

# **Property Asset Strategy**

## **2017-2020**



**March 2017**

# Property Asset Strategy 2017-2020

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# Property Asset Strategy

## 1.0 Overarching Strategy

### 1.1 Swale Borough Council Assets Subject to the Strategy

1.1.1 This Property Asset Strategy addresses the strategic management of property assets across Swale Borough Council's property portfolio. The assets are diverse and range from offices to grazing land. It is important to note that the property assets referred to are 'fixed' property assets of a building construction and/or land nature. Assets such as play equipment components, located in parks, are not classed as property assets covered by this Strategy. Property assets include physical assets, e.g. sports halls, depots, and intangible assets such as leases and ground rents.

1.1.2 The Council's property assets are currently valued at £54,451,000 (excluding equipment and intangibles) in the 2015/16 Statement of Accounts. This is the 'book' value of the assets, assuming continued use by the Authority. The figure does not represent the value that may be secured from the disposal of the assets on the open market.

1.1.3 Open market value aside, the book value is considerable and demonstrates the importance of property assets to the Council. It is also obvious why it is important to manage the property resource effectively and to ensure that the assets are both needed and are value for money.

1.1.4 The gross income generated from rents and licence fees in 2016/17 is approximately £530,000. This income is generated from around 50 properties and various access licences.

1.1.5 Property assets contribute significantly to the delivery of efficient and effective services to the community. However, ownership, occupation and operation of property assets are not an end in itself and each asset should have a clear rationale and purpose. It is clear that:

- Property assets held for non-investment purposes should be cost effective and make a positive contribution either to direct service delivery or to other socio-economic objectives of Swale Borough Council, over and above the costs of ownership; and
- Property assets held for investment purposes should provide the optimum balance between revenue income and capital appreciation

### 1.2 Asset Categories

1.2.1 Property assets are categorised in accordance with the CIPFA accounting code of practice. The categorisation of assets has been reviewed following the adoption of the International Financial Reporting Standard (IFRS) 13 for the 2015/16 accounts.

1.2.2 An analysis of the Council's property holdings reveals that, by number, approximately 92.1% of the Authority's property is categorised as **Operational**, 7.9% is categorised as **Non-Operational**. Community Assets form part of the Operational property portfolio.

1.2.3 A summary of the Council's Property Estate is attached at **Appendix A**.

### 1.3 Aims & Objectives

1.3.1 To establish the aims and objectives for the Council's property portfolio and how the portfolio should perform, the objectives need to be linked to the Authority's high level

corporate priority themes and medium-term strategic objectives as set out in the *Corporate Plan 2015 – 18*. The following objectives are of particular relevance:

- Priority theme 1: A borough to be proud of
  - Objective 1.1: Deliver major regeneration projects.
  - Objective 1.2: Enhance the borough's economic and tourism offer
  - Objective 1.4: Protect and improve the natural and built environments
- Priority theme 2: A community to be proud of
  - Objective 2.2: Encourage active communities and support the voluntary sector
  - Objective 2.3: Reduce crime and disorder
- Priority theme 3: A council to be proud of
  - Objective 3.4: Strengthen our financial and political resilience

1.3.2 Taking the medium-term strategic objectives as a foundation, the Council has developed the aims and objectives for its property portfolio that can be expressed as follows:

***The property assets of Swale Borough Council should be:***

- ***Maintained in an appropriate state of repair (given any financial constraints);***
- ***Fit for purpose (including accessibility, suitability, statutory compliance, space utilisation);***
- ***Efficient and Environmentally sustainable (including running costs and CO<sub>2</sub> emissions);***
- ***Economically sustainable (Investment Assets only); and***
- ***Positive in their contribution to Swale's corporate priorities, in particular a greater financial resilience achieved through new and enhanced opportunities for income generation.***

1.3.3 These objectives have been developed by Swale Borough Council's Asset Management Group in consultation with the Cabinet Member for Finance and other Council officers from across a range of Service functions.

1.3.4 The different elements of these property objectives are important as far as determining how the Council expects its property assets to perform and how progress in meeting the objectives can be measured.

## **1.4 Policy Framework**

1.4.1 This document fits within the context of a wide range of policies, strategies and plans covering key service areas and overarching activities. All of these policies and strategies are complementary.

1.4.2 Incorporated within the overarching document are the Disposals Policy, the Acquisitions Policy and the Community Asset Transfer Policy. These are all contained within the appendices.

1.4.3 In addition, there are further complementary documents including the Corporate Plan, the

Medium Term Financial Strategy, the Open Spaces and Play Strategy, the Playing Pitch Strategy, the Sports and Physical Activity Strategy and the Climate Local Kent and Climate Local Swale.

## **1.5 Community Asset Transfer Policy and the Localism Act**

- 1.5.1 Members adopted a Community Asset Transfer Policy in 2012 and this was reviewed and updated in November 2014. This sets out the objectives of asset transfer and the principles to be applied. The most recent version of this policy is attached as Appendix E. It is subject to three yearly reviews.
- 1.5.2 Since the policy was adopted, a total of 15 community assets have been transferred to community groups or Parish Councils on long leases. This includes five community halls (Thistle Hill Community Centre, Kemsley Hall, The Meads Community Centre, Iwade Barn and Borough Hall), three museums (Milton Regis Court Hall, Minster Abbey Gatehouse, Rose Street Cottage of Curiosities), one sports pitch (Seager Road), the Faversham Community Gym and Activity Centre, Queenborough Harbour (Town Quay), Queenborough Bowling Club, 7 Allotment sites (4 in Faversham and 3 in Queenborough) and a community car park in Teynham.
- 1.5.3 In addition, prior to the adoption of the policy, the freehold of the Alexander Centre was transferred to the Alexander Centre Trust.
- 1.5.4 A further 4 assets are in the stages of community asset transfer and expected to be completed early in 2017/18. These are 3 sports pitches (New Road, Leysdown, Thistle Hill) and East Hall Farm Community Centre (currently under construction)
- 1.5.5 In the event that an asset transfer was to fail, due for example to an irretrievable breakdown of the trust, financial difficulties or other unforeseen factors, there are provisions in the leases for the asset to transfer back to the Council to safeguard the delivery of the community activities that are being delivered. In that event, Cabinet would be consulted over the short and long term arrangements to be put in place.
- 1.5.6 There is also a requirement within the Localism Act (the Community Right to Bid legislation) for local authorities to accept nominations from community groups and produce lists relating to:
  - Assets of Community Value; and
  - Assets which are the subject of unsuccessful nominations.
- 1.5.7 Governance arrangements in respect of the Community Right to Bid legislation are now in place and nominations can be made via the Council's website. As at January 2017, there have been 18 successful nominations and 5 unsuccessful nominations. Both lists can be found on the Council's website.

## **1.6 Repair and Maintenance Strategy**

- 1.6.1 As financial resources are currently constrained, it is important that the Council has a robust repair and maintenance strategy. This will allow repair and maintenance activities to be prioritised appropriately. The Authority has developed a strategy that applies to all property assets where there is a responsibility for repairs and maintenance.
- 1.6.2 A set of criteria has been developed that is given priority levels and a risk score. These criteria, each with an allocated priority and risk score are tabled below.

<b>Table 1: Criteria for repairs and maintenance</b>		
<b>Criteria</b>	<b>Risk score</b>	<b>Priority score</b>
A. Compliance with legislation (e.g. health & safety, legionella, asbestos, fire risk, DDA)	3	5
B. Contractual or legal obligations set out in management agreements or leases	3	4
C. Preserving asset life, replacing life-expired assets or protecting heritage assets	2	3
E. Corporate and/or service objectives	2	2
F. Business/service continuity	2	1

1.6.3 Required repair and maintenance work will be scored according to which and how many criteria are met and the risk and priority score for each criteria multiplied to give a final score. Each repair will be assessed against the criteria in Table 1 and a cumulative score built up according to how many of the criteria will be met if the repair in question is carried out.

1.6.4 A further factor to be considered is the impact on any income/efficiency generation and/or reduction in revenue costs that may be achieved as a result of carrying out the work.

1.6.5 If the decision is taken to carry out the work, the repair will be budgeted for, either through the annual maintenance budget or the Building Maintenance reserve.

## **1.7 Asset Collaboration**

1.7.1 Working with partner organisations is an important part of the Council's asset strategy. It provides greater opportunities for utilising assets to their maximum potential, improving service delivery through closer working with public and voluntary sector partners and ensuring sustainable provision of operational assets in the medium to long term.

1.7.2 Current initiatives include:

- *The One Public Estate Programme* – led by KCC Property Services, this has the objectives of (1) creating and supporting economic growth, and (2) generating capital receipts, reducing running costs and delivering more integrated and customer focused services. It aims to do this by mapping all public sector assets and creating a property delivery board/forum to drive delivery of the programme. KCC has recently been awarded £308,000 under phase 4 of the scheme to deliver projects that meet the OPE criteria. Subject to the timing of future decisions, there may be an opportunity for some of this funding to be used to carry out a feasibility study looking at the development of the public sector estate in Sittingbourne town centre.
- *NHS Local Estates Forum* – this initiative is primarily about optimising the NHS estate

to improve patient and staff experience and address the inequality of health outcomes. The various health organisations such as NHS Property Services, Community Health Partnerships, NHS England and GP federations will be working in partnership with other public sector organisations including Kent County Council and Swale Borough Council to develop a Local Estates Strategy.

- *Town Centre Regeneration* – phase 2 of the Spirit of Sittingbourne Development Agreement includes for the construction of a new civic building to replace Swale House and enable the site upon which Swale House is located to be redeveloped. In order to maximise the opportunities presented by this, discussions are taking place with public sector partners to establish what collaboration might be achievable and beneficial to deliver the best possible outcomes for Sittingbourne. This could include the construction of a combined health centre/civic centre, a shared customer service centre and library/Gateway and/or space for voluntary sector groups.
- *PSP Facilitating Ltd* – a limited liability partnership (LLP) has been created between the Council and PSP Facilitating Limited (PSPF). The LLP between SBC and PSPF will provide the Council with an additional option over and above those currently available to it with regard to the disposal, sale, or development or other use of its assets in order to maximise income and opportunity. The relationship brings funding opportunities for the Council which are not traditionally available, and the LLP will be required to demonstrate its value to the Council before projects are agreed for delivery.

## **1.8 Capital Investment Strategy**

1.8.1 Over a long period the Council has had a very limited capital programme focussed upon specific grant funded items, primarily Disabled Facilities Grant, and use of reserve funds to support specific projects such as the Sittingbourne Skatepark of building improvements at Faversham Swimming Pool. The Council has also been debt free.

1.8.2 In March 2016 Council agreed that a borrowing facility of up to £30m could be put in place to fund capital projects. This reflected a fundamental change in the Council's stance linked to the income generation agenda. It recognised that some capital investment could be required to create some of the income generation opportunities. In the third quarter of 2016 councils invested £800m in to Commercial Property representing 10% of the total investment in Commercial property and that was more than in the previous 10 years combined.

1.8.3 In considering investing in assets there are two overriding principles to be applied:

- Minimising the cost to the revenue budget - given the continued reductions in local government financing there is no scope within the revenue budget to meet debt charge costs. If the Council incurred debt charge costs then, unless the investment generated sufficient income to cover these costs, the Council effectively would have to reduce services to fund the costs. In the case of the Sittingbourne Town Centre investment all the capital financing costs will be wholly funded from rental income; and
- Strategic impact - if the Council is going to invest in property it needs to support wider Council objectives around regeneration of the borough and creating new employment. This means there needs to be additionality in-terms of the wider economic benefits eg higher business rates.

1.8.4 The timing of new investment opportunities cannot be predicted in advance so Cabinet has agreed that a facility is created which would enable the Council to borrow an additional £30m on top of the £30m previously agreed. This borrowing would need to satisfy the principles set out in paragraph 3.15 and any project would be subject to a business case report to Cabinet.

## **1.9 Housing Development**

1.9.1 Many councils have created a wholly owned housing company to hold, deliver and manage properties that are either sold on the open market or offered for rent in the private rented sector. SBC is currently investigating this and other options which would allow it to potentially develop housing on its own land and/or acquire existing houses. Further details will be presented to members once a recommended delivery mechanism has been established.

1.9.2 The key drivers for managing a portfolio of residential properties are:

- The ability to influence the local housing market and potentially improve the quality of the private rented sector estate,
- The ability to contribute towards regeneration objectives in areas where the private sector alone is struggling to deliver the desired outcomes,
- The opportunity to generate additional income for the Council to reduce its reliance on grants, and
- The ability to contribute towards reducing the shortage of affordable housing and/or temporary accommodation.



## **2.0 Property Organisational Framework**

### **2.1 Overview of the Organisation's Approach to Asset Management Planning**

- 2.1.1 Irrespective of how specific assets are used and which service occupies which asset/s, the Council's property is owned corporately. This ensures that there is appropriate challenge to the occupation and utilisation of all property assets by the Authority. In addition, corporate ownership ensures that all property assets are occupied, utilised and maintained to achieve corporate goals.
- 2.1.2 It is the role of each service unit to identify the potential implications for property assets when undertaking service reviews. Potential property implications and requirements will be articulated in Service Action Plans and solutions to the issues raised will be agreed between the individual Service units and the Property unit. Individual Service units will also input into the Council's Property Review Process.
- 2.1.3 Any identified asset management initiatives or plans will be taken to the Asset Management Group for discussion and approval.

### **2.2 Strategic Fit with Corporate Business Planning**

- 2.2.1 Swale Borough Council adopts a business and budget planning cycle, whereby each Service unit is required to complete an annual Service Plan plus annual business action plans.
- 2.2.2 Each Plan identifies priority actions, initiatives and services for the current business cycle, linked to the Council's Corporate Priorities. Whilst there is generally no specific part of the Service Plan template that requires each service to separately identify asset related issues, those services that are most asset dependent do set out a number of asset related initiatives. Draft Service Plans are shared with the Head of Property Services to ensure that all asset implications are addressed within the Property Services Action Plan.
- 2.2.3 Capital Strategy - The Council's priorities for the use of available capital funds will be:
- projects which support the Council's corporate priorities;
  - earmarked receipts related to specific projects e.g. Section 106 monies;
  - minimum fulfilment of legal duties;
  - essential life and death maintenance work e.g. health & safety; and
  - essential remedial expenditure on the Council's IT systems.
- 2.2.4 The Capital Strategy and property related annual funding allocations are recommended by Finance in consultation with the Head of Property, approved by the Strategic Management Team (SMT), on the basis of need and funding availability. To allow comment, the Capital Strategy is circulated to the Asset Management Group. Final approval is obtained from Cabinet as part of the annual budget setting process.
- 2.2.5 In addition to the annual revenue budget for maintenance there is also a Building Maintenance Reserve. The balance on this reserve as at 1 April 2016 was £919,676 (after rollovers). It is a revenue reserve but it can also be used to fund authorised capital expenditure.
- 2.2.6 If there is an under or over-spend on the revenue budget in any financial year, this is generally ring-fenced to the Building Maintenance Reserve to ensure that (1) the maintenance budget is available for spending on future maintenance of assets, and (2) any over-spend does not impact on the Council's total outturn position.

## **2.3 Key Roles & Responsibilities**

- 2.3.1 The Property team is headed by the Head of Property Services and sits within the Corporate Services Directorate. It is pivotal in supporting the Council's strategic asset management of its property holdings. Current in-house functions include estates management, buildings management, facilities management, print room, building maintenance, health & safety and business support. An organogram illustrating the structure and roles within the current property team is attached as Appendix C.
- 2.3.2 The Head of Property Services has been identified as the Council's Corporate Property Officer (CPO). This role involves taking responsibility for strategic property planning and development.

## **2.4 Asset Management Organisational Arrangements**

- 2.4.1 An Asset Management Group (AMG) has been established by the Authority to make recommendations that ensure best use is being made of the Council's property assets. The Terms of Reference for the AMG can be referred to at Appendix B. Responsibility for chairing the AMG is with the Head of Property Services and there is Council-wide representation within the Group.
- 2.4.2 The AMG is responsible for reviewing operational property assets, through the Council's "challenge" process (property review model), to ensure that the assets meet Service units' current and future requirements. Additionally, non-operational assets are challenged to ensure that they are effective in generating income and/or supporting economic or social development. The AMG ensures that clear objectives are developed and makes recommendations for disposals or acquisitions as appropriate.

## **2.5 Corporate Landlord**

- 2.5.1 Swale Borough Council's corporate landlord function is to ensure that the Authority's property assets deliver a safe, secure and suitable working environment that supports Council service delivery within agreed resource constraints. Building support activities, including reactive repairs, maintenance and legislative testing are managed using the resources available.
- 2.5.2 The role also involves challenging the current use of property assets through the programme of property reviews, working with Service units to assess the Authority's properties in respect of being fit for purpose. New and innovative ways of working will be explored to ensure that asset potential is being maximised. The corporate landlord function will allow asset provision to be matched to Service needs.
- 2.5.3 Building maintenance is managed by the Property Service on behalf of Service units. The revenue budget for building maintenance is generally ring-fenced to the *Building Maintenance Reserve* which enables any under-spend from the previous year's Building Maintenance Revenue Budget to be paid into the reserve. Likewise, the reserve will fund any over-spend on the maintenance budget.

## **2.6 Consultation and Engagement**

- 2.6.1 As part of the Authority's property review process (see below), views of property occupiers and users will be captured through Property engaging with individual service units and members. Questions built into the property review models will focus on service delivery requirements, customer satisfaction, asset suitability and the localism agenda. Information

needed to answer the questions developed will be acquired through a consultation process combining interview and survey techniques.

## 2.7 Property Review Process

2.7.1 A formal property asset review process has now been carried out which is used to determine which assets are to be retained/improved in the medium to long term and which assets will no longer be needed by the Authority. It is informed by the Council's corporate priorities, its Service Plans and asset data/information.

2.7.2 There are four asset holding options for operational assets following a review. These are **Continued Management**, **Improved Usage**, **Asset Enhancement** and **Surplus**. The four property holding options for non-operational property will be **Continued Investment**, **Improved Investment Strategy**, **Improved Asset Management** and **Surplus**.

2.7.3 Having completed the property reviews, the next step is to complete project options appraisals using business case methodology to determine programmes of work or disposal actions.

2.7.4 The programmes will contain schedules of work required to change the asset base. Such programmes may include:

- Acquisitions and new build provision,
- Refurbishments and maintenance of stock retained,
- Asset alteration works to accommodate legislative requirements, changes in technology and changes in service provision,
- Disposals of surplus or unfit for purpose assets, and
- Innovative procurement.

2.7.5 The basis of the Council's Property Review Process is scrutiny of the operational and non-operational property assets, as part of an individual asset review procedure. A number of criteria were considered within each property review model as follows:

Criteria for Operational Assets	Criteria for Non-Operational Assets
Condition, Suitability, Sufficiency, Location, Tenure, Planning policy, Financial considerations (running costs, income potential, capital value) Utilisation, Environmental considerations, Corporate priorities	Economic regeneration, Financial return, Value, Location, Condition, Ownership, Economic environment, Planning policy, Utilisation Environmental considerations, Corporate priorities

2.7.6 There are four potential property holding options for each **Operational** asset. These are:

Option	Description
Continued Management	This could include responsive, planned backlog and future maintenance <i>[dependent on funding availability]</i> . The option may also include small extensions, minor improvements, small scale DDA equivalent work, fire risk assessment work and asbestos removal works in addition to repair and replacement works [appropriate outcome for an asset that is considered to be fit for purpose].

Improved Usage / Community Asset Transfer	Exploration of options for change of use, shared use, community asset transfer, partnering, flexible use (including 'hot desking') and the undertaking of all necessary works required to implement the change [assets that are considered to be 'good' but opportunities to co-locate other services, share assets or transfer ownership of assets would benefit overall service delivery].
Asset Enhancement	New build, major extensions/refurbishments, major replacement [ <i>longer term</i> ] (may include large scale DDA equivalent work, fire risk assessment work, asbestos removal works and entire elemental/component replacement work), acquisitions and demolition [similar to Improved Usage, but recognises the need for greater capital investment to exploit the asset and fully support service delivery].
Surplus	Assets identified as under-performing with no or little prospect or potential to improve and should be sold to produce a capital receipt. Land assembly opportunities will be considered prior to any disposal.

2.7.7 The four potential property holding options for **Non-Operational** assets are as follows:

Option	Description
Continued Investment	Continue to manage, maintain and monitor investment performance
Improved Investment Strategy	Asset is not performing to its highest potential, but performance can be improved through appropriate increased investment.
Improved Asset Management	Asset is not performing to its highest potential, but performance can be improved through more intensive management.
Surplus	Property identified as under-performing with no prospect or potential to improve and is to be sold. Land assembly opportunities will be considered prior to any disposal.

2.7.8 The Action Plans for the Operational and Non-Operational Properties are updated and reported to the Asset Management Group quarterly. Actions are also included in relevant Service Plans and monitored using Covalent.

2.7.9 Whilst developing the detailed phase of the action planning particular emphasis is being or will be placed on potential opportunities to increase income generation. This could be achieved through a number of the property holding options identified in the strategic review and will be a key part of the next phase of the process.

2.7.10 In 2014/15 the Property Services unit commissioned a planning consultant to carry out a review of all surplus land holdings. This is ongoing and is being delivered on a phased basis. The initial phase comprised an overview of the potential of each site and recommendations regarding next steps. The second phase involves a more detailed appraisal of certain sites that are considered to have development potential. The outcome of the second phase will lead to a set of recommendations which are likely to include:

- The development of sites for the purpose of creating properties to be transferred to the Housing company,
- The sale of sites at auction, either with or without planning permission for development,
- The sale of sites with no development potential to adjoining landowners to reduce the Council's maintenance liabilities.

## **2.8 Disposals and Acquisitions**

2.8.1 The Council's Disposals Policy is attached as Appendix D to this document. This document sets out the Council's approach to asset disposal to ensure consistency and transparency. It was noted by the Audit Commission in the 2011-12 Annual Governance Report that a policy was required that would complement the Community Asset Transfer Policy and sit within the overarching strategy that is set out in this document.

2.8.2 The Council's Acquisitions Policy is attached as Appendix F.

### 3.0 Property Performance Framework

#### 3.1 Outline of Property Performance Management Framework

3.1.1 The Property Performance Framework details how the performance of property assets within the Council is being measured and the general direction and areas of performance that need to be addressed going forward if the Property Asset Strategy is to be delivered.

3.1.2 This Property Performance Framework is concerned with two aspects of performance, namely:

- The range of performance indicators that the Council has adopted to measure the performance of the property portfolio and thus how well its property assets are assisting the Authority in delivering the Property Objectives; and
- Progress with key activities and projects involving property assets.

#### 3.2 Property Performance Management Framework

3.2.1 Table 2 below sets out an outline of the Council’s Property Performance Management Framework, based upon delivering the Property Objectives. The Framework is flexible, to be adapted for each property asset group that the Authority owns and operates.

**Table 2: Property Performance Indicators**

	Objective	Performance Measures	Description	Baseline date
1	Maintained in an appropriate state of repair (given any financial constraints)	Condition rating	This measures the percentage of gross internal floor space in condition categories A – D for those properties which the Council has an obligation to keep in repair.	April 2011
2	Fit for purpose (including accessibility, suitability, statutory compliance, space utilisation)	(a) Building Accessibility	This will measure the percentage of properties open to the public which are fully accessible to disabled people as defined in the Equalities Act 2010.	April 2013
		(b) Suitability	This will measure the suitability of the Council’s assets in terms of overall fitness for purpose based on an agreed set of criteria and scoring matrix.	April 2013
		(c) Statutory compliance	This measures the percentage of properties that are fully compliant in terms of statutory compliance checks and testing.	April 2012
		(d) Space utilisation (operational offices only)	This is intended to measure the percentage of office space utilised in accordance with agreed space standards. Due to Swale House being occupied on a short term basis it is proposed to postpone measuring this PI until the new civic building is ready to be occupied.	TBD

	Objective	Performance Measures	Description	Baseline date
3	Efficient and environmentally sustainable (including running costs and CO <sub>2</sub> emissions)	(a) Running costs	This measures the gross property costs per square metre of gross internal floor area. Included elements are: repairs and maintenance, energy, water and sewerage, grounds maintenance, rent, rates, cleaning, premises insurance, caretaking.	April 2012
		(b) CO <sub>2</sub> emissions	This measures the CO <sub>2</sub> emissions from the Council's properties.	April 2011
4	Economically sustainable  (Investment Assets only)	(a) Income yield / return	This measures the financial performance of investment properties.	April 2012
		(b) Void Rate	This measures the percentage of tenanted properties that are currently vacant.	April 2012
		(c) Rent Arrears	This measures the total amount of debt as a percentage of gross rental income.	April 2012
5	Positive in their contribution to Swale's Corporate Priorities	Council objective contribution	This measures the percentage of property assets that are positively contributing to Swale's Corporate Priorities. The Corporate priorities changed in 2015/16 therefore it was necessary to commence with a new baseline in April 2016.	April 2013 revised to April 2016

3.2.2 The performance indicators are collected annually in June and the data is used to:

- Undertake performance benchmarking (internal and external),
- Monitor and manage performance improvement, and
- Inform the strategic property review process.

### 3.3 Monitoring, Reporting & Review Arrangements

3.3.1 The ongoing performance of the Council's property portfolio will be challenged through the Property Review Process and reported to the AMG.

3.3.2 The newly collected, collated and analysed data will inform each phase of the Property Review Process, assist the Authority in understanding performance relative to other similar organisations through benchmarking and support the Council's aim of achieving the overall Property Objectives.

3.3.3 Progress reports will continue to be prepared annually which provide a summary of all actions and decisions that have taken place in the previous financial year. These will be presented to SMT and relevant Cabinet Members and, if considered appropriate, to formal Cabinet.

## **4.0 Executive Summary**

4.1 The Property Asset Strategy 2017 – 2020 fully updates the previous versions of the document, taking into account the following changes:

- A revised Corporate Plan setting out a new set of corporate priorities,
- Changes to the Council's Investment Strategy, placing a greater emphasis on the need to generate additional revenue income through the acquisition and/or different management of assets,
- Decisions taken in relation to the regeneration of Swale,
- The significant number of assets that have been transferred to voluntary and community sector organisations through the Community Asset Transfer policy,

4.2 The document sets out the organisational framework for property management, the process of review and performance management and the way in which property will contribute towards to the Council's corporate priorities for the next three years.

4.3 Sitting alongside this document is the annual Property Services Service Plan which contains the Property Services Action Plan. This sets out the key property objectives for the year and progress is monitored through Covalent, the Council's corporate monitoring tool. There are 20 actions set out in the Service Plan, the most significant being:

- Establishing a process for the effective management of the new commercial properties to be acquired as part of the Sittingbourne regeneration project,
- Continuing to improve the energy performance of the Council's properties,
- Refurbishment of the Swale House lifts to improve their reliability and reduce periods of break down,
- Completion of the ongoing review of landholdings,
- Completion of the ongoing review of assets occupied by voluntary and community sector organisations,
- A compliance review to ensure that all statutory duties are being met in relation to the safety of Council buildings (eg. control of legionella, fire safety, control of asbestos, electrical and gas safety).



## Appendix A: Swale Borough Council Summary of Property Estate

Property Category	Operational		Non-operational			
	PPE Land & Buildings	Community Assets	PPE Surplus	Assets Under Construction	Investment	Assets Held For Sale
Car Parks (Pay & Display)	27					
Car Parks (Other)	20					
Sports Halls/Pools	5					
Community Halls	1			1		
Public Conveniences	10					
Sports Pavilions	3					
Museums/Heritage	1	5				
Country Parks (Buildings)	2					
Tenanted Community/Leisure	24					
Vacant/Surplus (Land)	10		5		1	
Vacant/Surplus (Buildings)			3			
Shops	6				2	
Depots	1					
Administrative Offices	3					
Gypsy Site	1					
Housing	3					
Markets	3					
Cemetery Chapels/Stores	4					
Offices	4					
Miscellaneous	17					
Surplus - Held for Development	6					
Investment					14	
Agricultural/Grazing Land	4					
Cemeteries (Land)		5				
Country Parks		5				
Allotments		10				
Harbours/Quays		1				
Formal Recreation Grounds/Parks/Open Spaces		106				
Seafront	4	6				
Public Monuments & Memorials		5				
<b>Total Number</b>	<b>159</b>	<b>143</b>	<b>8</b>	<b>1</b>	<b>17</b>	<b>0</b>

\* Community Assets (as per CIPFA definition)

## Appendix B: Asset Management Group Terms of Reference – February 2017

### Aims of the Group

1. To ensure that best use is made of the Council's assets by:
  - treating property as a strategic resource and funding its maintenance from a corporate repairs and renewals reserve;
  - reviewing operational property assets to ensure that they meet Services' current and future requirements and helping them maximise their performance in delivering Service Plans;
  - challenging the effectiveness of non-operational land and property assets to generate income and/or support economic or social development, developing clear objectives and recommending disposals or acquisitions as appropriate;
  - ensuring that all relevant reports to the Cabinet have fully addressed the property implications of any proposal;
  - in the case of s106 agreements that will potentially impact on the Council's budget due to the adoption of community facilities, acting as a consultee to the LPA, enabling the Council in a more corporate capacity to consider the full implications of the s106 agreement and identify the cost implications and management issues at a very early stage in the process; and
  - working to ensure that sufficient funds are made available so that assets can perform to their maximum potential and are maintained in the most cost effective manner.
2. To consider bids for capital expenditure and make recommendations to SMT and members, based upon the approved methodology on which bids should be supported and the level of capital contribution that should be invested.
3. To oversee the work of the Asset Transfer Group in driving forward the transfer of assets to the voluntary and community sectors where there is a sustainable business case and benefits to the local community.
4. To oversee the repairs and maintenance strategy which prioritises expenditure out of the corporate repairs and renewals reserve, based upon approved criteria and to receive reports advising of high value essential repairs and maintenance.
5. To prepare and periodically update the Property Asset Strategy that sets out the Council's aims and objectives for its operational and non-operational property, demonstrates the links to the Council's corporate priorities and Service Plans and describes how the aims and objectives will be achieved through management strategies and processes.
6. In consultation with the Cabinet Member for Finance and Performance, to decide on nominations under the Community Right to Bid for assets to listed as an "asset of community value".

## Standing Agenda Items

*Annually in September* – to monitor the spending of s106 money that has already been paid to the Council by developers to ensure that it is spent within the required timescale and in a way that meets the requirements of the agreement.

*Quarterly* – to monitor progress against the approved planned maintenance programme.

*Quarterly* – to monitor the progress of the Action Plans relating to operational and non-operational property.

## Composition of the Group

Anne Adams	Head of Property Services (Chair)
Nick Vickers	Chief Financial Officer
Caroline Frampton	Principal Accountant
Kent Parker	Estates Surveyor
Andy Jeffers	Development Manager
Martyn Cassell	Leisure and Technical Services Manager
Charlotte Hudson	Acting Head of Economy and Community Services

The Group will meet bi-monthly or at other periods determined by the Chair. However, the Group will meet at least twice in any six-month period. In the event that a Group member is unable to attend a meeting they should be represented by a substitute.

## Key Outcomes

- Greater Member and officer awareness of the property implications of all decisions;
- Better use and management of property assets;
- Realisation of capital receipts through the disposal of surplus and/or underused assets;
- Enhanced corporate and strategic working;
- Opportunities for increasing income and/or reducing expenditure in the management of non-operational property are maximised;
- Clearer links between the aims and objectives of the property portfolio and the Council's key Corporate Priorities; and
- The transfer of assets to the voluntary and community sectors.

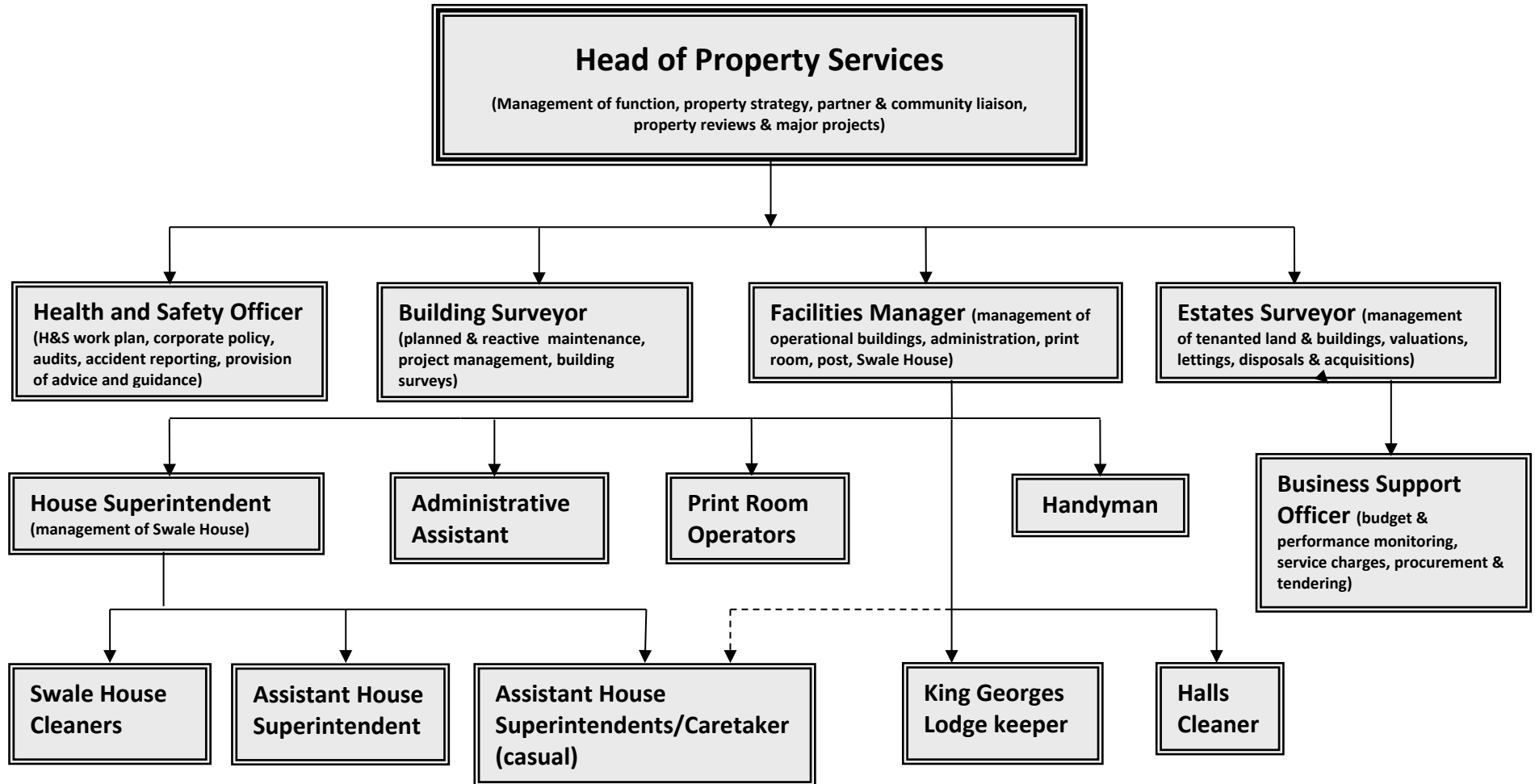
## Officer and Member Reporting Arrangements

Minutes of the meetings, with action items, will be circulated *within 10 working days* to all group members, SMT and the Cabinet Member for Finance. The Group will report to SMT and Cabinet periodically as required.

## Review Arrangements

Reviews will be carried out annually.

## Appendix C: Property Services structure and roles





## Disposals Policy – updated January 2017

### 1. Introduction

#### *Purpose of policy*

- 1.1 This policy sets out the relevant strategic framework and related policies concerned with the retention and disposal of Council property assets. It also provides guidance on the procedures to be followed in the disposal of Council owned property.

#### *Definition of Disposal*

- 1.2 This policy applies either where the disposal falls within the Community Asset Transfer Policy or where the disposal is the subject of a freehold transfer or a lease of no less than 99 years. All other property transactions are regarded as lettings.
- 1.3 The Community Asset Transfer Policy defines a community asset as one where community activities are the primary purpose of the asset.

#### *Strategic context and Corporate Plan priorities*

- 1.4 The disposal of assets links to some extent with all three of the Corporate Plan priority themes.
- 1.5 The 'Community To Be Proud Of' priority theme refers to the Council continuing to transfer responsibility for the management of community assets to groups of local volunteers to make the best use of them for the benefit of their communities. One of the high level objectives of this priority theme is to 'Encourage active communities and support the voluntary sector and, whilst there is a separate Community Asset Transfer Policy that covers this in greater detail, it is important that any community asset transfer also complies with the principles set out in this Disposals policy.
- 1.6 Under 'A Borough To Be Proud Of' priority theme the disposal of Council assets can also act as a facilitator to the regeneration of the town centres and elsewhere in the Borough, enhance the Borough's economic and tourism offer and protect and improve the natural and built environments.

#### *Audit Commission statement/recommendation*

- 1.7 This policy was prepared partly in response to the recommendation in the 2011/12 Annual Governance Report by the Audit Commission.
- 1.8 The report states that "The Community Asset Transfer Policy and the Council's Property Asset Strategy 2012 – 15 should be aligned to inform the Council's integrated Asset Disposal Policy." In order to respond fully to this recommendation the Community Asset

Transfer Policy was revised, the Property Asset Strategy was reviewed and updated and this Disposals Policy was added as an appendix to the Property Asset Strategy.

*Localism Act*

- 1.9 Part 5 of the Localism Act 2011 contains the Community Empowerment provisions. The two chapters relevant to Council owned assets are Chapter 2 (Community Right to Challenge) and Chapter 3 (Assets of Community Value).
- 1.10 The Community Right to Challenge provisions entitle relevant bodies to submit an expression of interest to deliver Council services. The disposal of a Council asset could be triggered in the event that a relevant body submits an expression of interest to deliver a Council service where the asset is an integral part of the delivery of the service.
- 1.11 The Assets of Community Value provisions entitle community groups to nominate assets in their locality to be placed on the List of Assets of Community Value. The governance arrangements in respect of this legislation have been agreed by the strategic management team and are now in place. In the event of a nomination of a Council owned asset, this could impact on the potential disposal of the asset.

*Summary of relevant statutory powers and duties*

- 1.12 Under the Local Government Act 1972 Section 123, local authorities may dispose of land held by them in any manner they wish subject to the provisions of that section. Under Section 123(2) a Council cannot dispose of land, unless by way of a tenancy for a term not exceeding seven years, for less than the best consideration that can reasonably be obtained except with the consent of the Secretary of State. Section 233(3) of the Town and Country Planning Act 1990 makes similar provision for local authority land held for planning purposes (to which s.123 of the 1972 Act does not apply).
- 1.13 Where the disposal is to be for less than best consideration and the 'undervalue' does not exceed £2 million, the Department for Communities and Local Government's 'Local Government Act 1972: General Disposal Consent 2003 (Circular 6/03)' removes the requirement for Secretary of State consent to be sought by local authorities where the transaction will help it to secure the promotion or improvement of the economic, social or environmental wellbeing of its area. Circular 6/03 states that local authorities should seek professional advice on the likely amount of undervalue resulting from the transaction. This will demonstrate that the Council has acted reasonably and with due regard to its fiduciary duty.
- 1.14 Sections 123(2A) of the Local Government Act 1972 and section 233(4) of the Town and Country Planning Act 1990 require a local authority wishing to dispose of 'open space' under those powers to advertise their intentions in a local newspaper for two consecutive weeks and to consider objections.
- 1.15 Where the disposal of land would involve a local authority in giving financial assistance to a privately let housing scheme (including housing association accommodation), consent is required under Section 25 of the Local Government Act 1988. Under The General Consent for the disposal of land to registered providers of social housing 2010 (as amended) local authorities may dispose of land to registered providers at less than market value for the development of housing, other than housing for outright sale.

- 1.16 Councils are recommended to have regard to what are commonly known as the 'Crichel Down' rules when disposing of surplus land under which land which was acquired by, or under threat of, a compulsory purchase order should be offered back to former owners, their successors in title or to sitting tenants. This revised non-statutory guidance is set out in Part 2 of the Memorandum to ODPM Circular 06/2004 *Compulsory Purchase and The Crichel Down Rules*.
- 1.17 All disposals need to comply with the European Commission's State aid rules. The Commission's Communication on State aid elements in sales of land and buildings by public authorities (97/C 209/03) provides general guidance on this issue. When disposing of land at less than best consideration authorities are providing a subsidy to the owner, developer and or occupier of the land and property, depending on the nature of the development. Where this occurs authorities must ensure that the nature and amount of subsidy complies with the State aid rules, particularly if there is no element of competition in the sale process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.

*Officer delegations*

- 1.18 Cabinet approval is required for disposals except where the authority has been delegated to the Head of Property as follows:
- (i) To deal with applications for the sale of sub-station sites;
  - (ii) To deal with applications for the sale and purchase of small areas of land where the proposed consideration does not exceed £10,000 or where the land is to be sold or purchased on behalf of Kent County Council;
  - (iii) To grant leases for less than seven years or to grant leases where the annual rent is less than £3,000.

**2. Whether to dispose**

*Property Review Process*

- 2.1 The Property Review Process is set out in section 2.7 of the Property Asset Strategy. This process is used to determine which property assets should be retained or improved in the medium to long term and which assets will no longer be needed by the Authority. The process can also be used to determine which assets should be considered for community asset transfer.
- 2.2 The strategic property review was completed in April 2014 and action plans for both operational and non-operational properties prepared. This has led to the commissioning of planning consultants to carry out a more detailed Landholdings Review focussing on those vacant and surplus assets identified for potential disposal. Following completion of this review it is anticipated that a number of sites will be released for disposal.
- 2.3 In the event that an asset unexpectedly comes forward for potential disposal and the review has not yet been carried out, this will be brought forward in the review programme to ensure that all necessary factors have been taken into consideration when making a recommendation to members regarding a possible asset disposal.

- 2.4 A key consideration in deciding whether to dispose of an asset is whether that asset has the potential to generate additional revenue income for the Council, either through development by the Council or in partnership with another organisation. This issue is discussed in greater detail within the Property Asset Strategy.

### *Responding to bids under Community Rights legislation*

- 2.5 As stated in 1.9 above, an asset disposal could be triggered under the Community Right to Challenge legislation. In this event, the Community Asset Transfer Policy would apply and the terms of the asset disposal would need to reflect the terms of the transfer of the service.

### *Responding to bids from special purchasers*

- 2.6 A 'special purchaser' is defined in the RICS Valuation – Professional Standards, 8<sup>th</sup> Edition as “a particular buyer for whom a certain asset has special value because of advantages arising from its ownership that would not be available to general buyers in the market.” For example a sitting tenant or an owner of adjoining land.
- 2.7 Where the Council is approached by a special purchaser who wishes to purchase Council property the Head of Property will carry out internal consultation with the relevant Heads of Service to identify any objections to disposal.
- 2.8 Where the property is held for investment (i.e. for income generation) the views of the Head of Finance will be sought on the cost-benefit analysis of the likely capital receipt or the retention of the rental income.
- 2.9 A disposal will only be recommended/agreed if it is considered by the Head of Property that the price offered by the special purchaser is above the market value (i.e. disregarding the bid of the special purchaser) and where appropriate the Head of Finance has recommended that a capital receipt will be in the Council's best interest.

### *Consultation process*

- 2.10 Where an asset disposal will potentially impact on the local community then a community consultation will be carried out in accordance with the corporate consultation process.
- 2.11 Internal consultation will include the Head of Finance, the Head of Legal Services and the Head of Service that is occupying or receiving income from the asset.

## **3 When to dispose**

### *Drivers that determine the timing of a disposal*

- 3.1 Once an asset has been declared surplus to the Council's operational requirements or the review has identified it as being suitable for disposal it will be placed on the List of Assets for Disposal.
- 3.2 A programme of asset disposals will be prepared based on a number of different factors. These factors include:



- Financial considerations (the need for a capital receipt or a reduction in revenue costs)
- Property market conditions (for example, will fluctuating market conditions impact on the open market value of the asset?)
- Corporate Plan priority themes (for example, regeneration, economic and tourism development, Localism)
- Programme for Community Asset Transfer

*Property market conditions*

- 3.3 Property market conditions will influence whether it is an appropriate time to dispose of an asset. Minor sales of low value property will not be influenced as greatly but higher value properties should be retained until market conditions are favourable in order to maximise the income to the Council. Retention of the property must, however, be weighed against the cost of holding the property i.e. empty rates, security, insurance etc. Possible temporary alternative uses should be considered in order to reduce these costs.

*Regeneration objectives*

- 3.4 The contribution that the property may make towards the Council's regeneration objectives will influence whether it is an appropriate time to dispose of an asset. Following consultation with the Director of Regeneration and the Cabinet Member for Regeneration the priority for disposal will be determined based on the contribution to regeneration objectives.
- 3.5 Where it is agreed that land should be retained for its future regeneration potential the timing of disposal will be determined by other factors and should be kept under review.

**4 How to dispose**

*Community Assets*

- 4.1 There is an important distinction between the disposal of a community asset and the disposal of other Council owned assets. Where an asset is defined as a community asset (as per paragraph 1.3 above) the Community Asset Transfer Policy will apply to its disposal.
- 4.2 In the case of community assets, the disposals process involves the seeking of expressions of interest from groups interested in continuing to deliver the community activities from the asset.
- 4.3 It is also possible for a vacant building for which there is no current commercial interest (either for short term letting or disposal) to be treated as a community asset in order to achieve occupation. In this case an expression of interest process may be appropriate to identify any voluntary sector organisations that may be prepared to take a short term letting of the asset. Lettings of this nature should generally not exceed 7 years and should provide for regular rent reviews to reflect changes in circumstances.

*Identification of constraints and opportunities*

- 4.4 If a property has been declared 'surplus', investigations will be carried out to identify any constraints or opportunities. Some of these may have already been identified during the Asset Review Process but if necessary further consultations will be carried out with relevant

service units. These could include Legal Services, Planning, Open Spaces, Regeneration, Housing, Environmental Services.

- 4.5 The development potential or alternative uses should be considered including the benefit in obtaining planning permission prior to disposal.
- 4.6 If appropriate statutory undertakers may be consulted to determine the existence of underground services.
- 4.7 An Energy Performance Certificate will be required on the disposal or letting of commercial buildings unless an exemption applies. If the property is to be marketed then this is required prior to marketing.

### *Valuation*

- 4.8 Advice from a suitably qualified surveyor/valuer (eg. RICS) should be obtained before the terms are finalised. This may be provided by an internal surveyor/valuer or an external valuer. An independent valuation will be obtained in the case of a complex/specialised site or where required by statute.
- 4.9 Where the disposal is for less than best consideration an independent valuation will be obtained to establish the likely level of undervalue.

### *Methods of disposal*

- 4.10 Depending on the individual circumstances, it may be appropriate to use any of the following disposal methods:
  - Negotiation with a special purchaser (see 2.5 above)
  - Private treaty (via marketing agent)
  - Sealed bids/tender (via marketing agent or advert)
  - Expressions of interest (community assets)
  - Auction sale

### *Restrictive covenants/lease conditions*

- 4.11 Where there is a likelihood that the asset could increase in value following its disposal as a result of a successful planning application, consideration will be given to including a restrictive covenant or claw-back provision (in the case of a freehold transfer) or a lease condition (in the case of a leasehold transfer) to enable the Council to benefit from the uplift in value. It should be noted that conditions imposed under a lease are considerably more enforceable than those imposed under a freehold disposal.

### *Approvals and consultation process*

- 4.12 All potential disposals, unless covered by the delegated authority set out in 1.17 above, will be discussed either by the Asset Transfer Group (in the case of a community asset transfer) or by the Asset Management Group (in the case of all other asset disposals). The Group will make a recommendation which will be incorporated in a report to Strategic Management Team.

- 4.13 Discussions will also take place with the local ward member(s) and the relevant Cabinet member(s) to ensure that any local views are understood and taken into account. If appropriate, a full consultation exercise will be carried out.
- 4.14 Once approved by SMT the report will be presented to Cabinet for approval.
- 4.15 In the event that the disposal is for less than best consideration the Cabinet report will set out the level of undervalue as determined by the independent valuation described in 4.9 above. The report will also set out the criteria that members should use in order to properly appraise the proposal in a way that compares the social benefits against the financial consideration.



# Community Asset Transfer Policy

Updated November 2014

## 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 every three years.

## 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 Finance and Performance 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 Finance and Performance. 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 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.



## **Acquisitions Policy**

### **1. Introduction**

#### *Purpose of policy*

- 1.1 This policy sets out the relevant strategic framework and related policies concerned with the acquisition of property assets either freehold or leasehold. It also provides guidance on the procedures to be followed in the acquisition of property assets.

#### *Strategic context and Corporate Plan priorities*

- 1.2 There are three main drivers that will determine whether an asset should be acquired:

- Its contribution towards the provision of the Council's services and/or delivery of corporate aims
- Strategic acquisition for regeneration, development or redevelopment purposes
- Revenue income generation

- 1.3 Other reasons for acquisition may be:

- For economic development purposes
- To provide homeless accommodation
- To consolidate land ownership e.g. Minster Cliffs Open Space
- To improve performance of any investment portfolio
- Other exceptional circumstances.

#### *Investment Strategy*

- 1.4 In accordance with the Council's Capital Strategy in considering investing in assets there are two overriding principles to be applied:

- Minimising the cost to the revenue budget - given the continued reductions in local government financing there is no scope within the revenue budget to meet debt charge costs; and
- Strategic impact - if the Council is going to invest in property it needs to support wider Council objectives around regeneration of the borough and creating new employment. This means there needs to be additionality in-terms of the wider economic benefits eg higher business rates.

### *Summary of relevant statutory powers and duties*

- 1.5 Section 120 of the Local Government Act 1972 provides the power for acquisition of land by agreement (whether inside or outside their area) for the purpose of:
- Any of their functions under this or any other enactment, or
  - The benefit, improvement or development of their area.
- Acquisition can take place notwithstanding that the land is not immediately required for that purpose.
- 1.6 Section 12 of the Local Government Act 2003 provides a general power to invest (a) for any purpose relevant to its functions and (b) for the process of the prudent management of its financial affairs.
- 1.7 Section 1 of the Localism Act 2011 introduced a new General Power of Competence. Under the provision a local authority has power to do anything that individuals generally of full legal capacity may do. The Act is drawn very widely and includes reference to commercial activities and does not have to be in benefit of the local authority's area.
- 1.8 Compulsory Purchase powers may be used as a means of acquiring land for a specific purpose, if the land owner is not willing to sell by agreement. It is commonly used where the Council has need of land or site for major Schemes which have an impact on the Community. Any CPO would require the approval of full Council following a recommendation by Cabinet.

### *Officer delegations*

- 1.9 The Head of Property Services has the following delegated powers in regard to property acquisitions:
- To finalise negotiations in the case of confirmed Compulsory Purchase Orders.
  - To deal with applications for the sale and purchase of small areas of land where the proposed consideration does not exceed £10,000 or where the land is to be sold or purchased on behalf of Kent County Council.
  - To retain agents to advise upon terms for sales, leases, purchases, easements, compensation claims and similar matters or otherwise in connection therewith.
  - To carry out site investigation where he/she considers it necessary whether upon commencement of negotiations or acquisition or otherwise.
- 1.10 With regards to bullet point 2 above, at the next scheduled review of officer delegations it is proposed to recommend that the figure be increased to £30,000 and that the delegation be amended to cover all assets and not just small areas of land.

## **2. Whether to acquire an asset**

### *Market Research*

- 2.1 Once a need to acquire property has been identified, or an opportunity arises in accordance with the overriding principles at 1.4, market research will be carried out by the Head of Property Services, in consultation with the Chief Financial Officer and the Asset

Management Group, to establish whether suitable land or property is available on the market to fulfil this need.

2.2 Criteria against which any decisions are made in respect of an acquisition will include, where appropriate:

- Price
- Condition of property / land
- Planning policy
- Development constraints
- Availability (in terms of timing)
- Nature of tenure being offered (freehold or leasehold)
- Occupational tenancies/vacant possession
- Locational advantages (where a strategic acquisition is under consideration)
- Return on investment (where a revenue generating asset is being considered)
- Restrictive covenants / easements
- Costs in-use for premises for Operational purposes
- Cost to build, adapt or improve any premises and other costs relevant to the purpose
- Meeting the Council's strategic priorities as outlined in the Local Plan, Property Strategy and/or other Strategies
- Conditions around the spending of any commuted sums (in lieu of a s106 agreement) for acquisitions
- The powers under which the Council is acquiring the asset which will influence future uses, and where the asset sits within the Council.

2.3 Where a number of potentially suitable properties exist in the marketplace, robust comparisons will be made to establish which is the most suitable for the Council's needs using the criteria set out in paragraph 2.4 et seq.

### *Financial considerations*

2.4 When a suitable property or site has been identified, a financial/feasibility appraisal will be carried out to establish the financial/budgetary implications of acquiring the asset at the quoted asking price. The advice of Finance will be sought regarding the financing of the acquisition and current rates of interest on capital invested, to enable the opportunity cost of the acquisition to be fully assessed. The Chief Financial Officer will undertake a financial appraisal, taking into account the following matters, where appropriate:

- The capital cost of acquisition and relevant expenditure
- The opportunity cost of acquisition
- Any revenue, or potential revenue, generated from the asset, both short and long term
- Availability of external funding sources
- Internal resourcing required
- Development procurement options including joint ventures
- Risk assessment
- The cost, in asset management terms, of owning the property or site, including:
  - Immediate maintenance/refurbishment requirements
  - Demolition costs, if appropriate
  - Adaptation requirements
  - Ongoing maintenance/life cycle costs

- National non-domestic rates including empty rates liability
- Insurance
- Council Tax
- The overall effect of the expenditure on the Council's budgetary position.

2.5 Appropriate external support will be sought where necessary.

### *Consultation process*

- 2.6 The draft proposal, setting out the reasons for the acquisition, together with the business case and any other pertinent details (including valuation), should be presented to the Asset Management Group for endorsement to proceed with negotiations.
- 2.7 Any formal offer to acquire an asset must be approved by SMT, the Chief Financial Officer and the Cabinet Member for Finance and Performance. Any capital expenditure should also be included in the Council's Capital Programme prior to any commitment being made.

### *Property market conditions*

- 2.8 Consideration should also be given to the current property market conditions and whether this should influence the decision to purchase. For example, it may be considered that certain property acquisitions should not take place during a downturn in the market (either locally or nationally) or period of recession.

## **3. Acquisitions process**

### *Community Assets*

- 3.1 Certain community assets may be acquired under planning agreements rather than acquisition by agreement or compulsory purchase. These acquisitions are not within the scope of this policy.

### *Identification of constraints and opportunities*

- 3.2 Prior to purchasing, appropriate investigations will be undertaken into matters relating to:
- The legal title of the property
  - Planning and Building Regulation compliance for the existing use and proposed purpose, including the potential designated use in the Local Plan.
  - Other relevant statutory consents
  - Contamination and other environmental factors
  - Existing construction and Mechanical and Electrical plant

### Valuation

- 3.3 Valuation advice will be provided by the District Valuer or other suitably qualified surveyor (RICS). Appropriate informal advice shall be obtained prior to that to assist with assessing options and recommendations.
- 3.4 Where an acquisition is in respect of a major or complex site, additional independent valuation advice may also be sought. Independent advice is to provide a safeguard for the propriety of the Council's transaction. The advice may include assistance with negotiations with the vendor.
- 3.5 Where independent advice suggests that the true Open Market Value of the property is below, or equivalent to, the asking price and / or there are overriding factors which justify the purchase, a report shall be prepared for Cabinet by the Head of Property Services, in consultation with the Chief Financial Officer, seeking approval to continue with the proposed acquisition.
- 3.6 Where the acquisition is to be by way of a long lease, Finance will be specifically consulted to assess the implications regarding VAT, Capital Controls and Treasury Management.

### Negotiations

- 3.7 Negotiations will be commenced with the vendor by a suitably qualified surveyor (RICS) acting under the instruction of the Head of Property Services.
- 3.8 Where the sale is by auction or tender, bids will be formulated as appropriate.  
**NB.** Any recommendations by the third party carrying out either the valuations and/or the negotiations must be included in any reports that are presented to the Asset Management Group, Cabinet, Council and/or the Chief Financial Officer.

### Approvals process

- 3.9 Unless covered by officer delegated powers, Cabinet approval for acquisitions will be required. For acquisitions below £100,000, provided that a budget has been identified, a formal offer will be made and purchase agreed subject to Cabinet approval.
- 3.10 Following preliminary investigations and where the possibility of an acquisition has been established at a capital value of £100,000 or more, or a periodic payment of £20,000 or more per annum, the Head of Property Services and the Chief Financial Officer will prepare a report for Cabinet to obtain agreement in principle to proceed, identifying a budget for the acquisition, prior to a formal offer being made.
- 3.11 Any offer to the vendor, subject to the financial limits described in 3.10, will be made "*subject to contract, Cabinet approval and, where appropriate, survey*" and a report will be prepared for the next Cabinet by the Head of Property Services and the Chief Financial Officer recommending acceptance of the acquisition.

### Exceptions

- 3.12 In exceptional circumstances, where time is of the essence, the Chief Executive, acting on the advice of the Chief Financial Officer, and in consultation with the Leader of the Council, may make offers to acquire land and property of a value in excess of £100,000 in

accordance with, and to give effect to, the Council's strategies and corporate aims (subject to a report being prepared for the next Cabinet by the Chief Executive). In this situation, the emergency provisions within the Constitution would be invoked.

*Compulsory Purchase*

- 3.13 The Council may consider, where appropriate the acquisition of land through its compulsory purchase powers. The Chief Financial Officer will be notified at the earliest opportunity and prior to any action, when consideration is being given to acquisition in this way.