

Northumberland County Council Community Asset Transfer Policy (January 2013)

1 INTRODUCTION

- 1.1 This paper outlines Northumberland County Council's policy on the transfer of Council assets to Community Organisations. It has been prepared by an Officer/Member Working Group established to lead the Council's work on Community Asset Transfers
- 1.2 The policy is structured as follows:
 - Policy Context
 - Scope of the Policy
 - Aims of the Policy
 - Principles of the Policy
 - Asset Transfer Procedures
 - Assessing Asset Transfer Proposals

2 SCOPE OF THE POLICY

Assets covered by the Policy

For the purposes of this policy, an asset is considered to be any property asset in the ownership of Northumberland County Council. The Policy does not explicitly exclude any asset from potential transfer to a Community Organisation and leaves this open for decision on a case by case basis.

- 2.1 The Council considers that the provision of affordable housing is best served at present, through Homes for Northumberland and will not therefore support the large-scale transfer of social housing to a Community Organisation at this time.
- 2.2 The policy is not restricted to those assets which are identified by the Council's Asset Management Strategy as "surplus to requirements". It also includes: property attached to a transfer of service provision - either long or short term and transfers to specialist service providers e.g. leisure trusts.

Transfer Arrangements

- 2.3 “Transfer” is generally considered to relate to leasehold or freehold arrangements in some cases at less than best consideration, or to giving community-led organisations ‘first-refusal’ on a commercially-based disposal.
- 2.4 In transferring its assets to a Community Organisation, the Council will consider the transfer of:
- Management
 - Short/medium term lease
 - Long lease, or
 - Freehold
- 2.5 The decision on which type of transfer is the best option will be decided on a case-by-case basis. It will be informed by an assessment of the business case and which option is best suited to meeting the objectives of the transfer.
- 2.6 There will be a presumption in favour of a management agreement or lease to allow the Council the option of continuing to provide the service from the building, if the venture fails. However, the Council recognises that, on occasion the transfer of a freehold might be possible where the transferee is a statutory organisation such as a Town or Parish Council.

Reversion Clauses

- 2.7 The Council will reserve the right to include some or all of the following conditions on any transfer, whereby the asset could revert to the Council to ensure the property remains in public ownership and used for the benefit of the Community.
- If the organisation is discontinued;
 - In the case of bankruptcy;
 - In the case of corruption;
 - If the anticipated benefits of transfer are not realised;
 - If there is a material breach of lease covenants or restrictive covenants
 - If a building does not remain open for the use of the intended community;
 - If the organisation loses its charitable status;
 - If there are significant issues of service quality for the Community;
- 2.8 However, the Council recognises that the imposition of such conditions could reduce the value of the asset, and will therefore review such conditions carefully during the assessment process.
- 2.9 Where deemed appropriate, following the assessment process, the Council may opt to include an ‘asset lock’ or ‘clawback clause’ to prevent an asset being sold on for excessive financial gain – unless this was the intention of both parties.

- 2.10 However, the presumption should be that a transfer to a Town and Parish Council be less restricted than other transfers. There would be the possibility of either a freehold or leasehold transfer at less than market value depending upon the needs of the Town or Parish Council. There would be a restriction on use limiting it to Community Use only and on a freehold transfer there would be no requirement for a clawback or requirement for NCC to agree to any future disposal of the property. Permission would need to be sought to future transfers of leasehold property, as this is a usual term of a long lease.
- 2.11 For community groups the presumption should be that a transfer of Assets be by a lease arrangement, except in exceptional circumstances. Restrictions would be placed on any freehold transfer at less than market value, requiring the Group to:
- Limit the use to a specific community use
 - Seek approval from NCC for any future sale or sublease
 - Pay a clawback on any future sale except in exceptional cases. This will not taper over time.
 - The test on whether to pursue clawback would be whether the disposal is in the interest of the public. For example a disposal that enables cash to be reinvested in a local community project would be supported but a disposal that leads to the financial gain for an individual would not.

In imposing such conditions the Council will aim to ensure that its decisions are both transparent and consistent and will be made public.

Eligible Groups

- 2.12 The Council will consider asset transfer to any Community Organisation. Appropriate groups may be area- based, around a particular social group or have some other 'community of interest'.

The Council will not transfer its assets under this policy to private businesses which distribute profit or to political parties.

- 2.13 Groups must be able to demonstrate good governance and an appropriate legal structure, for example as:
- Parish and Town Councils
 - Registered Charities
 - Development Trusts
 - Community Interest Companies
 - Industrial and Provident Companies
 - Companies Limited by Guarantee
 - A Constituted Body

3 AIMS OF COMMUNITY ASSET TRANSFER

- 3.1 The Council's physical assets include land, buildings and other structures used for a variety of different social, community and public purposes as well as to NCC's own operations. For some of these assets community management and ownership could deliver:
- benefits to the local community
 - benefits to the Council and other public sector service providers
 - benefits for the organisation taking ownership
- 3.2 To manage the Council's assets flexibly to maximise their contribution towards achieving the Council's priorities. This will include:
- Disposal at best value or market value
 - Contribute to Regeneration priorities by disposal at less than market value.
 - Transfer to Community Organisations
- 3.3 To balance the requirements of the Council to maximise the monetary value of disposal of non-strategic assets against the added value of asset transfer to a partner Community Organisation. To pursue a twin track approach to disposal by offering to the market and Community Organisation partners. Note that this will not normally apply when there is a transfer of service under the Northumberland Charter of Local Councils. A scoring mechanism will be developed in conjunction with Community Organisations.
- 3.4 Public assets are rarely used by everyone: their 'value' being locked-in to a particular use or a particular group of people. Changing ownership or management offers opportunities to extend the use of a building or piece of land, increasing its value in relation to the numbers of people that benefit and the range of opportunities it offers. Community-led ownership offers additional opportunities to secure resources within a local area and to empower local citizens and communities and will be supported.
- 3.5 The County Council will proactively seek the transfer of appropriate assets to community groups in order to promote the widest public value that can be achieved in relation to, for example:
- Facilitate inward investment
 - Community empowerment and greater control over services
 - Area-wide benefits
 - Building the capacity of the Community and encouraging sustainable Community Organisations by building partnerships
 - Economic development and social enterprise
 - Improvements to local services
 - Value for money
- 4.6 The Council will consider the disposal of groups of properties on the same basis as individual properties.

4 PRINCIPLES OF POLICY

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

- Any proposed asset transfer must support the aims and priorities of the Council as set out in adopted policy.
- The Council views its policy on community asset disposal as part of a long-term programme of support to, and partnership with Community Organisations
- The Council will seek to implement the policy *proactively*, This will include raising awareness with Community Organisations and supporting them to encourage appropriate groups to take on an asset.
- This is linked with ongoing support for the Council's ongoing programmes of support to Community Organisations in areas such as grant funding and assistance in the preparation of business plans.
- The Council will take a strategic approach to asset transfer through regular reviews of the asset transfer potential of its assets, and the establishment of priorities linked for example, to priority neighbourhoods, the exit-strategies from regeneration programmes, or the potential of particular high-profile cases etc;
- The Council will have an open and transparent corporate process for asset transfer which includes 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 corporate priorities) which allows a comparison with market disposal and potentially with rival Community Organisation bids This scoring mechanism will be developed in conjunction with Community Organisations;
- Where there is a transfer of service provision, a Community Asset Transfer may be accompanied by a Service Level Agreement identifying the benefits and how these will be monitored and measured, together with the remedies available to both parties if the Service Level Agreement is not met. This SLA will be in effect a contract for provision of services.
- With Service Transfers covered by the Northumberland Charter for Local Councils, there will not normally be a requirement to put the property on the open market.

Benefits of the Community Asset Transfer Policy

Benefits can be measured in terms of the economic, social or environmental well being of the community. Not all benefits have to be financial – they can be about better community outcomes. The business case will need to articulate these benefits and how they will be measured. The potential benefits of asset transfer can include:

For Community Organisations

- Physical assets can provide sustainable wealth;
- Can strengthen the Organisation's community ties;
- Can strengthen the Organisation's ability to raise money. There may be access to funding to refurbish the building or to support staff training and development;
- Greater financial sustainability can help the organisation to escape short term grant-dependency;
- Community organisations can alter or modify a building to better suit their needs.

For the Council

- Transfer can help to solve building management problems ;
- The Community Organisation has "reach" into the community a transferred building can therefore provide a more accessible and responsive base from which to deliver services;
- Can strengthen 'community anchors';
- Can restore 'iconic' buildings;
- Can deliver social, economic, environmental benefits;
- Can provide a catalyst for inward investment and local multipliers through local purchasing and employment;
- Provide a source of rental income;
- Can lower ongoing costs;
- Can help to progress neighbourhood regeneration plans;
- Can provide opportunities for long-term working between sectors;
- Community Organisations can often ensure that no single use dominates a building, whereas Councils may be forced to allocate a single or overriding use.

Risks of Community Asset Transfer

4.2 The assessment should also identify the potential risks of transfer e.g.:

- Potential to disadvantage particular individuals or impact negatively on the local community or communities of interest;
- Potential for a negative impact on community cohesion;
- Potential loss of existing community services;
- Uncertainty around capacity of recipient to manage asset;
- Potential for the asset to become a financial liability for recipient;
- Capacity of recipient to deliver promised services/outcomes;
- Capture of asset by unrepresentative/extremist minority;
- Transfer contravenes State Aid and procurement rules;

- Conflict with other legal, regulatory constraints;
- Potential for ongoing Council liability;
- Lack of value for money;
- Conflict with other funders;
- Potential unfair advantage for one group over another.
- The risks associated with property ownership will pass in whole or in part from the Council to the Community Organisation.
- Perception of a loss of the use of a Community facility by certain sectors of the Community.

5 ASSET TRANSFER PROCEDURES

Applications for Asset Transfer from Community Organisations will be assessed through the following procedures:-

Phase 1

1. Interest received - initiated by the applicant organisation or by the County Council.
2. Where the building is declared surplus, the Council will consider both the merits of an open market sale against the possible reuse of the building by the Community Organisation and may run a market disposal in parallel with determining interest from the Community.
3. Initial proposal is referred to Commercial and Property Services and the Community Asset Transfer Group to check eligibility of property for transfer.
4. The Community Asset Transfer Group will be a cross-functional group consisting of Property, Legal, Development Control, Social Enterprise, Policy and representatives from Community Organisations, including Northumberland Association of Local Councils (NALC) and the VCS Assembly. The intention is it acts as a brokerage group to speed up the process and assess Community needs more accurately. The Group will be consulted and will perform a brokerage role where there are competing Community Groups involved.¹

Phase 2

5. If property is eligible for transfer, applicants invited to complete an Initial Expression of Interest Form (Attached as Appendix 1) which sets out details of the applicant organisation, the property and plans for its use.
6. The Applicant will be provided with full details of Premises related running costs, the property title including any restrictive covenants and survey information including any asbestos or condition data.

¹ This paragraph has been updated since May 2012 to reflect changes within NCC

7. Advice may be sought from representative groups such as Northumberland Association of Local Councils and the Voluntary and Community Sector Consortium on the viability of proposals.
8. The Application should be accompanied by a Business Plan but it is understood that the process of pulling together a formal Business Plan is long and costly and this may follow later with approval to proceed being conditional upon receipt and approval of this.
9. The Assessment Template (Appendix 2) will be completed by Commercial and Property Services and would be referred to the Community Asset Transfer Group,
10. The application would be assessed around the competence of the organisation, the business plans, community benefit and contribution to delivery of policy objectives of the Council – the assessment process will usually include an interview.
11. If the decision of the Community Asset Transfer Group is positive, then Commercial and Property Services will consult the portfolio holder and Ward Councillors for approval

Phase 3

12. If approval is given, then Property and Legal will negotiate Heads of Terms. This would include proposals for post transfer support and monitoring led by the relevant service directorate.
13. Referral to Property Group, Senior Management Team and Executive as appropriate for a decision if required. If necessary the Application will be referred to the Risk Appraisal Panel.
14. Final sign off by the Corporate Director of Finance in consultation with the Executive Member for Corporate Resources.
15. Transfer the property and put in place the on-going support and monitoring arrangements, where appropriate (See note below on Toolkit)
16. If at any stage the application does not proceed then feedback would be given to the applicant organisation by the key contact.

6 ASSESSING ASSET TRANSFER PROPOSALS

- 6.1 The asset transfer decision is essentially a choice between:
 - Doing nothing;
 - Expenditure on other services made possible as a result of a 'commercial' disposal;
 - The benefits generated by the transfer of the asset to one or other community group (if there are competing proposals);
- 6.2 In assessing proposals for asset transfer, the Council will attempt to measure the relative benefits and risks of these 3 options in order to

justify its decisions and the level of discount proposed. It will also relate these benefits to Council priorities.

- 6.3 A scoring mechanism will be developed in conjunction with Community Organisations to assess the value of community benefits to enable comparison with a market value disposal.

Given the presumption in favour of leases, one possible method of doing this would be to assess the market rental value foregone by a transfer at a peppercorn rent. Indeed we could set up leases that are at market rent but with a side agreement which provides a percentage discount potentially down to a peppercorn depending on the amount of community benefit based on performance indicators being met for factors such as: proper governance, use by special needs groups, etc. Failure to meet the condition would mean a loss of discount. This also allows accurate monitoring of the subsidy that the Council is providing to Community Groups.

- 6.4 Critical to the success of any transfer is having a clear rationale backed by a robust business-case demonstrating the ability of the recipient to manage the asset effectively, including an assessment of the financial and organisational capacity of the organisation.
- 6.5 An initial assessment framework which incorporates this information is provided in Appendix 2.
- 6.6 The assessment framework provided in Appendix 2 is proposed as an interim approach to the assessment of asset transfer proposals. It is intended that the Council would employ a framework which enabled the more direct comparison of 'intangible' community or social benefits with the capital receipts from a commercial transfer.

Organisational Health Check

- 6.7 The Council must be confident that the organisation which will receive the asset is sound financially and managerially, and is capable of delivering the anticipated benefits. Some statutory organisations such as Town and Parish Councils will be able to satisfy these without in depth checks being undertaken. The following will be assessed as appropriate:
- Does the organisation have a Constitution?
 - Is the organisation a Registered Charity?
 - Is the organisation a Registered Company?
 - How long has the organisation been established?
 - How is the organisation managed?
 - How is the organisation governed?
 - Does the organisation have an Equal Opportunities policy?
 - Does the organisation have insurance?
 - Does the organisation have an Annual Report?
 - Does the organisation have Annual Accounts?
 - Is there a supporting statement available from 2 referees?
 - Does the organisation have the necessary expertise to take on the asset (now, and in future)?
 - Any outcomes from peer reviews of organisations

Support and idea sharing will be put in place to encourage groups to reach a stage where they are able to satisfy these requirements if possible.

Business Case

- 6.8 All applicants for an asset transfer will be provided with detailed information regarding the building including the following:
- Premises related running costs
 - Details of the property title including any restrictive covenants
 - Survey information including any asbestos or condition data.
- 6.9 The Business Case will need to identify:
- Need for transfer and use and maintenance of asset;
 - Benefits;
 - Capacity of the Community Organisation to acquire and manage asset;
 - Evidence that the Community Organisation will insure the asset;
 - Business case for future use – e.g. cashflow;
 - Type of transfer and reasons;
 - Statement from sponsoring Department;
 - Terms of transfer;
 - Capacity building plan and how delivered;
 - Details of how the proposed use will be monitored and any 'fall back' arrangements;
 - Liabilities and how these will be addressed.