

TRANSFER OF COMMUNITY ASSETS POLICY: DECEMBER 2015

Introduction

1. This policy sets out the circumstances and conditions under which the Borough Council will consider the transfer of interests in property, ie land and/or buildings, to third parties.
2. This policy establishes the nature of the organisations to which the Council will consider an asset transfer, the basis of the transfer and how requests will be processed. It establishes a transparent process for this to occur.
3. The policy also establishes the basis for enabling the community to bid for key local amenities, both in the public and private ownership, when they are offered for sale and to keep them part of local life in accordance with the provisions of the Localism Act.

Eligible Organisations

4. The Council will, as far as its property assets are concerned, consider a transfer to community based organisations which provide a service to the whole community where the use of the facility will continue to be available to all residents within the Borough. This will not preclude the casual hiring of facilities to members of the public, clubs etc.

Basis of Transfer of Council Assets

5. The Council has established a number of criteria that sets out the basis of the interest in its assets that will be transferred to third parties. These criteria, which are set out below, also provide some basic principles regarding the future management of the asset:
 - (a) To ensure that the property interest transferred is retained by the community for the purpose for which it is transferred and, in the case of the transfer of open space, that the open space is managed to at least the same standard as is currently provided by the Council for other similar areas. The Council will only transfer a leasehold interest. The lease will set out what has been agreed between the Council and the applicant regarding future provision of services from the property. The maximum length of lease will be 99 years, although leases may be for a shorter period. Only in exceptional circumstances will the Council consider leases for a longer period.
 - (b) All leases will contain a provision to enable the Council to terminate it should the property not be used for the purpose for which it is transferred, unless such changes have been formally agreed in writing.

- (c) The Council could, in some circumstances, seek to charge a rent for any property transferred.
- (d) The party receiving the property and/or open space interest will be expected to bear all costs of managing and maintaining the property and transfer of a property interest does not imply any ongoing financial assistance from the Council. For clarity property shall include, in the case of the transfer of open space, any play areas, structures, trees, bedding, footpaths, lighting, drains, gullies, culverts, SUDS etc situated upon or forming part of the transferred open space. The Council will continue to insure any buildings transferred and will recover the cost of this from the party to whom the building is transferred.
- (e) At the end of any lease the Council will expect the property to be returned in the condition that it was made available.
- (f) The Council will not ordinarily transfer an interest in an asset where that asset either generates a rent or where a rental could be derived from it, or where the asset has development potential that could generate a future capital receipt. Income from casual hirings eg football pitches on an area of open space would not, for the purposes of this provision, constitute rent.
- (g) In exceptional circumstances, the transfer of an interest in an asset with a small or nominal financial consideration could be considered where an objective assessment of the services to be provided shows the community benefit to be of greater value than the capital or rental value. In practice, this will exclude assets which have a high market value for alternative uses. Further guidance is available in Appendix B.
- (h) If the organisation to which the asset is transferred is wound up or liquidated the lease will enable the Council to regain possession of the asset either for use by itself or by others.
- (i) The Council will propose a standard lease document to ensure a smooth and quick asset transfer. The organisation receiving the interest in the asset will be expected to bear their own costs.
- (j) Whilst casual hirings and lettings will be permitted, any longer term arrangements with third parties will require the Council's express approval to ensure that the property remains available for the purpose it was released.
- (k) The Council would encourage and welcome investment in assets made available to community groups and, in some cases, may require applicants to raise or bid for external funding to enable investment in the asset as a condition of the transfer. However, any major works would require the Council's prior approval, the purpose again being to ensure that the property remains suitable for the use for which it was released (or any subsequently agreed variation).

- (l) The Council would also have to be satisfied that there was no other suitably qualified party who also wished to take over the management of the property in question.

Determining Applications for the Transfer of Council Assets

6. This section sets out how the Council will respond to, assess and determine requests it receives for the transfer of an interest in any of its assets.
7. All requests should initially be submitted on the application form (Appendix A) and Business Plan to the Head of Democratic and Registration Services who will co-ordinate the response to all requests. . Organisations applying for an asset to be transferred at below market value must also complete the Business Case template (Appendix C).
8. All requests will initially be forwarded by the Head of Democratic and Registration Services to the Assistant Director/Head of Service responsible for managing the property.
9. Applications that fall outside the criteria set out in this policy will be advised within 28 days, with details of why this has occurred. This will be undertaken by Democratic and Registration Services on advice from the Assistant Director/Head of Service.
10. The Assistant Director/Head of Service, in consultation with the Head of Property Services, Head of Finance and other officers, if relevant, will review the application having regard to the following matters together with any other that are considered relevant in respect of each application:
 - (i) that the applicant has the skills to manage the property on an on-going basis and the capacity and capability to meet the responsibilities in respect of legislative requirements;
 - (ii) that the applicant has the financial resources and skills to continue to manage the facility, including how the applicant will manage the asset as it ages, including a commentary of its eventual replacement plan if this occurs during the life of the lease;
 - (iii) that the applicant has a sound governance and operational management structure to fulfil its legal liabilities associated with the property, such as health and safety and equalities, and that the organisation will demonstrate appropriate accountability to the local community. This will be assessed using a recognised quality management assessment;
 - (iv) how, via the proposed business plan etc, the applicant will continue to provide benefit to the community and continued public access to the facility;
 - (v) the impact of the proposal on existing operational property and/or open space and the Council's property and open space portfolio and in

particular any potential fragmentation of management of contiguous areas of property;

- (vi) any financial implications that will affect the Council arising from the proposal;
 - (vii) this will also include whether there are any legal restrictions that prevent the Council releasing the property as requested;
 - (viii) agreement with the applicant of the proposed use to which the property and/or open space will be put and specifically, in the case of open space, the standards to which the open space and any property on it will be maintained and managed. This will form a key term in any lease granted;
 - (ix) that the transfer of the asset will not adversely impact on the Council's ability to continue to deliver the service provided by the asset;
 - (x) that the application is consistent with the Council's approved Corporate Plan;
 - (xi) in dealing with the application the Council will have regard to the unrestricted value of the property, and
 - (xii) any proposed disposal at an undervalue will be in accordance with any statutory requirements prevailing at that time.
11. The Assistant Director/Head of Service will also consult with Ward Members to obtain their view on the application. This will not occur in situations where an individual Member has a personal and prejudicial interest and, for example, is, in another capacity, a member of the organisation making the application.
 12. In receiving the views of the Ward Councillors, the Assistant Director/Head of Service will then consult with, and obtain the views of, the Portfolio Holder.
 13. Upon receipt of the Portfolio Holder's views and having completed all other investigations, as set out in this document, the Assistant Director/Head of Service will submit the proposal to a nominated team for consideration. The team will then review, taking all the facts into consideration, whether the requested transfer could be recommended for approval.
 14. Following consideration by the nominated team, the Assistant Director/Head of Service will prepare and submit a report to the Mayor/Executive recommending that the request is recommended for approval or not. In either situation, reasons will be given for the recommendation made.
 15. The Head of Democratic and Registration Services will notify the applicant of the outcome of the application within 21 days of the decision of the Mayor/Executive.
 16. If the application includes the transfer of open space the proposed disposition will be advertised (as required by statute) and objections considered by the

relevant Portfolio Holder (based on a report received for officers) prior to the final decision being made on the transfer.

17. Unsuccessful applicants may appeal in writing within one month of the decision being notified to them, providing such additional information as it considers appropriate. Any appeal will initially be considered by the nominated team.

Post Transfer Monitoring of Council Assets Transferred

18. Upon completion of the lease of the asset, the Council will undertake a level of monitoring to ensure that the asset continues to be used for the benefit of the community as set out within the lease, that the asset continues to be properly maintained, that the lease terms are complied with and the lessees are maintaining acceptable levels of continued community use.
19. This process will be undertaken every two years by the appropriate Assistant Director/Head of Service. The outcome will be reported to the relevant Portfolio Holder. Where, in the opinion of the Assistant Director/Head of Service, the above criteria are not being complied with, discussions will be undertaken with the organisation, prior to the report to the Portfolio Holder, to identify how any failures can be rectified. The agreed action will be included in the report to the Portfolio Holder.
20. Should a satisfactory resolution of any failings not be possible the Council will give consideration to forfeiting the lease and returning the asset to it.

Requests for the Transfer of Community Assets

21. The Council will compile and maintain a register of assets of community value which have been nominated by the local community in accordance with the requirements of the Localism Act.
22. The Council will consider requests of interest from community groups where listed assets come up for sale or change of ownership, and will encourage owners within the provisions of the Act to give interested community groups the time to develop a bid and raise the money to bid to buy the asset when it becomes available on the open market.
23. Guidance will be available to community groups to enable expressions of interest in assets of community value to be made and to outline the details to be submitted to support the community interest and the plans for shaping bids, raising funding and the timescale for pursuing interest in the community asset. Where the interest relates to a Council owned asset, the provisions of the policy outlined at 4 to 17 above will apply.