



# **Community Asset Transfer Policy**

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## **1. Purpose of the policy**

- 1.1 The purpose of this policy is to provide a clear framework on Community Asset Transfer (CAT). The Community Asset Transfer Policy will be reviewed on an annual basis.

## **2. Definition and context of Community Asset Transfer**

- 2.1 The term 'Community Asset Transfer' is defined as 'where the Council transfers land or buildings into the ownership or management of a Voluntary and Community Sector (VCS) organisation or statutory body'.
- 2.2 For the purposes of this policy, those bodies included are set out in clause 5.3 and consist of statutory parish and town councils together with properly constituted voluntary groups, charities and trusts.
- 2.3 The Policy applies to Council assets where community activities are the primary purpose of the asset, eg. community halls and allotments.
- 2.4 This policy will also apply where community assets are being managed by a VCS group under a short term lease or management agreement and a request has been received from the group for a long lease transfer. In that case, the exception set out in clause 5.11 would apply and no expression of interest stage would be required.

## **3. National and local policy context**

- 3.1 The 2006 Local Government White Paper, Strong and Prosperous Communities, confirmed the then Government's intention to increase opportunities for community asset ownership and management.
- 3.2 The later Quirk Review, Making Assets Work, published in May 2007, found that a careful increase in the community's stake in an asset can bring a wide range of additional benefits for the community, the organisation receiving the asset, and the local authority facilitating the transfer.
- 3.3 The Government's response to this was its Empowerment Action Plan published in 2007, which included actions relating to the transfer of assets and to a programme of support for community anchors.
- 3.4 The Localism Act 2011 aims to shift power from central government back into the hands of individuals, communities and councils. It stated that: 'We want to pass significant new rights direct to communities and individuals, making it easier for them to get things done and achieve their ambitions for the place where they live'.

- 3.5 The Localism Act introduces a Community Right to Bid (Assets of Community Value) which aims to ensure that buildings and amenities can be kept in public use and remain an integral part of community life. Under the Localism legislation, voluntary and community organisations and parish councils can nominate an asset to be included in a 'list of assets of community value'.
- 3.6 Revised Best Value Guidance sets out some reasonable expectations of the way best value authorities should work with voluntary and community groups when facing difficult funding decisions.
- 3.7 The following local policy documents include reference to asset management and transfer to Voluntary and community sector organisations/partners.

**Realising our Ambitions for Swale:** this is the Borough's Sustainable Community Strategy which sets out our vision for the kind of place that we would like Swale to be in the future. It describes our priorities over the next twenty years, and sets out shorter term targets to focus us in the right direction.

**The Corporate Plan:** Localism is a priority within the Corporate Plan with a key action to *'continue to transfer responsibility for assets..... to parish/town councils and voluntary/community groups'*.

**The Swale Property Asset Strategy 2012 – 2015:** This document provides the overarching framework for the management of the Council's assets and incorporates the Disposals Policy and this Community Asset Transfer Policy which together address the procedures to be followed for the disposal of all Council assets, whether defined as community or non-community assets.

**Volunteering Strategy:** This sets out the Council's approach to supporting volunteering and the organisations, including ourselves who encourage and promote volunteering in the borough. We will work in partnership to support volunteers to make sure that they can continue to deliver vital local services, whilst also seeking to increase the variety of opportunities on offer for residents to participate in volunteering.

**The Kent Partners Compact:** is an agreement which brings together representatives from the public and voluntary and community sectors to encourage closer working and co-operation.

**Local First Policy:** This sets out our commitment to embed 'local' and 'think local first' when commissioning and procuring by integrating social value into the Council's Commissioning Framework and Procurement Strategy. The aim is to maximise the proportion of our spend that is retained locally; deliver social value in the Swale BC area; and support and enable local businesses, Town and Parish Councils and the Voluntary and Community Sector to bid for contracts and services.

- 3.8 This policy also reflects the recommendations set out in the 2011/12 Annual Governance Report in which it was stated that leasehold transfer should be preferred over freehold transfer.

#### **4. Aims of Community Asset Transfer policy**

- 4.1 The aims of the policy are to:
  - (i) sustain viability and improve service provision;

- (ii) deliver sustainable solutions that are accepted, agreed, 'owned' and driven by the local community;
- (iii) increase the number of local people helping to run or own local services or assets;
- (iv) realise wider community benefits such as increased levels of volunteering, social capital and civic participation; and
- (v) improve the leverage of external funding into the local area through increased funding opportunities, encouraging economic development, and social enterprise activity.

## 5. Swale Borough Council Statement on Community Asset Transfer

- 5.1 The Council views its policy on community asset disposal positively as part of its long-term support to / engagement and partnership with the voluntary and community sector. The Council will therefore seek to implement the policy through targeted awareness raising, outreach and support to encourage town and parish councils or Voluntary and Community Sector (VCS) organisations to take on appropriate assets, linked to its wider ongoing programmes of support to the VCS.
- 5.2 As a result, the following principles will be applied to community asset transfer unless there are circumstances **specific to the asset** which suggests an alternative approach. Assets disposed of on the open market are dealt with in accordance with the Council's Disposals Policy.
- 5.3 Transfers will only take place to a statutory body (such as a town or parish council) or properly constituted group (for example, but not limited to, a Trust, Charity, Community Interest Company or Charitable Incorporated Organisation) that can demonstrate that it has a fully worked up a credible Business Plan for the asset in question. A community asset transfer will not proceed if the organisation cannot satisfy all requirements that are detailed in the Community Asset Transfer Assessment.
- 5.4 Transfers will normally be in the form of a lease of up to 125 years in order to manage the risk of the few asset transfers that will fail. There is no evidence to suggest that an organisation will be at any disadvantage (eg. reduced access to funding opportunities) with a leasehold transfer. This ensures that:
- the council retains the ability to have influence over the future use of the asset in the event that it is no longer needed for community use; and
  - there is a straightforward and low cost 'exit strategy' in the event that the body taking over the asset fails as the asset will automatically revert to the council.
- 5.5 While being clear that assets will normally be transferred on a 125-year leasehold basis as described in paragraph 5.4 above, the Council does not wholly exclude the possibility of longer or shorter leases or different forms of tenure, in exceptional circumstances. It is not possible to determine in advance what could constitute an exceptional circumstance, and the onus will be clearly on the applicant to make the case. This will generally be expected to be by reference to the specific attributes of the asset in question, and it will be necessary

for the applicant to **demonstrate** the additional community benefits and any additional financial and non-financial considerations which would result from deviating from the standard 125-year leasehold transfer.

- 5.6 Where an application for a non-standard transfer is made (that is, one for a term of other than 125 years), the Council will consider the application on its merits, balancing the applicant's case and proposal with the interests of the wider community the Council represents. The Council reserves the right unilaterally to reject any application for a non-standard transfer on the grounds that in its view the wider community interest would not be well served. In the exceptional event that a form of tenure other than leasehold is entered into, a 'clawback' or 'asset lock' provision will be placed as a legal condition on the transfer. (An asset lock provision applies to community interest companies and prevents an asset from being used for private gain rather than the stated aims of the organisation.)
- 5.7 The Council will seek to ensure that any asset transfer is sustainable in the long term by ensuring that the terms and conditions imposed upon the organisation are not unduly onerous, but are reasonable and affordable within the resources available.
- 5.8 Financial support provided to the organisation will be decided on a case-by-case basis but will consider the following principles:
- it will be based on existing budgets for the asset;
  - any additional funding will be determined through the Council's normal budget process and prioritised against other growth bids;
  - funding to support the organisation will decrease year on year;
  - except in very exceptional circumstances, no community asset transfer will be made if the cost after transfer exceeds the cost of retaining the service in-house.
  - any warranty provided will be fixed in relation to the term and amount.
  - any rent charged under the lease will be determined on a case-by-case basis and may range from nominal (£1 per annum if demanded) up to a full market rent. The assessment of rent will take account of both financial and community benefit considerations and will be clearly set out in the report to Cabinet or the Cabinet Member seeking approval to the transfer.
  - The lease will normally contain a rent review clause that allows the Council to review the rent after the first three years of the term and thereafter at five yearly intervals in the event that a commercially viable and profitable operation is taking place from the asset. Finance will be consulted on the VAT implications of all rent reviews prior to final agreement.
- 5.9 Where the Council directly employs staff to work at the asset, then both the Council and the organisation will adhere to the Transfer of Undertaking (Protection of Employment) Regulations (TUPE).
- 5.10 All issues related to financial support and support in kind, arrangements related to staffing, and service expectations (where relevant) will be captured in a Partnership Agreement, to be concluded prior to transfer taking place. This will also include any appropriate monitoring arrangements.

5.11 All proposed Community Asset Transfers will be advertised on the Swale Borough Council website requesting Expressions of Interest. However, the Council may choose not to carry out an Expression of Interest process where:

- The asset is already occupied by a VCS organisation who has occupied the asset for three or more years and has fully complied with the terms of the tenancy/lease; and either
- The organisation has invested a capital sum in the asset that has had a significant impact on the quality of the asset or service being delivered; or
- A constituted group has been set up through a community engagement exercise with the express purpose of managing the asset.

5.12 The Council will comply with the principles of the Kent Partners COMPACT.

5.13 The Council will at all times respect the independence of the organisation.

5.14 The Council will seek to ensure that any asset transfer is sustainable and will work with the organisation to develop its capacity and provide support and guidance.

## **6. Heritage Assets**

6.1 For the purposes of this policy the definition of “heritage asset” used by English Heritage is deemed to apply, as follows:

*“A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing).”*

6.2 In the case of heritage assets, the Council will not grant a 125 year lease unless it is satisfied that the group will be able to comply with its statutory duty to keep the asset in repair for the duration of the lease term.

6.3 If the Council has any concerns about this, it will grant a lease of no more than 25 years and may retain responsibility for the external and structural repair of the asset.

## **7. The Community Asset Transfer Process**

7.1 In order to assess and deliver a Community Asset Transfer a process has been developed to assist both the VCS organisation wishing to take on a Community Asset and the Council officers currently managing that asset.

7.2 In assessing proposals for asset transfer, the Council will attempt to measure the relative benefits and risks of the available options in order to inform its decision-making. It will also relate these benefits to wider Council priorities.

7.3 Asset transfer decisions are essentially a choice between:

- the Council continues to manage the asset; or
- Community Asset Transfer to a statutory group or VCS organisation; or
- commercial tender of the asset; or
- commercial disposal of the asset and alternative service provision made or the service ceases.

7.4 The stages of asset transfer should provide a clear reference and test of a proposed asset transfer against the principles and processes outlined in this policy. It should be integral to the stages involved in an asset transfer project and provide the basis for decision-making on a proposed transfer. The stages will generally include:

- The organisation must be a statutory body or properly constituted group,
- A sustainable business case has been demonstrated which includes any impact on SBC's budget,
- The organisation has the skills and experience to run the asset and/or the level of support required has been assessed,
- The organisation has appropriate policies in place,
- A valuation of the asset has been carried out (see section 9 below),
- Draft Heads of Terms have been negotiated,
- There is an appropriate decision making process (see section 8 below),
- Lease / Grant agreement is agreed.

7.5 The council will endeavour to work to an agreed and appropriate timescale for asset transfer completions.

## 8. Approvals and consultation process

8.1 All community asset transfers will be discussed by the Asset Transfer Group who will make a recommendation to the Cabinet Member for Localism following consultation with the Asset Management Group, SMT, local ward members, the relevant Cabinet members and heads of service and the section 151 officer.

8.2 Unless it is a key decision or crosses two portfolios and if considered appropriate, the decision may be taken under the delegated authority of the Cabinet Member for Localism after consultation with the Cabinet Member for Finance. However, using their discretion, the Cabinet Member may choose to take a report to Full Cabinet. In most cases it is anticipated that the decision will cross two portfolios and will therefore be taken by full Cabinet.

## 9. Valuations

9.1 In normal circumstances a valuation of the asset will be carried out. In the case of certain assets that may have an alternative non-community use (resulting in a potentially higher land value) an independent valuation will be obtained that sets out the "under-value" – that is the difference between the **restricted** market value (of the asset in community use and subject to the proposed terms of transfer) and the **unrestricted** market value (of the asset



in some alternative use without any restrictions imposed by way of proposed transfer terms).

- 9.2 Where the asset has no alternative use, an internal valuation will be carried out. In this case the market value will be based on its existing community use only which in most circumstances will be low.
- 9.3 In certain circumstances there may be no need for a valuation if it does not involve the transfer of any benefits or liabilities to the Council - for example, where the asset transfers in a back-to-back transaction from a developer to a community group via the Council. This is to be agreed by the s151 officer.