



Surplus asset policy (Community benefit)

July 2015

1 Background

- 1.1 Community ownership of assets is not new, however, in recent times, community ownership and management of land and buildings has been given fresh momentum as a result of influential reports, government policy and the work of community-based organisations. In May 2007, the Department for Communities and Local Government (CLG) published 'Making Assets Work', the report of an independent review led by Barry Quirk, the Chief Executive of Lewisham Council. The review focused on the transfer of asset ownership and management to community groups. It identified the need for transparent community asset transfer policies to be implemented.
- 1.2 Under the Localism Act 2011 (part 3 chapter 5), the concept of '**assets of community value**' was introduced. District and unitary councils are required to maintain a list of 'community assets', which can be nominated by parish councils or by groups with a connection with the community (not individuals). If an asset successfully nominated as an 'asset of community value' becomes surplus to requirements, local groups will be given time to come up with a bid for the asset when it is sold. This process has become known as the '**community right to bid**'.
- 1.3 A parliamentary briefing of February 2015¹ indicates that:
- The right to bid only applies when an asset's owner decides to dispose of it. There is no compulsion on the owner to sell it. The scheme does not give first refusal to the community group, unlike the equivalent scheme in Scotland; and it is not a community right to buy the asset, just to bid. This means that the local community bid may not be the successful one.*
- 1.4 **Community asset transfer** is a government policy directed at local authorities' use of their redundant assets. It is entirely separate from the community right to bid, operating on a discretionary basis rather than forming a 'community right'.
- 1.5 The powers under which it takes place predate the Localism Act 2011. Relevant legislation includes the Local Government Act (section 123), which allows local authorities to dispose of land and buildings at best consideration; and the General Disposal Consent (England) 2003, which allows Councils to dispose of land and buildings at less than best consideration, to an undervalue of £2m subject to an assessment of whether this will contribute to social, economic or environmental well being.
- 1.6 The legislation noted above enabling community asset transfer applies to joint authorities (which includes Fire and Rescue Authorities) as well as to principal Councils.

¹ <http://researchbriefings.files.parliament.uk/documents/SN06366/SN06366.pdf>

- 1.7 Although TWFRAs have a relatively small number of property assets (land and buildings), and most of these are fully utilised in delivering services, it is considered that the Authority should have in place a policy for the determination and management of any disposals of surplus Authority assets into community ownership and/or management.

2 Types of community asset transfer

- 2.1 Community Asset Transfer is the transfer of the control of an asset from a Council or FRA to a community or voluntary group. This may take a number of forms including a short term licence agreement, a long or short term lease or a freehold disposal.
- 2.2 The concept of community asset transfer was informed by the Quirk review of 2007, which recognised that disposal of former Council premises to community groups at less than market value (or best consideration) may in some circumstances provide better value to the Council in terms of delivering its wider community objectives than sale of the asset on the open market.
- 2.3 The matrix below is adapted from Manchester City Council's community asset transfer policy, and illustrates some of the alternative arrangements and their benefits and risks to both Councils and community groups.

Type of disposal	Councils		Community groups	
	Benefits	Risks	Benefits	Risks
Freehold sale at full market value	Maximum capital receipt realised; no liability to maintain	Loss of control over asset & potential loss of community use	Unrestricted control over asset Potential to access external capital funding	Need to secure funding to buy and/or operate
Freehold transfer at less than market value	Loss of maintenance liability Some capital receipt	Potential loss of control over asset & loss of community use Limited capital receipt	Opportunity to generate income by sub-letting.	
Long lease	Loss of maintenance liability Control over use ensuring asset remains in community use Asset eventually returns to Council in reasonable condition	Asset not adequately maintained- could end up asking for further Council support. Council has insufficient capacity to manage/enforce covenants	Potential to access external capital funding Control over operation of building Opportunity to generate income by subletting	Need to Secure funding to operate and cover all costs Requirement to provide an agreed service from the property

Type of disposal	Councils		Community groups	
	Benefits	Risks	Benefits	Risks
Short lease-tenant responsible for internal repair and occupation costs	<p>Potential net saving on maintenance/ rates/security costs</p> <p>Potential to generate rental income</p>	<p>Potential net increase in costs</p> <p>Inadequate resource to manage</p> <p>Risk that property not maintained properly- Council would retain some obligation for fabric of building</p> <p>Need to renegotiate regularly</p>	Use of property to provide a community service, with limited financial commitment	Restricted ability to access external capital funding

- 2.4 It is recognised that a community asset transfer can create more than an ordinary landlord/ tenant relationship but also a partnership between the community organisation and the Council/FRA. Such a partnership could assist the Council or FRA in delivering its objectives.
- 2.5 There are 'up front' costs associated with community asset transfer, including condition surveys, legal fees and capacity building support for the group. Councils tend to have resources for community capacity building within their organisations, as part of their place shaping role. These resources do not tend to be present within FRS.
- 2.6 Any proposals for a Community Asset Transfer need to take full account of these up front costs, and be clear about the nature of support required by, and offered to, the community group. It is not envisaged that TWFRAs will cover significant upfront costs associated with a community asset transfer, other than stock condition surveys which are part of the overall estate management process for the organisation.

3 Policy

- 3.1 TWFRAs recognise that it has the statutory power to dispose of assets at less than best consideration, within the legal constraints, where the disposal will secure the promotion or improvement of the economic, social or environmental well-being in the area.
- 3.2 Changing ownership or management can offer opportunities to extend the use of a building or piece of land, increasing its social value in relation to the numbers of people that benefit and the range of opportunities it offers. Community ownership can offer additional opportunities to secure resources which the Authority would be unable to access, and potentially allows the Authority to offer support 'in kind' within a local area.
- 3.3 This needs to be balanced against the fiduciary duty of the Authority to local people to act prudently when disposing of assets, and in particular to maximise income to support the financial sustainability of the organisation, and its ability to provide a high quality service to the residents of Tyne and Wear. This is particularly pertinent in a climate of sustained annual reductions in available funding.
- 3.4 In the light of this, assets suitable for community transfer are defined as land or buildings in the ownership of TWFRAs which:
- a) have been identified as surplus to requirements through a decision of the Fire Authority
 - b) have, through a formal independent valuation, been demonstrated to have limited commercial value either in terms of sale or rental.
- 3.5 Where assets do not meet these conditions, there will be a presumption that they will be exposed to the open market to seek the best commercial value for the asset. Community groups may express an interest in such properties and these will be considered alongside any commercial offers.
- 3.6 The Authority will retain discretion to dispose of assets which do not meet these conditions at less than best consideration where it considers this to be appropriate and in accordance with its statutory powers.
- 3.7 Where these conditions are met, the Authority will advertise this fact in a variety of ways subject to adequate budget provision being identified to cover the costs of this exercise. A clear procedure will be followed for the management of any proposal to transfer assets to a community/voluntary organisation.
- 3.8 For the purpose of this policy, a community/voluntary organisation is defined as a collection of individuals who come together to undertake specific activities for the benefit of the community, whatever that community might be. Such groups will be self-governing, non-profit distributing and non-statutory, with a strong emphasis on volunteering or demonstrating strong community benefit in the case of social or community enterprises.

4. Framework for community asset transfer

4.1 Where an asset has been deemed suitable for community asset transfer, a clear framework is essential to ensure that fair and transparent consideration is given to the proposed transfer. VCS organisations must be provided with the clearest guidelines possible in order to move forward.

a) Expression of interest

4.2 Where a surplus asset has been deemed suitable for community asset transfer, any VCS organisation wishing to pursue such a proposal must submit to the Authority a formal expression of interest in the asset, setting out the proposed use to be made of the asset, and the basis upon which the VCS group is seeking for the asset to be transferred.

4.3 VCS organisations must submit any such expressions of interest within a time period specified by the Authority, which will normally be three to six months.

4.4 In the event there are two or more community groups applying for asset transfer for the same asset, and there is no potential for the groups to work together on proposals, each group will be required to follow the process below. The relative merits of each proposal will be assessed using information supplied within the process, supported by a transparent interview process.

b) Evidence of need

4.5 VCS organisations will then be asked to prepare an outline business case demonstrating objectively how the transfer will contribute to the promotion or improvement of the economic, social or environmental wellbeing of the whole or any part of the area.

4.6 This should make reference to:

- how the occupation and maintenance of the asset will serve the community and support the objectives in the Authority's Strategic Community Safety Plan and/or the overarching strategic or local area plans of the Council in whose area the asset is located
- Who will benefit, and how they will benefit
- What level of support for the proposal exists in the local community, including an indication of how the community have been consulted
- Evidence that the group will offer facilities that are open and accessible to all
- Partnership Work Evidence of partners who will be supporting the project – including letters of support
-

4.7 Advice and assistance to the VCS group may be available from the relevant VCS infrastructure organisation in the area.

4.8 The Authority will work with the relevant Council in which the asset is located to test the evidence of need set out in the business case. This will include an analysis of:

- Existing programmes, facilities and services in the area (either VCS, public or private), to determine whether there is an identified need for the proposed use
- Views of Ward councillors as to their knowledge of need in the local area
- Whether the proposal fits with the strategic plans of the Council and its partners (including the FRA)
- Whether there is potential for co-location of services and the release of other assets for sale
- Whether the proposal needs a specific facility or can be located elsewhere
- Whether there is any evidence of working with other VCS groups in the area and/or evidence of investigating the possibility of using an existing facility

4.9 Following assessment of evidence of need, the Authority will either recommend that the proposals be taken forward to full assessment stage, or not. The organisation involved will be advised in writing of the decision, giving reasons if the proposal is not recommended to be taken forward.

c) Community Asset Readiness Assessment tool (CARAT)

4.10 The third stage is the use of CARAT which has been adopted from Sunderland Council's approach to the management of community asset transfers. It has been developed to provide an assessment or "Fit for Purpose" ranking of the building and the governance capacity of the VCS organisation. Using this tool will inform the decision making process by establishing the status of the building and the group proposing the asset transfer.

4.11 The CARAT considers the following key areas:

- Building status
- Status of the organisation
- Current level of council or external funding support
- Use of building

4.12 **Stage 1** comprises a full evaluation of asset management information i.e. condition survey including Disability Discrimination Act (DDA) compliance, market value, potential rental value and compliance with statute. The template for this assessment is attached as Appendix A. The contents of the condition survey will be shared with the VCS organisation to aid the business planning process

4.13 **Stage 2** of the CARAT considers the governance status and capacity of the VCS organisation. The template for this assessment is attached at Appendix B This stage has been developed using guidelines from the Charity Commission and considers a range of indicators including an assessment of staff and volunteer policies, assessment of management committee skills, legal and financial probity, marketing and promotions and legislation compliance. The experience of the staff and volunteers in terms of premises management experience will be considered at this stage.

4.14 This stage would also identify in more detail the the business plan of the proposing VCS organisation, including:

Financial Sustainability:

- Funding in place for revenue to support the building and an ongoing maintenance plan over the life of the proposed transfer

Programme Sustainability

- Degree of local support and identified need for proposed programme to be delivered; clear outcomes identified from programme delivery
- How programmes will be delivered, including how they meet the strategic priorities of the Authority and its partners

Governance Capacity of Organisation

- Skills of volunteers and management committee
- Premises management experience
- Track record of managing similar projects
- Compliance with any VCS/partner compacts existing in the area

4.15 The community asset transfer process will be jointly led by the Authority's Estates function and the Property team from Sunderland Council. The CARAT process will be administered by staff from Sunderland Council in order to provide an independent view. Where the proposal is within Sunderland, the input of another Council in the Tyne and Wear area will be sought to avoid any conflict of interest.

d) Decision making

- 4.16 Following evidence of need and CARAT assessment, the Authority will consider whether it will give outline approval to the asset transfer. In supporting this decision, the Chief Fire Officer will ensure that the input of the Finance officer, Monitoring Officer and the relevant area committee/ward councillors' views have been sought.
- 4.17 If the Authority considers that the business case is not sufficiently strong to warrant a transfer, the VCS group will be notified in writing with reasons.
- 4.18 If the Authority considers that the business case is sufficiently robust, it will give outline approval to the transfer subject to the development of clear contractual arrangements. Full approval for the asset disposal will be made once proposed contractual arrangements have been finalised.

5. Basis of community asset transfer

- 5.1 Where a property is leased to a VCS organisation, the organisation will be responsible for all costs associated with its occupation of the property, including repairs and maintenance, rates, insurance, heating, lighting etc.
- 5.2 Consideration of a freehold transfer will be beneficial only where the property has been identified as a financial liability or when such transfer will better meet the Authority's strategic priorities. In these cases the VCS organisation would need to evidence the longevity and certainty of community benefits. Any freehold transfer would require restrictive covenants and financial claw back to restrict the use of the site to a community use within the legal documentation. This is to ensure that no profit can be made from the site and it would continue to be for community use only. Any potential future sales, changes in planning consent or applications for funding for the site could not proceed without the legal consent of the Authority.
- 5.3 If a community group is encouraged to proceed to an asset transfer the lease will be tailored to the individual circumstances of the transfer bearing in mind the financial value of the asset, the existing community facilities in the local area, and the sustainability of the group. In developing leasehold arrangements the following will be considered.
- 5.4 **Length of Term:** VCS organisations generally require long-term lease agreements in order to be able to access funding. These terms will be considered on an individual basis depending upon each circumstance. The length of term offered will depend on whether any potential future uses have been identified for the site and the sustainability of the organisation and the proposal.
- 5.5 **Rent:** If a building were to be let on a commercial basis it would be let on a fully repairing basis and at a market rent. This would mean that the Authority as Landlord would receive a financial return on the asset with no maintenance or financial responsibilities. To let a community asset on a reduced rent while retaining repairing responsibility is a significant decision as it results in a loss of rent for the Authority and potentially a repairing responsibility.
- 5.6 When assessing a community asset transfer, a rent review or lease renewal of an existing community asset, a valuation exercise must be carried out on the basis of the market rent in order to assess the potential financial cost of transferring or renewing the lease of an asset at less than best consideration. The market rent is assessed by a Royal Institution of Chartered Surveyors (RICS) professional in accordance with the RICS Valuation Standards and considers, but is not limited to, such factors as planning consents, property defects, market conditions, comparable evidence of recent market transactions for the type of property and location. However, if the community benefits are tangible and can be measured against the Authority's strategic objectives, and a value can be attributed to them – either through reduction of service delivery costs as a direct result of VCS use or through the meeting of a community need – this value may exceed the financial loss of a reduced rental. The decision to grant a lease at less than market rent is justifiable under the Authority's power of well being (Local Government Act 2000).

- 5.7 The view of the Council in the area where the asset is located will be sought as to the financial value of any community benefit claimed in relation to the setting of rents. All financial assessments must include Finance staff to ensure the calculation is correct and that the appropriate basis has been used and applied correctly.
- 5.8 **Maintenance:** Assets which are declared surplus in terms of built environment are generally assets that are at the end of their useful life and, as with the majority of Authority owned property, come with considerable backlog maintenance. Accordingly the buildings can be expensive to run and maintain, which in the case of Council transfers, has led to groups asking the Council to put buildings into repair prior to letting, to continually maintain the properties and to accept the buildings back in a poor state of repair if they cannot be maintained. This is unlikely to provide best value to the Authority.
- 5.9 A building survey will be undertaken by the Authority prior to any consideration of transfer, as part of the CARAT process. Unless there are exceptional circumstances, buildings will be transferred in their current state of repair and on a fully repairing basis. This will ensure that funding for repairs is not diverted from essential maintenance on operational buildings, such as a building occupied by the Authority to deliver services.
- 5.10 **Lease Terms:** A standard lease arrangement will be developed for any community asset transfers.
- 5.11 A rent review clause will be contained within the standard terms, which will allow the Authority as Landlord to review the rent payable on the property at regular intervals. The rent review will comprise the same valuation process that took place at the commencement of the lease; if the VCS organisation still meets the needs of the Authority, then the rent will remain at the reduced level. Should the organisation revert to a commercial entity at any point in the lease, the market rent will be implemented. The timing of the rent review will depend on the length of term of the lease for example a five year rent review on a ten year lease.
- 5.12 All new leasehold transfers will also allow for Authority monitoring of the VCS organisations to review usage, the programme offered and to ensure that the community is being adequately served from the facility. This monitoring process will impact the outcome of the rent review and lease renewal in terms of the rent that is applied.
- 5.13 The Authority recognises that there may be specific legislation and criteria associated with the delivery of particular services – for example, sports project or children and young people service delivery; in these circumstances, specific additional criteria will need to be applied within any contractual agreement.

6 Risk assessment

- 6.1 A full risk assessment will be carried out on any specific proposal to transfer an asset to a VCS organisation.
- 6.2 The following general risks have been identified in relation to community asset transfer.

Risk	Mitigation
Loss of Potential Capital Receipt and potential market rent	Under this policy, community asset transfer is only considered where the surplus asset has, through a formal independent valuation, been demonstrated to have limited commercial value either in terms of sale or rental
Transfer of a building in its current state of repair may place additional responsibilities on the VCS organisation and/or lead to the building being inadequately maintained	Provide a full building survey prior to a VCS organisation before agreeing to pursue transfer Contractual arrangements which are clear on the responsibility of VCS group in terms of building maintenance, supported by tenant's handbook
Lack of skill/experience/financial capacity in VCS organisations, to run and maintain the property?	Assessment of capacity of VCS group to manage a building as part of CARAT process Transfer on a long lease will give the receiving organisation more opportunities to raise grants and investment funding to support improvements Signposting of VCS group to Council community development staff and/or VCS infrastructure organisation to provide support in taking on this responsibility
Sustainability of VCS organisation	A full and sustainable business plan will be required from any VCS organisation requesting a transfer.
Risk of property being prematurely returned to the Authority	The business plan and the lease agreement will clearly state that the Council is not responsible to deliver the service provided by the VCS organisation if the asset returns to the Council

OFFICIAL