DISTRICT OF HARBOROUGH

Corporate Property Strategy

Community Asset Transfer Policy



Reviewed by

Clive Mason, Director of Resources (& S.151 Officer)
Caroline Averill, Head of Property Services
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1. Introduction

1.1 The purpose of this policy is to set out a transparent, positive and pro-active framework to enable, where appropriate, the transfer of assets from the Council to a third sector organisation (TSO), or other community organisations

1.2 The framework will support asset transfers that:

- meet community need and demand
- support the Council's aims and objectives
- are evidenced by a transparent business case including financial implications to the authority
- are sustainable in the long term (particularly if long lease or freehold transfer)

2. Definition of community asset transfer

2.1 Community Asset Transfer is distinct from standard commercial disposals in that it prioritises community benefit over financial return where justified.

2.2 The transfer of land or buildings from the Council's ownership into the stewardship and/or ownership of third sector (voluntary and community sector) organisations which includes:

- management agreement
- licence to occupy
- short lease or long lease
- freehold transfer (exceptional circumstances)

2.3 Community Asset Transfer usually involves a transfer at less than market value, either at a reduced cost, or for a nominal consideration. The social, economic or environmental benefits of the proposed transfer may be taken into account in determining the value.

2.4 There will be a presumption that any lease will be on a full repairing and insuring basis, and the third sector organisation will be responsible for all running costs of the asset.

3. National policy context

3.1 The Local Government Act 2000 introduced the power for Local Authorities to undertake activities that promote economic, social and environmental well-being of the area.

3.2 Making Assets Work – the Quirk Review of community management and ownership of public assets (2007) considered the role of public assets as an enabler of community empowerment. Local Authorities have traditionally been risk averse in their consideration of asset transfer, but the Quirk Review concluded that the benefits of community management and ownership of public assets could outweigh the risks and opportunity costs in appropriate circumstances.

4. Local policy context

4.1 The Council's policy direction is defined in its Corporate Plan which identifies the most important issues for local people and the subsequent Council priorities and strategic outcomes. The focus is on improving the lives of local people and making the district of Harborough a better place to live, work and visit.

4.2 The Corporate Property Strategy highlights the links between these themes and the Council's property holdings and recognises the importance of reflecting the aspirations of the community through its asset management policies.

5. Council commitment to community asset transfer

5.1 The Council shall use Community Asset Transfer (CAT) where appropriate and recognises the benefits it can bring to our communities and individuals, including:

- Economic development and social enterprise potentially levering in additional investment;
- Community empowerment;
- Improvements to local services;
- Building capacity and encouraging a more sustainable third sector;
- Value for money; and
- Supporting delivery of the Council's corporate objectives

6. Who can apply?

6.1 The Council will accept expressions of interest from not-for-profit groups and organisations. Applicants should be:

- Community led
  - Strong links with the local community and directly benefit the people of the district of Harborough.
  - Benefit as wide and diverse a range of local people as possible and demonstrate an inclusive approach to all members of the community.
  - Decision making process influenced by local community.
  - Primary purpose must be non-commercial.

- Properly constituted
  - Demonstrate good governance through open and accountable processes.
  - Clear management and financial systems.

- Skills and capacity
  - Deliver services and manage the asset being transferred or have access to appropriate skills
  - Be aware of the need to build capacity and demonstrate how they will achieve this

7. The principles of community asset transfer

7.1 This policy is underpinned by the following principles:

- Meeting Community Need and Demand
  - There must be both a need and demand for the activities being proposed

- The proposed use of the asset should not duplicate activities, services or facilities already being satisfactorily provided in the local community
- Collaboration between third sector organisations and co-location of services will be actively encouraged to optimise social value and value for money

- Supporting the Council's Corporate Objectives. The proposed transfer must demonstrably support the delivery of the Council's corporate priorities and community strategy
- Transparency
  - The asset transfer decision must be transparent and include an assessment of detailed criteria including:
    - The Council's asset management planning requirements for the asset;
    - Benefits to the community and the Council;
    - Potential loss of capital receipt and existing income or other opportunity cost to the Council arising from the transfer and potential revenue saving to the Council
  - The Council will not guarantee exclusivity on a "first come first served" basis and will consider other expressions of interest. If more than one organisation is interested in a property, then a collaborative approach to consider co-location will be encouraged. If co-location is not appropriate, then a selection procedure will be adopted taking into account the extent to which each organisation meets the application criteria.
- Sustainability
  - The applicant should demonstrate their ability to manage the asset effectively through the provision of a robust business case. This should include an assessment of their financial and organisational capacity:
    - income generation proposals
    - clear analysis of community/social need and demand for the proposed activities
    - space required to effectively deliver proposals
    - clear management structure and details of how building/land will be managed on a day to day basis including meeting any statutory requirements and compliance responsibilities (health & safety, asbestos, fire safety, etc.)

8. The framework for considering community asset transfer

8.1 The process for considering applications is detailed in Appendix 1. Requests for the transfer of Council owned assets will be considered where all the criteria contained in Appendix 2 are met. The degree to which the criteria are met, the condition of the asset and the requirements of potential funders/lenders will be used to determine the most appropriate type of transfer agreement where applicable.

9. Disposal and legal considerations

9.1 Any disposal will be in accordance with the council's disposal and acquisition Procedure. Any disposal will comply with Section 123 of the Local Government Act 1972 (best consideration requirement), unless a valid undervalue justification is applied under the General Disposal Consent (England) 2003. Community asset transfer of premises will be by way of leases or licences, and freehold transfer will only be considered in exceptional circumstances where significant funding depends on such tenure. The tenure offered will be determined on a case-by-case basis dependant on the strength of the applicant and sustainability of the business case, but the council will endeavour to meet funders requirements for security of tenure.

9.2 The decision whether to charge an open market consideration for the asset will be determined on a case by case basis. Factors influencing the decision will include proposed uses, extent of revenue producing opportunities and benefits to the community. Any asset transfer at less than best consideration will be dealt with in accordance with the Local Government Act, 1972; Guidance from Royal Institution of Chartered Surveyors (RICS); Local Authority Asset Management Best Practice guidelines on disposal of land at less than best consideration, the General Disposal Consent (England) and valued in accordance with the RICS Valuation – Professional Standards in force at the time.

9.3 In all cases a Restrictive Covenant or claw-back provision will be inserted within any transfer to protect the Council's position and ensure the Council receives the opportunity cost equal to the undervalue on a future sale and any windfall gain if a purchaser obtains a more profitable planning use.

9.4 Issues may arise in respect of Subsidy Control Act 2022 applicable to procurement issues, state aid, employment contracts, service agreements and other legal issues. These will be considered on a case-by-case basis with appropriate legal guidance. Third Sector Organisations will need to recognise that it is their responsibility to ensure that any disposal at an undervalue complies with and meets regulations and demonstrate this to the Council so that the Council are able to satisfy themselves that there has been no breach.

9.5 The decision to transfer an asset will not be considered as setting a precedent. Each asset transfer will be judged on its own merits, and the detail of the transfer arrangements will be subject to individual negotiation.

10. Approval

10.1 The approval of a Community Asset Transfer sits with the Council via the recommendation of Cabinet on the advice and report of the Corporate Property Officer. The Corporate Property Officer in considering their recommendation will receive all the relevant information set out in this policy from the Assets Team.

11. Appeal

11.1. If an application for community asset transfer is refused, the letter of notification will set out in detail the reasons for refusal. An organisation who has their application for asset transfer refused has the right of appeal within 21 working days of receiving notification of the decision.

11.2. The appeal should be made in writing and should state the reasons why the applicant disagrees with the refusal and should contain any additional information or evidence available.

11.3. The appeal will be reported to the next practicable cabinet meeting and notified in writing to the applicant. Cabinet decision is final.

Appendix 1

Community asset transfer process

STAGE	REQUIREMENTS	DECISION MAKER
Stage 1: Window of opportunity advertised or asset identified by voluntary or community organisation or Parish/Town Council Informal discussions with Council	• Is the asset eligible for CAT • Information concerning proposed use (i.e. in keeping with wider site) • Information concerning the reliability, credibility and sustainability of the organisation • Information concerning the social value the project will provide for the residents	Third sector organisation whether to submit formal Expression of Interest
Stage 2: Formal expression of interest submitted to the Council by the Third Sector Organisation (TSO) in response to: • Request from TSO to take on a community asset • Invitation to express interest in surplus property following asset review	Outline business case: • Why the asset is needed • Benefits to community, TSO and Council • Support from community/partners • Governance arrangements If the application is supported the TSO will be invited to proceed to Stage 3. If the application is not supported a full explanation will be provided.	Corporate Property Officer (to assess asset management implications) in consultation with: • Relevant Head of Service (to assess any service implications) • Director of Resources • Ward Members • Relevant Portfolio Holder

Stage 3: Detailed business plan submitted by TSO The Council will support the development of the business plan including the provision of any relevant asset information available.	Detailed Business Plan: • Needs analysis and projected utilisation • Type of transfer sought and why • Planned outcomes and benefits and how they will be measured/monitored • Details of any proposed partnership/collaborative working • Track record for delivering service/managing property. • Capacity to manage the asset. • 3-year plans for revenue and capital funding – projected income and expenditure including costs of managing and operating the asset. • Financial sustainability and forward planning.	As above

Stage 4: Full assessment of business plan	Report to Cabinet with a detailed assessment of: • Benefits for community, the TSO and how they relate to delivering Council priorities • Risks in relation to financial and organisational ability to manage the asset • Potential loss of capital receipt and existing income or other opportunity cost to the Council arising from the transfer • Establish level of discount (if applicable) • Terms of transfer and any legal issues • Monitoring arrangements e.g. Service Level Agreement	Cabinet makes recommendation to Council
Stage 5: Recommendation, Decision and Completion	Report in line with Disposals and Acquisition Policy	Council

Appendix 2

Application Criteria

a) The Applicant must be: A third sector organisation

- Legal entity
- Exist for community/social/environmental benefit
- Non-profit distributing – any surpluses must be reinvested to further its community benefits/social aims
- Properly constituted e.g. registered charity, not for profit company and constitution allows the management/ownership of buildings and provision of services
- Demonstrate good governance through open and accountable processes
- Demonstrate it has the skills and capacity within or available to effectively deliver its services and manage the asset
- Provide services or engage in activities that deliver economic, environmental or social benefits in line with the Council's core priorities
- Provide copies of the organisation's Annual Report and accounts if available
- Excludes Housing Associations
- Strong links with the local community and directly benefit the people of Harborough
- Benefit as wide and diverse a range of local people as possible and demonstrate an inclusive approach to all members of the community
- Decision making process influenced by local community

b) The Asset

- A legal interest owned by the Council from which the TSO can demonstrate community benefit
- The asset is in the freehold/leasehold ownership of the Council
- The asset is not currently needed or identified for direct service delivery or future investment value
- Preference will be given to applications for multi-uses and co-location of services. Single interest uses will only be considered where there is a significant business case to do so

c) Proposed Use

- There is both a need and demand for the proposed activities and consideration is given as to whether this is being satisfactorily addressed by another organisation
- The proposed use will support the delivery of the Council's corporate priorities

- The proposed use will maximise opportunities for income generation to ensure sustainability
- The TSO has established how much space it requires to deliver its proposals, and how they will make optimum use of the asset
- The proposed use will deliver extensive and inclusive reach into the community and will be open to all.

d) Business Plan and Finance

A robust business plan clearly stating the operation and service provision and

financial and organisational capacity of the TSO to deliver the proposed services/activities and manage the asset is critical to the success of any transfer. This will include:

- Needs analysis – how has the need for the services and use of asset been identified and what needs will be met
- How the building will be utilised to optimum effect
- Type and key terms of transfer sought and why
- Benefits analysis and how they will be measured and monitored
- Details of any proposed partnership/collaborative working
- Track record for delivering service and/or managing property
- Capacity of the TSO to acquire and manage the asset (including managing any liabilities) and how any future capacity building requirements will be addressed
- 3-year revenue and capital funding plans – projected income and expenditure including costs of managing, operating and maintaining the asset (including Health and Safety responsibilities)
- Financial sustainability and forward planning