

Sunderland City Council Surplus Building Policy (Community Benefit)

1.0 Introduction

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.

Sunderland City Council is responding to this by formulating a Policy to:

- Support the development of an efficient and effective portfolio of Council assets which are utilised by Voluntary and Community Sector (VCS) organisations, ensuring a systematic approach that maximises the delivery of key outcomes for the community consistent with the key priorities of the Sunderland Strategy, and Local Area Plans.
- Establish a consistent approach to occupancy (including rental arrangements and asset transfer where appropriate) and to consider all related requests that seek to support community related activity in Council assets.

The Council currently has 85 buildings that are utilised and managed by the VCS. The majority of these have been transferred as leasehold interests on varying lease lengths and associated responsibilities

On occasion, expressions of interest are made by VCS organisations as vacant properties become available. The existing assessment process involves the VCS organisation submitting a business plan to Property Services which then consults with those Directorates that may have an interest – for example, Children's Services if the proposal includes youth provision – on the sustainability of the organisation and the commercial viability of the building in question.

The transfer of community assets has both a national and local context which provides for the development of a framework to consider the potential for the transfer of an asset.

This Policy describes how the Council can work with VCS organisations to consider the case to support successful transfer of Council owned buildings for the benefit of the community, giving local people greater control over service provision in their neighbourhood

and enhancing the independence and self-sufficiency of our communities.

The policy provides a clear framework for considering the leasehold transfer of buildings to formally constituted VCS organisations. Organisations that take on the transfer and management of a Council owned building will be required to work to core standards set by the Council, which are communicated prior to the transfer of the building and are built into the monitoring of the lease process within current staff roles.

In addition the Policy provides a corporate review of community buildings currently utilised by the VCS and establishes a policy framework to manage these arrangements.

[Disposals or changes in use of school playing fields are covered by a legislative framework and any disposal would first need approval under Section 77 of Schools Standards and Framework Act 1998. School playing fields are not therefore considered under this policy.

2.0 National Policy Framework

The Local Government White Paper 'Strong and Prosperous Communities', published in October 2006, set out a new relationship between local authorities and its communities. The paper confirmed the Government's intention to increase opportunities for community asset ownership and management, and promoted asset transfer as part of a local authority 'place shaping' role. It aims to establish a relationship that promotes social cohesion and the revitalisation of communities through effective engagement and participation, an area based focus and community empowerment.

As part of this agenda, Lewisham Council's Chief Executive Barry Quirk led an independent review which looked at the transfer of asset ownership and management to community groups. The report of the Quirk Review, 'Making Assets Work', was published in May 2007. The Review found that:

- A managed increase in the community's stake in an asset can bring a wide range of additional benefits for the community, the organisations receiving the asset, and the local authority facilitating the transfer.
- Any sale or transfer of public assets to community ownership and management needs to realise social or community benefits without risking wider public interest concerns and without community purposes becoming overly burdened by operational considerations.
- The benefits of community management and ownership of public assets can outweigh the risks and opportunity costs in appropriate circumstances.

- There are risks, but they can be minimised and managed.

In relation to risk management, the Quirk Review advised that transfers do not necessarily have to be a transfer to one organisation. It is recommended that if a VCS organisation does not have the capacity to manage a building then the transfer can be made to a larger organisation that holds a portfolio of assets and can provide support to smaller community based organisations.

Both the Local Government White Paper 'Strong and Prosperous Communities' and the Quirk Review looked at the importance and methods of stimulating community empowerment through improved community welfare, harmony, cohesion and the capacity for self management. Whilst the primary objective is community empowerment, the purpose of the Quirk Review was to examine and to provide advice on how to optimise the community benefit of publicly owned assets by considering greater opportunities for asset ownership and management to community groups. The Review identified the need for transparent community asset transfer policies to be implemented.

In July 2008 the Local Government White Paper 'Communities in Control: real people real power' confirmed ongoing support for the Quirk Review and announced the establishment of a national Asset Transfer Unit.

The Asset Transfer Unit was set up in 2009. Funded by CLG, the Unit is led and managed by the Development Trusts Association in association with Community Matters and the Local Government Association.

Further key government legislation and policies that influence and impact upon community transfer include:

- The Decentralisation and Localism Bill was introduced to Parliament in December 2010 and gives residents and community groups 'first refusal' on the purchase and management of local community assets. The Community Right to Buy requires local authorities to maintain a list of public or private assets of community value put forward for consideration by communities. When listed assets come up for disposal (either the freehold or a long leasehold), communities will be given the chance to develop a bid and raise the capital to buy the asset when it comes on the open market. This will help local communities to save sites that are important to their particular neighbourhood.
- On 4 February 2011 the Department for Communities and Local Government issued the consultation paper 'Proposals to Introduce a Community Right to Buy – Assets of Community Value'. The Community Right to Buy scheme is intended to run alongside the

existing local authority asset transfer procedure under the Local Government Act 1972 (General Disposal Consent 2003) and includes:

- Extending the scope to private as well as public assets
 - Giving communities the right to identify property which they see as being of vital local importance, including local shops and public houses
 - Local authorities will be required to maintain a list of assets in their area which have community value, and communities will be able to nominate assets which they believe should be included.
 - Delaying the sale of these assets on the open market for a set amount of time to enable community groups to put together a bid, prepare a business plan and raise the necessary funds.
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- The Local Government and Public Involvement in Health Act (2007) provides a legal framework for social cohesion and community empowerment promoting the involvement of local representatives in decision making.
 - The Sustainable Communities Act (2007) reinforces the principle that local people know how best to promote the sustainability of their area and provides a simple process where ideas generated by local communities are fed through their local authority.
 - Local Government Act (2000) empowers local authorities to undertake activities that enhance, or contribute to the economic, social or environmental well being of the area. The power does not permit the Council to do anything that it is prohibited or restricted from doing under other legislation. The well-being power should be exercised with regard to the Council's community strategy and must be used rationally and lawfully. The well-being power provides a legal basis for an asset transfer but each proposed asset transfer will need to be judged on it's own merits.
 - Section 123 of the Local Government Act (1972) allows local authorities to dispose of land and buildings at best consideration. Under the General Disposal Consent (England) 2003 the Council has the ability to dispose of land and buildings at less than best consideration up to an undervalue of £2 million subject to the Council considering that the purpose for which the land is to be disposed is likely to contribute to the achievement of the promotion or improvement of the economic well-being, social well-being and environmental well-being, or any one of them, in respect of the whole or any part of it's area, or all or any persons resident or present in it's area.
 - Section 32 of the Housing Act 1985 provides that the Council may not dispose of any land held for housing purposes under Part II of the Act without the consent of the Secretary of State. The

Secretary of State has issued General Consent E3.1 which permits local authorities to dispose of any land held for housing purposes for the best consideration that can reasonably be obtained, provided that any dwelling house included in the disposal is vacant and will be demolished without being used again as housing accommodation. Where a community-based asset transfer of housing land is taking place at less than market value, a specific Ministerial Consent will be necessary for the disposal.

- The Public Request to Order Disposal (PROD) enables any member of the public to request the Secretary of State to direct a local authority under section 98 of the Local Government, Planning and Land Act (1980) to dispose of a building or piece of land in its ownership that is unused or underused in meeting the public body's function.
- Members have a fiduciary duty to local people to act prudently when disposing of Council owned assets. Consideration will need to be given to whether the non-financial benefits arising out of any community based asset transfer will outweigh the capital receipt or rent that is being waived.

3.0 Local Policy Framework

The Sunderland Strategy (2008-2025) identifies five strategic priorities for the City that should be considered in any community asset transfer. These strategic priorities are:

- Prosperous City
- Healthy City
- Safe City
- Learning City
- Attractive and Inclusive City

Underpinning the Sunderland Strategy are the Local Area Plans (LAPs) for each of the five areas. The LAPs support the delivery of the above strategic priorities and also focus activity and resources on key issues identified by local people in relation to the immediate area in which they live. Delivery of the LAPs is allowing both the Council and its partners to continue to make a demonstrable difference in the quality of people's lives within their own community.

The Sunderland Compact is an agreement between the organisations of the Sunderland Partnership and the VCS to improve their relationship for mutual advantage and community gain. The recent refresh of the Sunderland Compact has seen significant involvement from local VCS organisations alongside representatives from the Council and Sunderland Partnership organisations. This has resulted in the development of a local agreement in line with national policy guidance reflecting local requirements. The Sunderland Compact

provides the basis to improve partnership working between the Council/other Sunderland Partnership organisations and Sunderland based VCS organisations.

4.0 Property

When a Council owned property is declared surplus to operational requirements by an individual directorate, a corporate approach is currently taken to identify the options available, using an options appraisal process in order to determine, for example, its re-use, retention, or disposal. This approach is guided by the Strategy for Surplus Assets and the process followed is set out in Appendix A.

When carrying out an option appraisal, if an internal use is not identified then a valuation exercise is carried out whereby alternative uses are considered for the property. This valuation provides both a rental and capital receipt value as well as the likelihood of either being realised. Options are considered and a recommendation is made. The potential future strategic requirement for this property is considered as part of this process. Any needs identified will have an impact on the future use or disposal of the property.

Within the valuation process it will be possible to identify properties that have no commercial value, properties that will create a financial liability for the Council or properties that are surplus to current operational requirements but that need to be retained for a future use and can therefore be used in the short-term, perhaps for a time-limited project delivered by the VCS (providing it doesn't jeopardise or affect a disposal opportunity/future use). In this situation, community use of the properties could meet the financial and efficiency requirements of the Council as well as the needs of the community. It may be possible to streamline the application and assessment process short term use (under six months). A full business plan will not be appropriate in these circumstances, and an application could be submitted if a building was readily available.

On declaration by a directorate that a property is surplus to operational requirements, consultation is undertaken with other directorates to determine whether there is any other Council interest. As part of this consultation, City Services (Community Development) will also carry out an assessment as to whether there is community need (see section 5.1 for detail). This will be assessed against strategic priorities and will draw on the relevant database, as well as existing provision offered in the area, either from the VCS, Council, other public or private sector organisations. This will assist in identifying where there are gaps or an existing community need. Where such uses or needs are identified, it may be that the benefit of the community use can be valued and this

may match or exceed the purely financial aspects of the property, thereby making a transfer possible.

Considering this Policy at the option appraisal stage will allow the Council to be more proactive in disposal or utilisation, rather than reacting to individual requests. Such an approach will allow cohesion amongst proposed uses for the assets.

In considering the need for a community transfer, it will be essential to consider the tenure, length, rent, user and repairing responsibility in relation to the asset, as well as insurance and liability issues should the organisation fold and not have maintained the land and/or the building.

5.0 Framework for Transfer in Sunderland

A clear framework is essential to ensuring that fair and transparent consideration is given to a transfer in Sunderland. VCS organisations must be provided with the clearest guidelines possible in order to move forward, and a framework for ensuring this takes place is detailed in the sections below. A flowchart for the framework is also attached (Appendix B).

5.1 Evidence of Need

The evidence of need is the first stage, when consideration must be made of the following:

- Are there existing programmes and services in the area (either the VCS, Council, other public or private sector) that meet the proposal?
- Have Ward councillors been consulted in relation to their knowledge of need in their local area?
- Taking account of existing provision, is there an identified need for this use?
- Does the proposal meet with strategic and Council priorities, namely:
 - Sunderland Strategy?
 - Local Area Plans?
 - National Performance Indicators
 - Other identified Council priorities?
- Does the proposal allow for co-location of services and as such can the remaining asset be sold?
- Does the proposal require a specific facility or can this be supported in an existing facility?
- Is there evidence of working with existing VCS organisations in the area and/or evidence of investigating the possibility of using an existing facility?
- Identification of partnerships i.e. with statutory organisations, council directorates or other VCS organisation?
- Identification of financial/non-financial support including external funding and volunteer time?

By using the data on the existing facilities owned by the Council or other public/private sector in the area, it will be possible to not only assess the level of **need** in the area in light of the proposed use, but also to promote co-location of under-utilised buildings.

VCS organisations that require additional governance support and funding advice to enable the successful transfer of an asset will be supported by the Community Development Team.

5.2 Community Asset Readiness Assessment Tool (CARAT)

The second stage is the use of Sunderland's CARAT which has been developed to provide an assessment or "Fit for Purpose" ranking of the building and the governance capacity of the VCS organisation. Utilising this tool has the potential to inform the decision making process in relation to resourcing community buildings and organisations.

The CARAT considers the following key areas:

- Building status
- Status of the organisation
- Current level of council support both financial and in kind (rentable value) and external funding support
- Use of building

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. Template attached at Appendix C.

This approach ensures full cognisance is taken of the quality of both the organisation and the building.

The contents of the condition survey will be shared with the successful VCS organisation to aid the business planning process

Stage 2 of the CARAT considers the governance status and capacity of the VCS organisation. Template attached at Appendix D

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

It is apparent that some VCS occupiers take on lease agreements without fully understanding the legal responsibilities of holding a lease and also of managing a property. It is important that premises management and legal responsibilities are understood fully by the VCS organisation. Owing to potential conflicts of interests, it is not possible for the Council's internal legal services department to offer support around an organisations' legal responsibilities; however, it would be possible to signpost to leading organisations in the VCS who can offer this support, and receipt of such support will be evidenced within the subsequent business plans submitted by the VCS organisations. The Council will carry out regular lease compliance inspections at rent review and lease renewal to ensure lease covenants are being observed.

A tenant's handbook will be developed by Property Services and will detail responsibilities required for operating a property. This will include:

- Health & Safety information
- Contact details for the relevant Council departments
- Guides on applying for and when to apply for Landlords consent
- Log books for testing
- Energy Performance Certificate

Sunderland City Council 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 or vulnerable adults service delivery; in these circumstances, specific additional criteria will need to be applied.

5.3 Decision Making

Following evidence of need and CARAT assessment, there will be a requirement for the Head of Land and Property to consider the options below in-depth, in consultation with:

- City Services (Community Development)
- Corporate Capital Strategy Group
- Portfolio Holder for Resources
- Portfolio Holder for Responsive Services and Customer Care
- Ward Councillors
- Commercial and Corporate Services
- Relevant Area Committee

These options are:

- **Tenure:** The Council has a long history of leasehold transfer; in doing so, the Council retains some control over the asset. There may, however, be cases whereby there is no strategic need to

retain an asset or a need to retain ownership of the asset. A strategic need is one where the asset is required to meet the strategic aims of the Sunderland Strategy 2008-2025, the Corporate Improvement Objectives of the Council and the Economic Masterplan. 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 Council'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.

In the majority of circumstances a leasehold interest will be offered. This will protect the future of the building and ensure that the Council can veto any future changes in use and occupation of the facilities during the lifetime of the lease.

- **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.

- **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 Council as Landlord would receive a financial return on the asset with no maintenance or financial responsibilities. To let a building on a reduced rent while retaining repairing responsibility is a significant decision as it results in a loss of rent for the Council and potentially a repairing responsibility.

When assessing a transfer, a rent review or lease renewal of an existing building, 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

Council 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 Council's power of well being (Local Government Act 2000) and is permitted subject to compliance with the terms of the General Disposal Consent (England) 2003. The community benefit will be jointly assessed by City Services (Community Development), Office of the Chief Executive (Area Officers) and the directorate responsible for the strategic priorities / sponsoring the VCS organisation. All financial assessments must include Finance staff to ensure the calculation is correct and that the appropriate basis has been used and applied correctly.

- **Maintenance:** Buildings which are declared surplus in terms of built environment are generally those that are at the end of their useful life and, as with the majority of Council owned property, come with considerable backlog maintenance. Accordingly the buildings can be expensive to run and maintain, which 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.

A building survey will be undertaken by the Council prior to any consideration of transfer. 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 Council to deliver services, including back of house staff. Assistance should be provided by the Council to support community groups to access funding (for repairs for example) but also to provide an understanding of the repairing responsibilities that a transfer creates.

- **Lease Terms:** It is proposed that the majority of all new leasehold transfers will benefit from a standard lease agreement ensuring all relevant buildings have the same lease agreement with standardised lease terms and responsibilities. This will ensure cohesion and transparency across arrangements.

A rent review clause will be contained within the standard terms, which will allow the Council as Landlord to review the rent payable on the property at regular intervals. This reflects good estate management practice. 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 Council, 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 or the council will look to reclaim the premises. 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.

All new leasehold transfers will also allow for Council 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.

5.4 Business Plan

The final stage of the framework is the requirement for any VCS organisation applying for a transfer to submit a full and sustainable business plan. It is expected that this will detail:

- Financial Sustainability
 - Funding in place for revenue to support the building and an ongoing maintenance plan
- Programme Sustainability
 - Degree of local support and identified need for proposed programme to be delivered
 - Clear outcomes identified from programme delivery
- Governance Capacity of Organisation
 - Skills of volunteers and management committee
 - Premises management experience
 - Track record of managing similar projects
- Partnership Work
 - Evidence of partners who will be supporting the project – including letters of support
- Identification of Community Need
 - Evidence of community consultation
 - Link to Council consultation identifying need
- Links to Sunderland strategic priorities
 - Programme delivery showing meeting Sunderland Partnership and Sunderland City Council strategic objectives
- Compact Compliance
 - Organisation signed up to Sunderland Compact.

5.5 Cabinet

Where the consideration is more than £100,000 in the case of freehold transfers or where the annual rental is more than £50,000 in the case of leasehold transfers, the decision on the Community Asset transfer will need to be made by Cabinet.

6.0 Building Transfer – Risk Analysis

6.1 Benefits

It is essential that both Council and VCS benefits of the transfer are identifiable, tangible and measurable in order to make an appropriate case for the transfer of assets, whether it is on a licence, leasehold or freehold transfer.

Potential benefits of a transfer include:

- A business plan that is sustainable and seeks to ensure the delivery of priorities contributing to the Sunderland Strategy and Local Area Plans. In doing so the delivery of the business plan should increase/improve service provision and enhance the ability of VCS organisations to deliver the outcomes that the Council and local communities consider important.
- A more productive use of buildings by addressing evidence of need and developing partnerships and the opportunity to co-locate in facilities with the VCS and other local partners.

6.2 Risks

Whilst there are benefits, it is also important to understand the risks of such transfers and to identify ways in which the Council can manage these risks, which may include:

- Loss of Potential Capital Receipt and potential market rent
 - Transfer will be assessed within the corporate approach to the management of buildings deemed surplus to requirements as detailed in Section 4 of this Policy.
 - Not transferring may leave the Council with security and/or maintenance costs and in addition to the wider impacts of social cohesion and inward investment from external funders.
- Transfer of a building in its current state of repair may place additional responsibilities on the VCS organisation
 - Provide a full building survey prior to a VCS organisation agreeing to pursue transfer.
 - Transfer on a long lease will give the receiving organisation more opportunities to raise grants and investment funding to support improvements.
 - **Ensure VCS organisation has access to financial expertise and advice via Community Development Team which will include signposting organisations to wider third sector infrastructure support – for example Voluntary and Community Action Sunderland (VCAS, formerly Sunderland Centre for Voluntary Services).**
 - **Property Services will provide a tenants handbook which will detail responsibilities required for operating a property.**

- Do the VCS organisations, particularly community groups have the skills, expertise and financial capacity to run and maintain the property?
 - The organisation taking on the building must demonstrate the requisite skills and capacity to manage it. This could be demonstrated through a skills audit supported via the CARAT process in Section 5.2.
 - **The VCS organisation needs access to ongoing expertise and advice via the Community Development Team.**
- Will the VCS organisation be sustainable?
 - A full and sustainable business plan will be required from any VCS organisation requesting a transfer.
- Is there a possibility of the building coming back to the Council?
 - This will be managed via the lease process and property services carrying out monitoring of the VCS organisations usage within the rent review process which will assess continued community usage and entitlement to discounted community rental.
 - 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 building returns to the Council.
 - If the organisation does fold, the building will return to the Council and will be dealt with via the Surplus Assets Policy.