agreed a reserve price for the property with the Auctioneer. Provided the reserve price is reached then the property will be sold to the highest bidder who will exchange contracts and agree a completion date on the day of the auction. If the reserve is not reached the Property will be withdrawn and available for private bidding after the auction.

Sales by Formal Tender

- 7.4 This is an effective method of sale by Local Authorities used typically where there is known interest and the LA wants to move quickly to best and final bids. There will be a high degree of certainty about development issues. The tender conditions include for the provision of cleared funds and contracts are fixed on acceptance of the bid.

Sales by Informal Tender/Sealed offer

- 7.5 This is a commonly used method where contracts are agreed with the successful bidder following evaluation of sealed bids. The contract will allow for various conditions to be fulfilled by the purchaser. It has the disadvantage of not bringing any certainty to the sales process although is preferred by private sector bidders because of the more flexible arrangements. Useful where there is any great uncertainty concerning development sites in terms of planning/highways/services or contamination issues which would impact greatly on the potential receipt.

Direct sales

- 7.6 As set out above these sales are by exception and will generally be agreed by negotiation

8 Offers

Receipt and evaluation

- 8.1 For Formal and Informal Tenders all bids will be returned to and managed by Legal and Democratic Services under Legal Services tender protocol. Bids will be opened in accordance with legal protocols on a date usually no less than 24hrs from the closing date and time to allow for late receipt of offers.
- 8.2 Criteria for acceptance of bids made under formal tender will be best price as the conditions of sale are fixed.
- 8.3 Criteria for acceptance of bids made under informal tender is best possible consideration, not necessarily highest offer, e.g. if the highest offer is conditional it may be in some cases preferable to accept a lower unconditional or cash offer. The evaluation will consider carefully

any conditions to ensure that they are capable of being fulfilled and are not false promises. Purchasers will have been issued a standard offer form requesting full details of any bid conditions.

- 8.4 Legal and Democratic Services will notify successful and unsuccessful bidders stating exchange and completion time limits. If the successful bidder declines the property (informal tender only) then, depending on market conditions, the unsuccessful bids will be reverted to and re-evaluated for a potential sale or the property will be re-advertised
- 8.5 Bidders will not be given any information as to the number of bids received, the value of the offers made, by whom, etc.

Late offers (Informal tender/sealed offer sale only)

- 8.6 Late offers pose a problem for Local Authorities. It is important that those involved in the sales process understand the obligation place on the Authority to consider all offers received before exchange of contracts. To do otherwise, the Council may be failing in its duty to obtain best consideration.
- 8.7 To avoid late bids further offers should not be solicited, enquirers should be advised the property is sold STC and their details should be logged on file for use if the sale falls through. It is good practice for successful bidders to be warned in writing by legal services on acceptance of bids that the council cannot guarantee any sale until exchange of contracts has taken place and whilst the property will be taken off the market should any late offer be received the Council has a legal duty to consider such an offer which may result in a resale. This should have the effect of encouraging successful bidders to move quickly to exchange. Should a firm offer be forced on the Local authority see procedure below under receipt of late offer.
- 8.8 Once an offer has been accepted subject to contract; a SSTC sticker should be put on the For Sale Board. There are three late offer scenarios:-
 - (a) Offers not opened - late offer received:-

Consider alongside all other offers.
 - (b) Offers opened but successful bidder not notified - late offer received:-

If late offer is genuine and highest invite re-submission of bids by all parties by the new closing date.
 - (c) Offers opened, successful bidder's offer accepted

If late offer is genuine and highest invite re-submission of bids by all parties by the new closing date.

- 8.9 For any late offer to be taken into account it must be fully explored to establish that it is genuine and that the bidder is capable of proceeding i.e. it is not what is described in case law as “a bird in a faraway bush” which can be dismissed.

If the late offer is higher than the accepted bid and genuine bring the matter to the attention of the AD CP&P and solicitor dealing with the sale. Contact the parties explaining the Council's obligations and invite best and final offers by new closing date. This process should be by formal tender to bring closure to the sale and avoid further rounds of bidding.. Be prepared to deal with a possible complaint from the party who has been gazumped by ensuring the events are properly recorded.

Verbal Offers

- 8.10 Verbal offers must be accepted for consideration but persons making such offers should always be asked to put the offer in writing. Confirm this procedure by way of written notification to the potential bidder, with appropriate documentation.

9 Procedures following an unsuccessful sale

- 9.1 If the auction/ tender process fails, consider further attempts or a private treaty sale. Once a property has been advertised it is recognised that the authority has fulfilled its duty to the general public and the property can be made available to the first acceptable bidder.

10 Post Acceptance Procedures

- 10.1 Monitor progress of sale with Legal Services on a regular basis, currently weekly, to ensure purchaser is complying with any conditions etc. If no progress made within agreed time limits consider re-marketing of property.
- 10.2 As soon as a completion date is known the case holder to ensure that final meter readings are arranged for water (if meter fitted) gas and electricity and arrange a key handover.

11 Post Completion Administrative Procedures

- 11.1 Immediately following completion the Asset Management Officer will amend the Capital Receipts Programme, to ensure that an up to date financial position is maintained
- 11.2 Immediately following completion (no more than 5 working days), to avoid further unwarranted expenditure, the Senior Estates Surveyor/case holder responsible for the sale will notify the Asset Information. Officer (CP&P) who will undertake the following important post sale processes.

- amend the Corporate Asset Register and Atrium (Property Management System) recording the sale (as a whole or part asset only)
- Issue a standard letter/e–mail to the following parties to ensure that all expenditure and liabilities are brought promptly to an end.
 - Technical Support Team colleagues in CP&P as a final check to ensure that any grounds maintenance/cleaning/waste disposal and security contracts are cancelled. NB this should have been forewarned/ actioned at the managed shut down
 - Helpdesk colleagues in CP&P to cancel property repairs from ordering system
 - Corporate Insurance officer -to cancel insurance liability
 - Estates Surveyor, CP&P to cancel rates/Council tax liabilities and arrange any rebates..
 - Lead Fabric and Building services Surveyors CP&P - to cancel planned maintenance.

12 General Recording of Processes Throughout The sales Procedure

- 12.1 The public perception of estate agency is one of mistrust, for that reason it is vitally important that public sector sales are seen to follow robust, consistent and fair processes as outlined above which should if followed withstand scrutiny. Asset Management Team staff, CP & P and legal staff are therefore asked to make sure that all e –mails and relevant documents are safely stored within the Council's or the consultants electronic systems and can be recalled within a reasonable time period in the event of any complaint or procedural review. It is recommended that storage would be within a dedicated file or folder set up specifically for the sale.

APPENDIX 2

COMMUNITY ASSET TRANSFER

Community Asset Transfer (CAT) is where the management and/or ownership of public assets is transferred to community groups. For Cumbria County

Council this is one of the options available to help maximise community benefit from assets owned by the authority that are now surplus to requirements. It can give local people and communities the opportunity to take greater control of assets in their local area. The Council has been transferring assets to communities for many years with local elected members being at the heart of this activity. This policy and guidance builds on the knowledge, skills and benefits gained through those experiences.

A CAT usually relates to transferring a piece of land, property or other asset to a voluntary or community organisation; which in return commits to providing community benefits. The CAT can be by way of a long-term lease (25 – 99 years) at less than the market value or the freehold transfer of the asset, Short tenancies may be considered (to ascertain the viability of a group), if viability is proven a full business case will be required to support the longer lease or freehold transfer going forward.

This document sets out the Council's policy and guidance on CATs and the approach the Council will take to ensure consistent and transparent asset transfer to the voluntary and community sector. It will enable CATs to support the achievement of the Council's priorities and the Cumbria Sustainable Community Strategy which focus on better outcomes for the people of Cumbria. It also supports the delivery of the Council's Strategic Asset Management Plan 2011- 2021.

This policy and guidance sets out the context and rationale for considering CAT - referring to the national, regional and local drivers and priorities; and it describes the principles and processes the Council will use in determining whether an asset is suitable for transfer.

This means that voluntary and community groups can be confident that a fair and standardised process will be adopted for CAT but that this will be sufficiently flexible to enable adoption of an individual approach as every transfer is different.

Underpinning Principles

In order to ensure that CATs are dealt with in a consistent, fair and transparent way, this policy and guidance set out the principles upon which CATs will be progressed. However as every transfer and voluntary or community group involved will be different there also needs to be flexibility built into the approach.

The principles set out below will allow for consideration on a case-by-case basis; ensure that the well-being benefits to the community are assessed; give consideration to value for money; and will also ensure that transfers facilitate the provision of high quality, customer focused services for communities.

The Council sees this policy and guidance documentation as the method of ensuring that all factors are taken into consideration, enabling value

judgements to be made as appropriate in each individual case. It will mean that all communities, and voluntary and community organisations, will have equality of opportunity.

The principles are

- The process for CATs will be clear and transparent with indicative timescales from start to finish
- The criteria used for determining whether an asset is suitable for community transfer will be made publically available
- Any known costs or liabilities involved e.g. ground rent, sitting tenants, maintenance, essential repairs etc. will be made available to the body the transfer will be made to
- Requests for transfers from the community will be considered using the criteria and process set out when they are received
- The Council will work with voluntary and community organisations to achieve asset transfers where appropriate that will enhance community empowerment and engagement and encourage development and sustainability of the sector
- All requests for transfers must be to improve community, wellbeing, support or enhance the current services provided and demonstrate a clear contribution to the Council's priorities and aspirations; as well as support the outcomes in the Sustainable Community Strategy
- All requests for transfers must have the support of the Local Member
- Each asset transfer will be considered on its own merits

Guidance for Community Asset Transfers

When will the Council consider an asset transfer?

The assets a group are seeking a transfer for must be in the ownership of the Council (freehold and long leasehold) with applications considered against the following framework.

The Council will consider asset transfer applications from community organisations already using Council assets under the leases to voluntary organisations policy and from community organisations who wish to establish new services from assets declared surplus.

When considering transfer the Council will usually include a condition that the organisation taking ownership of the asset can only use it for community purposes that provide demonstrable benefits and improved wellbeing to the community. Continued access for community and voluntary groups currently using the premises will usually also be a requirement.

Assets which have been identified by the Council as surplus as part of Service reviews will be available for applications for transfer, alongside opportunities for disposal.

For any transfer, the Council would require a proposal from the group seeking the transfer outlining the community benefits, development plans and business case, covering financial viability, proposed utilisation, benefits to the organisation and community and evidence of wider support. Evidence of support must include elected members.

All decisions will be made by the Council's Cabinet as it holds the authority to approve the transfer of an asset using the wellbeing provisions contained in the general consent.

The Council ***is unlikely to consider applications*** for transfer except in exceptional circumstance in respect of:

- Assets that accommodate fixed or core services.
- Assets that first need to be offered to another person to satisfy a legal or policy requirement
- Assets that have been identified as having a potential significant capital receipt and where the Council is looking at disposal or when they are required by the Council. Where an asset is identified for disposal, voluntary and community sector organisations could submit bids along with other individuals and organisations during the process.

On what basis would an asset transfer take place?

Asset transfers will generally be by means of a long-term lease (between 25 and 99 years, , or freehold transfer, the terms of which will be agreed at the time of each individual transfer. In some cases the Council will consider a short term lease to an organisation with a view to moving to a position where a long term lease would be sustainable or a freehold transfer where community benefit organisations can demonstrate enhanced community benefits.

When considering short tenancies, this is a Corporate Director decision in accordance with Section 123 of the LGA and the power delegated in the Constitution.

The organisation taking ownership (leasehold or freehold) will be responsible for all issues associated with the use and operation of the property. For example:

- Upkeep, repair and maintenance of the asset;
- All running costs, including insurance;
- Compliance with statutory and legislative requirements, including inspections and health and safety requirements and the Council's Safeguarding Policy.

In all cases involving transfer of ownership/occupation, appropriate mechanisms will be put in place to protect the financial and legal position of the Council, such as restrictions on use, clawback provisions and break clauses. For example, in the case of a long term lease we will write into such

leases an appropriate provision (forfeiture or break clause) under which the asset would revert back to the Council, such as:

1. In the case of bankruptcy/insolvency;
2. In the case of corruption;
3. In case of non-payment of rent (if applicable);
4. In the case of non-performance of other terms such as breach of repairing obligations and unauthorised change of use (if applicable);
5. If the transfer agreement is breached;
6. If the organisation wishes to develop and move into bigger premises.

With freehold transfer of ownership the Council may also consider (in addition to the restrictions on use and clawback provisions referred to above), imposing a covenant on the asset limiting whether, when, how and to whom the asset may be sold on. Alternatively in appropriate circumstances, the Council may agree to a business plan that sets out that the community group will sell the asset at some point and reinvest the proceeds in a more suitable asset. The position of the Council on such a disposal would be ensuring the benefits of the CAT would be improved by the proposed sale or transfer.

Who will the Council consider transferring assets to?

We will consider asset transfer to any voluntary or community sector organisation providing it meets the criteria outlined below. The Council will ask the organisation to demonstrate it can fulfil these criteria through the provision of a business case; which will then be assessed by county Council officers from a range of disciplines.

A key consideration will be the sustainability of the organisation and its capacity to manage and develop the asset. The organisation shall:

- Be an appropriately constituted voluntary or community sector organisation which is a legal entity, or a legally constituted through a consortia agreement; (e.g. a registered charity, community interest company or charitable incorporated organisation, a not for profit company);
- Have a stable financial position and track record with a demonstrable financial plan. (The Council will wish to review copies of audited accounts and forward projections where appropriate);
- Exist for community/social/environmental/economic benefit;
- Be non-profit distributing – i.e. it must reinvest any surpluses to further its social aims/community benefits;
- Have stated community benefit objectives;
- Demonstrate strong governance by operating through open and accountable co-operative processes, with strong monitoring evaluation, performance and financial management systems; or where this is a newly constituted organisation demonstrating a robust governance framework;

- Demonstrate it has the skills and capacity within, or available to, its managing body to effectively deliver services and manage the asset;
- Have a specific plan on health and safety issues and compliance with legislation and any statutory requirements arising from transfer of the asset;
- Have a clear purpose and understanding of the activities it wishes to deliver and demonstrate how the asset transfer will enable and support these activities.

Disposal at under market value to Partnership Organisations

In some circumstances the Council may transfer an asset to an organisation other than stated above for example a parish Council. In most circumstances the requesting organisation will need to satisfy all the other conditions but exceptionally, such as in the case of a parcel of land to be improved and maintained for the benefit of the community, a full application will not usually be required as the financial standing and governance of the Partnering Organisation will be known and a short term lease is likely to be applied. Any such application would be subject to assessment and a Cabinet decision would still be required to allow any transfer to take place. (Please refer to point 7 on Page 8 within the Property Disposal Policy)

When considering short tenancies, this is a Corporate Director decision in accordance with Section 123 of the LGA and the power delegated in the Constitution.

What should an asset be used for?

The Council would expect each proposal from the organisation seeking the transfer to outline the current and proposed use of the building and how the asset transfer would enable and enhance the activities within the community that create economic, social or environmental wellbeing.

We would expect that the proposals:

- Demonstrate that the asset will support community and voluntary activities within the area and protect the use of the facility by other voluntary organisations;
- Outline the future opportunities that transfer would bring for enhancing the use of the asset as a community facility;
- Identify opportunities for using the assets to develop and provide new and innovative services, which may be linked to current Council service provision

How will the Council decide whether or not a transfer will take place?

The Council will decide on a case by case and property by property basis as to the suitability of transfer.

It is important to note that early in the process the Council expects applicants to fully understand the implications of taking on the asset therefore sustainability is considered before full application stage to enable groups to be prepared before going to full Business Case stage.

If a transfer is sought what timescales will the council abide by?

The council will require the following timescales to be abided by to ensure a robust decision to relinquish prolonged holding costs.

- Following identification of surplus property a 6 week period is allowed to establish an EOI with sufficient viability information
- Agreement by Corporate Director of Environment and Community Services will establish a further 6 month period to complete the detailed business case
- Subject to a viable and robust business case being prepared and draft legal terms agreed a paper will be prepared for Cabinet consideration
- Following approval by Cabinet completion of the transfer should be mobilised quickly to minimise ongoing holding costs, a period of 3 months maximum to complete transaction

The council will have no obligation to complete transfers if the defined timescales are not met by parties, the default position is to proceed to open market disposal upon non-compliance.