

Report to: **Audit, Best Value & Community Services Scrutiny Committee**

Date: **6 September 2013**

By: **Chief Operating Officer.**

Title of report: **Property Policies and Guidance**

Purpose of report: **To provide the attached suite of Property Policies for the consideration of the Committee.**

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**RECOMMENDATIONS: The Committee is recommended to**

- (1) note the report; and**
  - (2) consider Members' role in the future operation of these Policies.**
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**1. Financial Appraisal**

1.1 There are no direct financial consequences. However, there will be financial implications as decisions are made using the Policies, nevertheless these will be assessed for each specific decision.

**2. Background**

2.1 One of the core aspects of the Council's Property Improvement Plan was to ensure that there are clear and complete policies covering all aspects of property management. This work has now been undertaken and a complete suite of policies was approved by Lead Member for Resources on the 16 July following consultation with all key departments of the Council.

2.2 The purpose of these policy documents was to provide a comprehensive statement of how the Council will manage and maintain its portfolio of property throughout its lifecycle of acquisition, maintenance and improvement and eventually release. These were prepared in order to ensure a joined up and consistent approach to all aspects of the Council's property management in accordance with Council priorities and its adopted key principles of property management.

2.3 The Council's Asset Management Plan 2012/13 identified the following four key principles that will underpin our management of all property assets in the ownership of Council. The Council's property policies have adopted these principles in order to ensure the Council continues to maintain a portfolio of fit for purpose buildings which are efficiently used and support service delivery. These principles are:

Principle 1 – Improve or replace

Principle 2 - Release

Principle 3 – Reduce our Carbon Footprint

Principle 4 – Work in Partnership & empower our communities

2.4 In accordance with Section 149 of the Equality Act 2010 the Council is required to have a due regard to the protected characteristics as defined by the Act. The Council is satisfied that these policies accord with the Act, and in particular the proposed policies include a Disabled Access Policy with an Equality Impact Assessment that indicates it is anticipated that this policy

will have a positive impact upon meeting our obligations to all elements of the East Sussex community.

2.5 The attached documents under Appendix 1 include an introduction to Council Property Policies and in particular the Council's Community Asset Transfer and Property Disposal Policies. Further details on all other property policies can be found under Agenda Item 6 of the Lead Member for Resources decision meeting of the 16 July  
<http://www.eastsussex.gov.uk/yourcouncil/about/committees/meetingpapers/cabinetresources/2013/16july.htm>

2.6 These policies also recognise the value of continuing to consult with the relevant Local Member when dealing with a property issue that might impact upon a local community, and reconfirms our commitment to continue to consult with members whenever appropriate. The Council recognise that because of local member's knowledge of the district that they represent, that they will be able to help ensure that our property strategies reflect the needs of the communities to whom we provide services. The Council is therefore committed to consult and keep our Members informed of property matters that may impact on their local area.

2.7 Cabinet has delegated authority to approve the acquisition or disposal of land and property to the Lead Member for Resources. Any decision report will always be copied to the local member in whose electoral division the property that is the subject of the report is located. In addition to the formal reporting structure the Council's property department is committed to consult with Local Member's on all property disposals at an early stage including when the land is in the process of being declared surplus. This is to ensure that the needs of the local community are understood and that any local market knowledge that will help ensure that the best price reasonably obtainable is achieved through any subsequent disposal process.

### **3. Conclusion and Reason for Recommendation**

3.1 The adoption of these policies has completed a key recommendation of the Council's Property Improvement Plan that identified the need to review all existing policies and formulate new policies where required to reflect the wide nature of the work of the Property department. The Committee is invited to note and comment on the policies submitted for consideration.

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Chief Operating Officer

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Local Member: All

#### Background Documents

None



# Property Policies Overview

March 2013



INVESTORS  
IN PEOPLE



## Amendments history sheet

Issue Number	Changes Made	Issue Date
1	Created	March 2013
2	Amended	17 April 2013
3		
4		

**If you would like a copy of the document in a different format, such as large print, Braille or a different language, please contact us.**

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# 1 Introduction

The corporate property estate represents a value of over £800 million and needs to be managed effectively to ensure best value for money from property assets in serving the strategic priorities of the Council as adopted in the Council Plan 2013/14. These priorities are:

**Priority – Driving Economic Growth.**

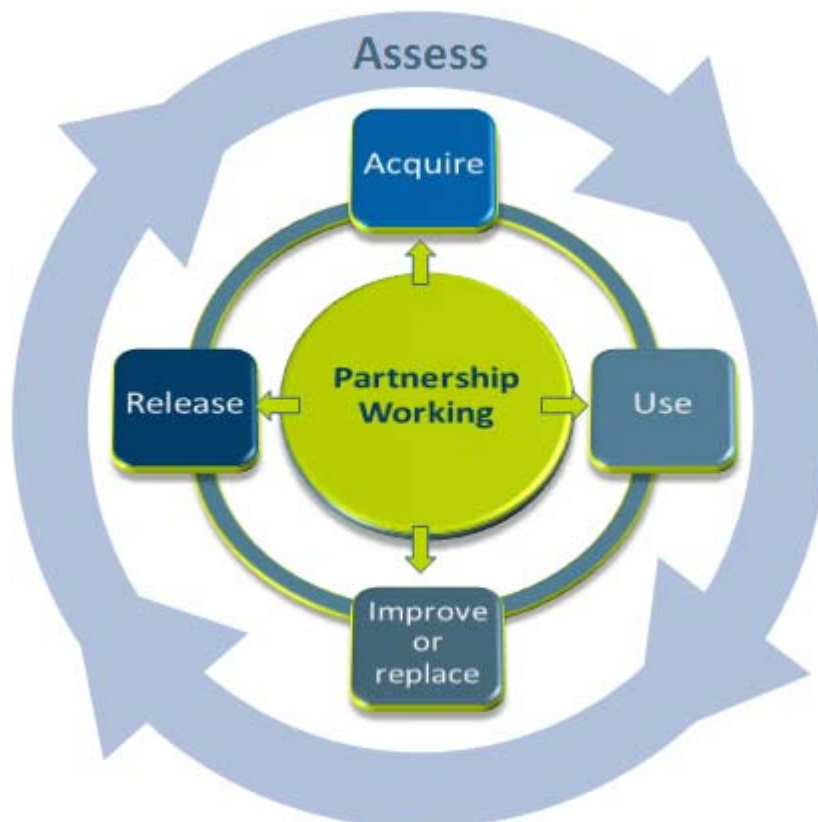
**Priority – Keeping vulnerable people safe and free from harm**

**Priority – Building Resilience for individuals and families to live independently.**

**Priority – Making best use of resources.**

We will ensure that our property portfolio is fit for purpose, efficient and sustainable through adequate and up to date supporting policies & strategies.

These policies are to facilitate a joined-up and consistent approach in terms of planning, delivery and sound property management throughout the life cycle of the portfolio, according to our key principles<sup>1</sup>:



<sup>1</sup> See Corporate Property Asset Management Plan

## 2 Our vision

To use property that is fit for purpose, efficient and sustainable, in order to support the delivery of services to our community.

Our vision is supported by the policy steers agreed by the Council. Property is a core resource and as such we want it to be:

- **'fit for purpose'** – property actively contributing to effective service delivery in terms of location, condition, suitability, accessibility, design and layout.
- **'efficient'** – in the way that property performs and in the way that property is used i.e. flexibly and support new ways of working,
- **'sustainable'** – both in environmental and financial terms so that it supports the work of the authority and its partners whatever changes come our way

To help our achieve our vision in the Council's Corporate Property Asset Management Plan 2012/13 the Council adopted the following key principles;

**Principle 1 - Improve or Replace.**

**Principle 2 - Release.**

**Principle 3 - Reduce our Carbon Footprint.**

**Principle 4 - Work in partnership and empower our communities.**

Each of the adopted property policies will specify these principles and how that key activity supports them.

Our supporting strategies in delivering this will involve:

- **Targeting available resources** on 'core' properties; those that the Council considers it needs to retain in the medium to long term (5+ years).
- **Working in partnership** with other organisations and local communities to maximise the use of property for the benefit of the people of East Sussex through SPACES (Strategic Property Asset Collaboration in East Sussex).
- **Addressing both the causes and the effects of climate change** through utilising best practice in all elements of the management of the estate.
- **Ensuring value for money** in all property-related transactions.
- **Improving organisational arrangements**, by raising the profile of asset management to ensure effective decision making.
- **Enhancing customer focus** across the Council by improving engagement and dialogue and redesigning our working practices to improve efficiency and effectiveness.

Many of the pledges made will have activities that continue over several years. Specific actions for the forthcoming year will be reflected in the business plan objectives.

## 3 Partnership working

Local authorities and other public sector agencies face a period of unprecedented financial challenge. In order to meet these challenges and maintain and improve core public service, it is essential that these agencies work together to share assets, property services or work together to procure services or capital investment through combined buying power. In addition, by working strategically with our partners, we can ensure that we learn from our common experience and share best practice.

The **Strategic Property Assets Collaboration in East Sussex (SPACES)** is a property collaboration programme in East Sussex where a range of public and voluntary sector partners are working together to reduce costs and generate capital receipts by seeking opportunities to share property or services that support those assets. The County Council has continued to support this group and recently appointed a Programme Manager to co-ordinate initiative to share property and procure services together. Its targets are:

- £10 million of revenue savings of property costs.
- To achieve £30 million in capital receipts through the disposal of property.
- To reduce carbon emissions by 10,000 tonnes.

**South East 7** is a partnership of a seven top tier and unitary authorities in the South East and is working together on a number of initiatives including property asset management. Due to the scale of the area it is not necessarily practical to share property and continue to deliver local services but partners across these authorities are working together to collaborate on the joint procurement of programmes of capital works and provision of shared property services. The scale of the potential prize of such a partnership is significant and it is hoped that through working together £1 billion of savings will be achieved.



## 4 Property Data & Information

We collect property data and information in order to assess our portfolio's performance throughout its lifecycle. This supports sound Asset Management, informs Strategic Plans, and enables ESCC to benchmark.

The property data will be held centrally in a corporate system, and kept up to date by the Property Department to ensure its accuracy and wider accessibility.

The Council is committed to a programme of continuous improvement and review of the property data it holds and is currently considering options to acquire a new Property Asset Management System following a joint development and procurement programme by Hampshire and Surrey County Councils.

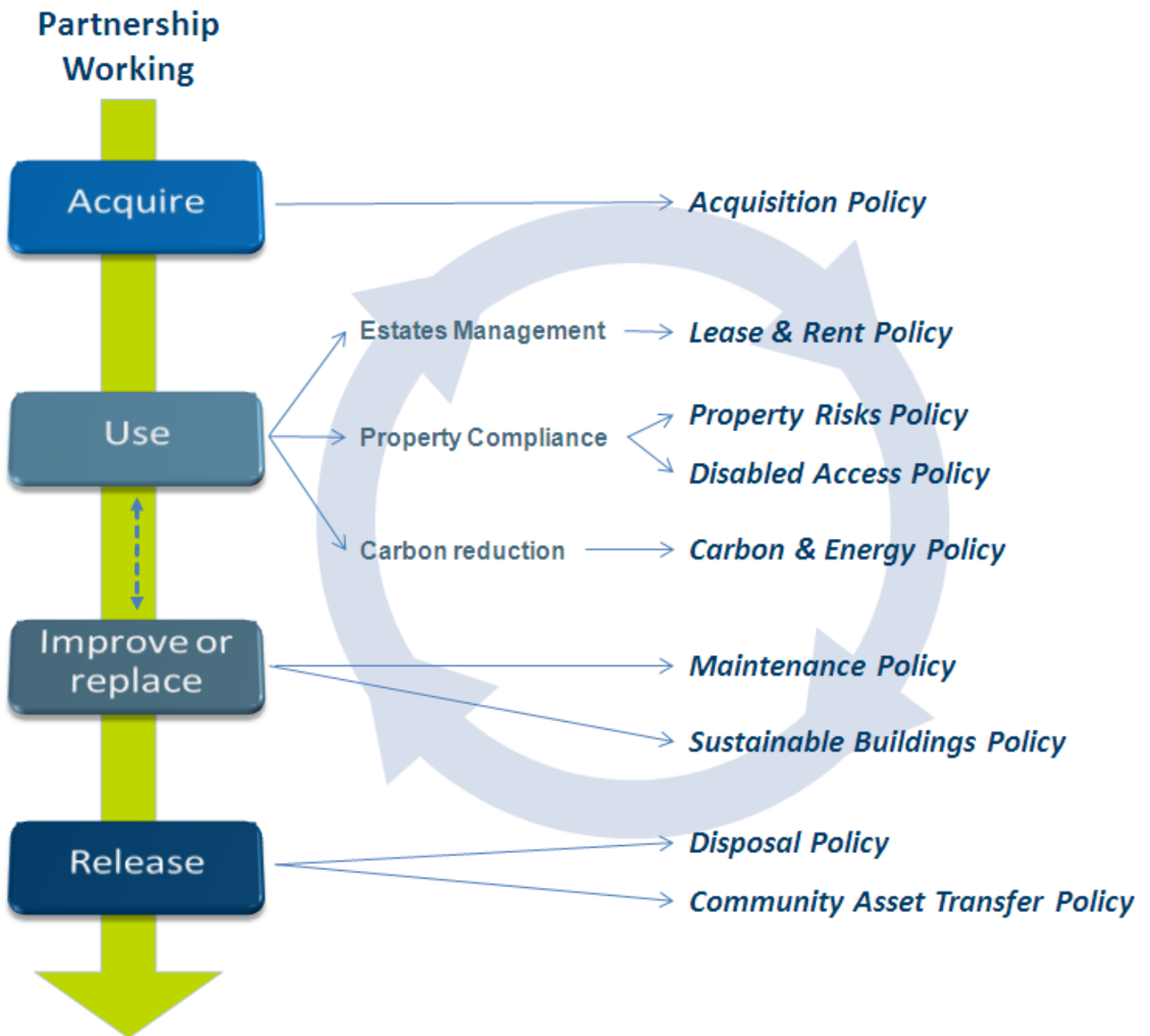
## 5 Members Involvement

We will continue to consult and keep our Members informed of property matters that may impact on their local area. It is recognised that members, because of the local knowledge of the district that they represent, will be able to contribute to those discussions to ensure that our property strategies reflect the needs of the communities to whom we provide services. Therefore engagement will be sought and encouraged at an early stage.

# 6 Property Policies

This document brings together all our Property Policies & Strategies by linking them to our priorities, as outlined in the Corporate Asset Management Plan (CPAMP) and our business plan. The diagram below illustrates how various policies underpin these priorities.

A summary of each is provided with links to the specific strategies.



## **Property Acquisition Policy**

This policy document is to be followed when considering the acquisition by the Council of an interest in property. For the purpose of this policy, reference to “Property” includes any property constructed on land or land or an interest in land itself. It applies to the acquisition by the Council of all interests in property including freeholds, leaseholds (including capitalised leases), restrictive covenants, easements and options. However, it does not apply to acquisitions under compulsory purchase procedures.

Property is a corporate resource and the Council’s Corporate Asset Management Plan sets out the objectives and targets to be applied in managing the property portfolio. This policy places emphasis on adopting procedures that are open, transparent and consistent and aims to ensure maximum benefit from the effective purchase and subsequent management of the Council’s assets. Within this framework the policy will help ensure the Council achieves best value, acts within the appropriate legal framework, acts in a demonstrably fair and open manner and considers whole life costs.

[\*Link to latest Policy Document\*](#)

## **Property Lease & Rent Policy**

The adoption of a policy that considers the way the Council manages its leased and licensed property or those assets it leases from others will provide a framework for decision making regarding leases and licenses will ensure consistent management of lease terms and conditions, managing insurance, undertaking maintenance and collecting rents.

This policy paper will specifically set out guidelines for agreements for standard commercial or public entities as well as voluntary and community groups. This will help achieve the Council’s goals of making the best of our resources and encourage personal and community responsibility by ensuring space is available for residents and groups to meet, network and participate in community and recreational activities.

[\*Link to latest Policy Document\*](#)

## **Property Risks & Compliance Policy**

The Property department’s role is to ensure the Council’s duty of care is fulfilled by meeting our statutory obligations and eliminating property risks wherever possible or reducing them to a safe and acceptable level. As a landlord and an employer, the Council has obligations to provide a safe environment for its staff and users.

This process begins with commissioning a series of assessments and surveys to assess if any significant risks exist, to gauge the extent of those risks and then put in place an appropriate action plan for the management and/or removal of those risks.

Property risks comprise high profile risks such as asbestos, Legionella and fire safety and include more generic testing and assessments of items such as electrical equipment, gas testing, lifting equipment, etc.

[\*Link to latest Risks & Compliance Policy Document\*](#)

## **Disabled Access Policy & Strategy**

It is a priority for the Council that our public buildings are accessible to all. To do so, we will make as many necessary and reasonable adjustments to our buildings and services as possible and will do all we can to meet the needs of our customers and members of staff.

The Disabled Access Policy & Strategy sets out how the Council will integrate and consider the implications of the Equality Act 2010 whenever buying, selling, building or managing our properties<sup>2</sup>.

[\*Link to latest Disabled Access Policy Document\*](#)

## **Carbon Management Strategy**

The Council's objective is to manage our assets better, in order to reduce energy consumption, utility costs and consequential greenhouse gas emissions (ESCC's Carbon Footprint), thereby reducing any adverse impacts on our environment and helping to preserve the natural beauty of East Sussex.

[\*Link to latest Carbon Management Strategy\*](#)

## **Building Maintenance Policy**

This policy sets out how we intend to deliver, through a maintenance strategy, the Council's commitment to the vision of using property that is fit for purpose, efficient and sustainable, in order to support the delivery of services to our community.

[\*Link to latest Building Maintenance Policy Document\*](#)

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<sup>2</sup> Excluding schools, which have a different policy, under the SEN and Disability Act 2001

## **Corporate Sustainable Buildings Policy**

This policy sets out how we intend to deliver our commitment to a sustainable approach to construction and maintenance. The policy responds to the changes in our climate, and the guidance document creates a sustainable framework for the progressive review and auditing of objectives and priorities.

This Policy and Guidance Document will constitute part of the brief to our design and maintenance service providers and inform project teams and project boards/sponsors of the Council's expectations and requirements regarding a sustainable approach to construction and maintenance.

*[Link to latest Corporate Sustainable Buildings Policy Document](#)*

## **Property Disposals Policy**

This policy will provide clear guidance and a method of ensuring that when considering disposal, all factors are taken into consideration, enabling value judgements to be made as appropriate in each individual case. It will mean that all communities will have equality of opportunity to acquire Council property that is surplus to requirements and is therefore to be sold.

It is important to note the key role that Local Members will have in determining if a property is surplus to Council needs as their knowledge and understanding of their local areas and wider neighbourhoods is essential in formulating balanced decisions in the interests of all members of the community. Members' views will also be sought when a property becomes available for sale.

*[Link to latest Property Disposals Policy Document](#)*

## **Community Asset Transfer Policy**

Property disposal does not always mean sold for the highest price. The assets the Council owns in local communities may play an important part in enabling voluntary groups to come together to offer communities a range of activities and services that benefit the social and economic wellbeing of an area. The Community Asset Transfer Policy will provide clear guidance to enable communities to help themselves, officers and Members to support those transfers when a transfer to a local or voluntary group will provide the right solution to the community and the tax payer in East Sussex.

*[Link to latest Community Asset Transfer Policy Document](#)*

## 7 Going forward

Although some policies have been completely updated, we are still in the process of adjusting others, so there is a consistent format throughout all documents. We will review all property policies regularly and at least once a year.

<b>Policy Name</b>	<b>Officer</b>	<b>Version date</b>
Property Acquisition Policy	David Baughan	May 2013
Corporate Sustainable Buildings Policy	Peter Bowley	March 2013
Property Lease & Rent Policy	David Baughan	May 2013
Carbon Management Strategy	David Baughan	March 2013
Property Risks & Compliance Policy	David Baughan/ Peter Bowley	May 2013
Disabled Access Policy	David Baughan	March 2013
Building Maintenance Policy	Dave Attwood	May 2013
Property Disposals Policy	David Baughan	March 2013
Community Asset Transfer Policy	David Baughan	March 2013

## 8 Equalities

The public sector duty is set out at Section 149 of the Equality Act 2010. It requires ESCC, when exercising its functions, to have “due regard” to the need to;

- Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited under the Act.
- Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it.
- Foster good relations between people who share a relevant protected characteristic and those who do not share it.

ESCC are confident that none of the Property Policies will have a negative impact to any of the protected characteristics as detailed below:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race (including ethnic or national origins, colour or nationality)
- religion or belief;
- sex;
- sexual orientation.

(Marriage and civil partnership are also a protected characteristic for the purposes of the duty to eliminate discrimination.)

However, we have established that the Disabled Access Policy, for which we have produced an Equality Impact Assessment, will have a positive impact on disability.

Throughout all our property policies we will ensure that our processes accord with the Equality Act 2010.

**If you would like a copy of this document in a different format, such as large print, Braille or a different language, please contact us.**







# Community Asset Transfer Policy

June 2013



## Amendments history sheet

Issue Number	Changes Made	Issue Date
1	Created	March 2013
2	Amended	June 2013
3		
4		

**If you would like a copy of the document in a different format, such as large print, Braille or a different language, please contact us.**

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4 Our approach to Community Asset Transfers

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Appendix I19 - Risk Assessment

Appendix I20 – Community Assets – Grants available

# 1 Introduction

The Council wants to support the development of the transfer of assets to third sector as part of the Government's agenda to encourage devolution to local people and communities.

Transfer occupation of Council owned premises by the voluntary and community sector is not new. Currently several properties are used/occupied by a variety of organisations ranging from voluntary support groups to sporting and youth organisations. The purpose of this policy framework is to build upon current experience and best practice and provide a clear policy framework for responding to any requests or identifying any opportunities for asset transfer to the community. This includes how it considers the risks and benefits of asset transfer as part of its overall corporate asset management planning process.

Due to the diverse nature of the Council's property holdings which includes land, buildings, structures, and monuments it is clear that one policy will not fit all circumstances. However a number of common themes will need to be considered e.g. nature and capacity of the applicant, adoption of robust option appraisals including financial implications to the authority, contribution to corporate objectives, assessment of risks and sustainable business cases before contemplating the transfer of any asset. The Council therefore needs a clear policy framework against which to judge any asset transfers.

The Council does also consider the community and voluntary sector using its assets for short term use or to cultivate organisations to be self sustaining. Whilst these are not transfers as such, the principles of this policy will be observed in such arrangements as demonstrated in this policy

This policy has been shared with the Third Sector and developed with support from Localities.

## 2 Background

### Scope of the Policy

An asset is land or buildings in the ownership of East Sussex County Council. The policy applies to all land and buildings, and potential transfers will be considered on a case-by-case basis against the criteria outlined in this policy. The Council will not consider applications for transfer in respect of:

- Buildings which accommodate fixed or core services (e.g. schools, social care establishments, integrated service centres)
- Assets which have been deemed not to be of community value and that disposal on the open market will be in the best interest of the East Sussex Council Tax payer.

The Council will consider asset transfer solutions through proactively working with the voluntary and community sector, or consider applications in respect of:

- Buildings currently delivering community-based services, where there is a demonstrable need for the building and associated services to continue. For these buildings there may be mutual benefit to explore transfer. The Council would, however, place a condition that the organisation taking ownership of the building does so for community use and continue to provide access to the community and voluntary groups currently using the premises.
- Buildings which have been identified by the Council as potentially surplus or where there is no clear rationale for retention due to; a) the cost to maintain, b) the condition of the building, c) low levels of participation or utilisation, or d) the potential to use nearby facilities to provide services.

Whilst the Council does not rule out transfer of the freehold, this will need to be carefully considered as it increases the level of risk to both the Council and the third sector organisation. Freehold transfer could reduce the Council's control in the long-term over the benefits achieved through its assets. Transfer of freehold would also require a more complex assessment and justification process. Any asset permanently transferred to a third sector organisation would also need to be removed from the Council's balance sheet thus reducing the Council's financial strength.

"Transfer" is therefore primarily considered to relate to leasehold arrangements at less than best consideration or potentially freehold with relevant covenants. The terms of transfer will therefore usually be on the basis of a long lease of between 25 and 99 years, assessed on a case-by-case basis.

The Council may grant an initial 3-5 year lease with a view to eventual transfer to allow the voluntary and community sector organisation to, for example, explore options for the management and refurbishment of the building. The process followed will be the same as set out however it will be a one stage process based on the principles.

Groups may be locally based or regional or national organisations with a work programme that has clear benefits for East Sussex. Groups must be able to demonstrate good governance and an appropriate legal structure. Transfer to social enterprises will be considered, but will be subject to additional commercial analysis.

## Purpose of the strategy

The transfer of assets can have a significant impact:

- It can contribute towards the regeneration of communities and can act as a catalyst for social, environmental and economic regeneration
- Changing ownership or management offers opportunities to extend the use of a building or the piece of land, increasing its value in relation to the number of people benefiting and the range of opportunities it offers
- It can stimulate the involvement of local people in shaping and regenerating their communities, and can be a catalyst for local volunteering and increasing community cohesion
- It can build confidence and capacity amongst the individuals involved, and can support the creation of community leaders, and inspire others to improve their community
- It has potential to create stronger, more sustainable voluntary and community sector organisations (VCOs), which can create a wide range of benefits for the communities they serve. An asset can provide VCOs with financial security, recognition, and management capacity
- It can result in the creation of new organisations, joint ventures or collaborations with the ability to lever in additional resources, which would be unavailable to the Council acting independently
- The activities that are stimulated or safeguarded by community asset transfer will contribute to council objectives. Working in partnership with VCOs (HVA, RVA and 3VA) can help the Council to achieve its outcomes set out in key place shaping strategies
- It can contribute towards efficiency savings (e.g. achieving revenue savings by releasing surplus property), and drive the diversification of public services in an era of austerity spending settlements for local government
- It can contribute to the Council's objective to rationalise its estate and facilitate more effective and efficient use of its asset base, where the focus is on better services and community outcomes as a result of strategic asset management
- It can be a stimulus for partnership working between the voluntary and community sector, the Council and other partners and can improve the provision and accountability of services within communities.

As part of wanting to maximise on the impact, the Council must have a clear and transparent approach to how it addresses asset transfers to the community. This is the aim of this policy.

## National policy context

The development of this policy has regard to:

- Localism Act (Part 5 Community Empowerment) 2011
- Public Services (Social Value) Act 2012
- Local Government Deficit Reduction

## Local policy context and links to other strategies

The operation of this policy will need to have regard to the desired outcomes in other Council strategies including:

- Sustainable Community Plan
- Corporate Plan
- Local Development Framework
- Empowerment and Engagement Framework
- Corporate Property Asset Management Plan
- The Compact
- Capital Strategy

The Council will also have regard to specific local issues.

There may be conflicting needs and the Council will in such cases have regard to priorities and core responsibilities.

## 3 Our Principles

The Council's Asset Management Plan 2012/13 identified the following four key principles that will underpin our management of all property assets in the ownership of East Sussex County Council. By adopting these principles we will strive to rationalise the estate, reduce backlog maintenance and provide fit for purpose buildings which are efficiently used and support service delivery. Therefore the adoption of this policy will support these principles as follows;

### **Principle 1 – Improve or replace**

**Investment to ensure retained properties are fit for purpose, efficient and sustainable.**

Out of scope.

### **Principle 2 - Release**

**To identify poorly performing assets to rationalise the corporate Estate**

The authority needs to streamline its estate in order to be able to provide fit for purpose buildings to support service delivery. This means releasing buildings which are not fit for purpose where investing in improvement is not viable and gaining capital receipts from sales to fund replacement or improvement of other properties and where appropriate seek to transfer to community use to support core priorities.

### **Principle 3 – Reduce our Carbon Footprint**

**To identify and implement changes to reduce our carbon footprint**

Out of scope

### **Principle 4 – Work in partnership**

**And empower our communities**

The authority aims to provide services across the county, alongside and in collaboration with, other organisations, enabling local people to access a range of services from place. This is an important issue in the provision of services to both children and young people, and in adult care services, where the ability to access a range of support facilities in one location is beneficial (personalization of services).



The County Council is a member of SPACES (Strategic Property Asset Collaboration in East Sussex) which comprises of public, private, voluntary and community sector organisations. One of the core priorities of the Council is to also create sustainable communities. For more information see

<http://www.eastsussex.gov.uk/community/helping/partnerships/default.htm>

## Challenges

- To identify opportunities for greater efficiency in service delivery and building use in key towns across East Sussex.
- To reconcile organisational timescales and strategies with partners, alongside agreeing partnership principles.
- Building greater resilience and self-sustaining capacity to support delivery of joint objectives with the voluntary and community sector.
- To balance the benefits of asset transfers and community empowerment with the need to generate resources to fund the Capital programme.

## Pledges

- To build on existing partnerships between the public, voluntary and community sector throughout East Sussex.
- Support the delivery of the SPACES priorities.
- Work with partners to further develop area based asset plans and to work strategically with our partners to ensure that we learn from our common experience and share best practice.

## Underpinning Principles

The above primary principles will also be underpinned by the following principles specifically in relation to the Community Asset Transfer policy:

- We will work with the voluntary and community sector to achieve asset transfers where appropriate that will enhance community engagement and empowerment and encourage development and sustainability of the sector
- We will take a strategic approach to community asset transfer and identify assets to be transferred through regular reviews of the Council's asset base, and undertake option appraisals
- We will have a transparent process for responding to requests for individual asset transfers
- We will seek to implement the policy proactively to encourage appropriate groups to consider transfer
- Engagement and empowerment of local communities is the primary reason for asset transfer

- Any proposed asset transfer must be for the benefit of the community, support or enhance the current services provided and demonstrate a clear contribution to the priorities within the Sustainable Community Strategy and/or the Council Plan
- We recognise the Council's dual but independent roles as a supporter of the third sector, but also as a steward of publicly owned assets
- The Council will assess the benefits of the transfer (linked to corporate priorities) which allows a comparison with market disposal
- There must be a clear proposal, business case and rationale for transfer, which could include opportunities for new and innovative ways of supporting the Council providing services to the community
- We recognise the advantage of long and flexible terms of tenure (with appropriate and proportionate safeguards) to enable the voluntary and community sector to adapt and change over time, in response to community needs, and to achieve long term sustainability
- We will seek to extend our approach to community asset transfer and positively promote it to other public bodies and service providers
- We will take a community wide perspective involving other public partners through our SPACES programme
- We will have a clear process and timescale for dealing with asset transfers.
- 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 arrived at through individual negotiation.
- All Council departments will endorse and help to deliver this agenda
- The Council will negotiate two sets of documentation in respect of any transfer. This will be a **Lease** and a **Partnership Agreement**. The aim will be to empower the VCS organisation, in an appropriate timescale, to take on the full legal responsibilities of an asset transfer.
- **The lease** will therefore be "aspirational" and commercial in nature in that it will set out the eventual position on shared responsibilities.
- **The Partnership Agreement**, however, will clearly set out the support (financial or otherwise) being provided to the organisation to enable it to meet its responsibilities. These may change over time in recognition of growing capacity within the organisation to take on more responsibility for the asset. The Partnership Agreement will also detail any monitoring regime, together with remedies available to both parties if the terms of the partnership agreement are not met.
- Cabinet will ultimately take decisions on all transfers.

# 4 Our Approach to Community Asset Transfer

## Council's Disposals Policy

The implications of this policy will also be reflected in the Acquisition and Disposal Policies. Any implications arising from this policy will inform decisions on future disposals which are deemed suitable for a community transfer. An appraisal to consider the suitability of transferring an asset to the community will consider a variety of criteria; e.g. capital investment for continued operational use by another service, income from rental, disposal to support the capital investment programme, transfer of asset to the third sector, opportunity for collaborative working. Appraisals will also need to address economic, regeneration, and sustainability issues.

The priority will always be to obtain the best outcome to help deliver Council objectives and this will require balancing the best price reasonably obtainable to support the Capital Programme against the benefits being offered through alternative use including asset transfer. All Council property disposals will be in accordance with the Localism Act 2011 and will consider if the surplus property has been registered as an "asset of community value" and if it has the Council will ensure that there is opportunity for a Community to Right to Bid.

The Council does have the opportunity, under the General Disposals Consent 2003, to dispose of land or buildings at less than market value provided the disposal is likely to contribute to the economic, social or environmental well-being of the area, and the difference between the market value and the actual price paid is less than £2million. Any disposal for less than market value would need to be transparent justifiable and have the appropriate Cabinet/Lead Member approval. In some cases the consent of the Secretary of State is required.

[Link to Disposals Policy](#)

[Link to Acquisition Policy](#)

[Link to Lease and Rent Policy](#)

## Aims of Community Asset Transfer

The Council's Property Portfolio includes land, buildings and other structures held to support direct service delivery, support delivery by partners including the voluntary and community sector, stimulate economic activity and regeneration. Through the ownership of assets it achieves a variety of different economic, regeneration, social, community and public functions. For some of these assets community management and ownership could deliver a variety of benefits.

For the Council and other public sector service providers, the potential benefits from asset transfers include:

- Community empowerment
- Area wide benefits for the citizens of East Sussex
- A sustainable third sector
- Improvements to local services including more accessible and responsive services
- Delivery of corporate objectives
- providing a catalyst for inward investment and local multipliers through local purchasing and employment
- transfer can help to solve building management problems and can lower ongoing costs
- helping to progress neighbourhood planning priorities
- providing opportunities for long-term working between sectors
- creating the opportunity for investment in the asset that may not be possible within Council ownership.

The potential benefits of asset transfer for **VCS organisations** include:

- physical assets can provide sustainable wealth
- can strengthen the organisation's confidence
- can strengthen the organisation's community ties
- can strengthen the organisation's ability to raise money. There may be access to funding to refurbish the building or to support staff training and development
- greater financial sustainability can help the organisation to escape short term grant-dependency
- an ability to develop the asset to meet the organisation's needs and aspirations

Public assets are rarely used by everyone: their 'value' being locked-in to a particular use or a particular group of people. Changing ownership or management offers opportunities to extend the use of a building or piece of land, increasing its value in relation to the numbers of people that benefit and the range of opportunities it offers. Community-led ownership offers additional opportunities to secure resources within a local area and to empower local citizens and communities.

## How asset transfers can take place

The process of asset transfer may be initiated in two ways:

- By the Council identifying an asset as appropriate to consider for transfer either to sustain the current building and service delivery where a building has been deemed surplus; or
- A request from the voluntary and community sector

In the case of the former, following a review of the Council's assets and relevant engagement and approval on which community assets are suitable for transfer, these will be advertised and the local voluntary and community sector will be made aware.

In the case of the latter, the Council will assess the initial request to determine whether the asset is suitable for transfer. Speculative transfer requests will be subject to an initial assessment of the suitability of the asset for transfer. Should the asset be deemed suitable it will be advertised as being so to ensure an open and transparent process. Interested parties will be directed towards completing an initial Expression of Interest (EOI) providing details about the organisation, identifying the building proposed to be transferred, identifying the organisation's plans for the building and identifying any local support for the proposal (amongst local members and the local community).

When there are a number of interested parties in an asset that has been made available for transfer, the Council will aim to encourage collaboration. However, when this is not possible a competitive process will be used to decide the outcome and the successful organisation will become the Council's preferred partner in the transfer process.

Where there are current lease arrangements in place, the transfer process will need to consider the terms of this lease and this may limit the opportunity to advertise on particular buildings.

## Members' involvement

We will consult and keep our Members informed of any matters that may impact on community interests in their local area. It is recognised that members, because of the local knowledge of the district that they represent, will be able to contribute to those discussions to ensure that our community strategy reflects the needs of the communities to whom we provide services. Therefore engagement will be sought and encouraged at an early stage of the process.

## Potential funding sources for community groups

Grants are available towards the purchase/refurbishment of community assets depending on the location, status of the organisation applying and the use of the asset, some of which are listed in Appendix I20. For more information, please contact our external funding team: [external.funding@eastsussex.gov.uk](mailto:external.funding@eastsussex.gov.uk) or phone 01273 482859.

## Conclusion

This Policy sets out how the Council approaches asset transfer. It will be reviewed

regularly and at least once a year

## Appendix I17

### The Process for Asset Transfer

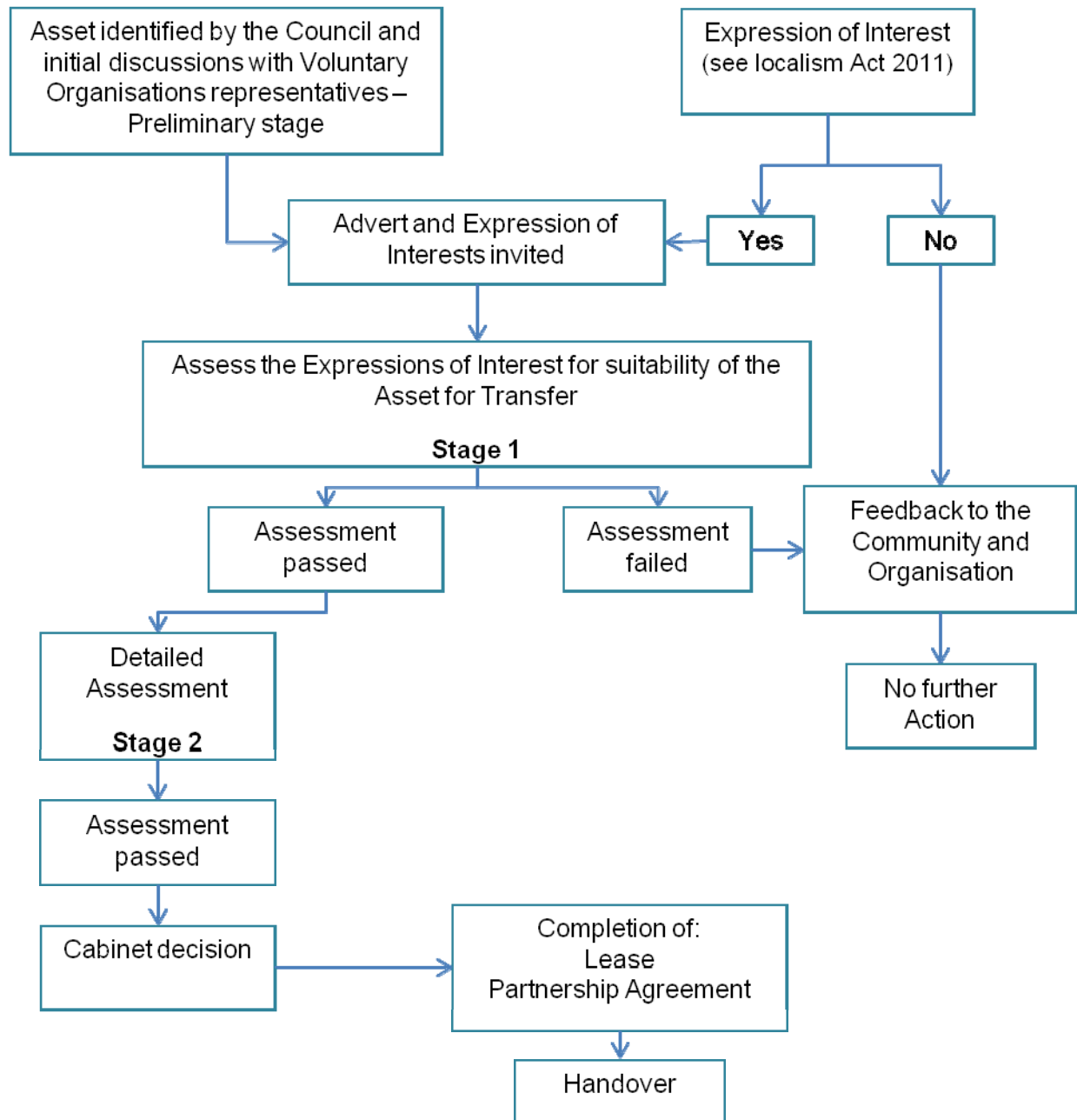
The asset transfer decision is essentially a choice between:

- doing nothing;
- realising a capital receipt as a result of a 'commercial' disposal;
- the benefits generated by the transfer of the asset to a VCS organisation and local communities more widely.

In identifying assets proactively and in assessing proposals for asset transfer, the Council will attempt to measure the relative benefits and risks of these three options in order to justify its decision and the level of discount proposed. It will also relate these benefits to Council priorities such as objectives of Vision 2030 and the Corporate Plan.

The Council will operate a two-stage process for asset transfer. Where a decision is made not to transfer – either at stage 1 or stage 2 – the Council will give feedback to the third sector organisation. As part of the feedback, the Council may put forward alternative proposals for working with the organisation to help build capacity or to find an alternative property solution.

The process can broadly be described as:



NB Short Term Lease of 3 to 5 years will follow single stage process based on stage 2.

# Criteria to be adopted for considering requests for Community Asset Transfer

## Preliminary Stage

Where the preliminary approach is being undertaken by the Council, this will be based on:

- Any known needs in the area with input and engagement from 3VA and appropriate representatives of the voluntary and community sector
- Current status of the asset e.g. surplus
- Value of a commercial decision
- Asset is not currently needed or identified for future investment value or use for direct service delivery which could be best provided directly by the authority rather than through the community
- Transfer will deliver the strategic priorities of the Council
- The asset is fit for purpose and would not impose an unreasonable liability to a third sector organisation or the Council
- Transfer or management of an asset would not be contrary to any obligation placed on the Council
- The asset is in the freehold/leasehold ownership of the Council

## Requesting Expression of Interest

These will be via advertisement. Where an organisation approaches the Council with an Expression of Interest, the Council will consider whether this should be advertised more widely or whether the Expression of Interest will proceed to stage 1 and can hence be evaluated.

### Stage 1 - Suitability Assessment: key criteria

The outline assessment will take place for:

- a) those opportunities proactively identified by the Council and advertised
- b) those expressions of interest made by

The suitability decision will be made on the suitability of the asset for transfer and the standing of the third sector organisation based on their expression of interest.

The suitability of the asset for transfer would consider:

- Current status of the asset
- Any future intentions
- Value of a commercial decision, financially and non-financially e.g. creation of housing
- Risks of status quo or commercial decision



In assessing the organisation, the Council will consider its constitution, how long it has been operating, its aims and objectives and its management and staffing:

- What does the organisation want the asset for?
- Does the organisation have a business case supporting their bid / how well developed are the proposals?
- Does the organisation have the capacity to take on the asset?
- What benefits might arise from the proposed transfer?
- What are the risks of the proposed asset transfer?
- How does the proposal contribute to corporate priorities?

Responsibility - this will be undertaken by the Community Asset Group along with other representation from relevant and appropriate service departments.

## Stage 2 - Detailed Assessment: key criteria

The second stage decision will be made based on a detailed business case submitted by the third sector organisation and a detailed assessment of the potential benefits and risks made by the Council.

The stage 2 assessment covers 5 main areas, the details of which are set out in Appendix I18.

## Consideration by the Council

In view of the diverse nature of assets within the Council's ownership, there is no one disposal methodology that suits all circumstances. However the Council's asset transfer policy will be that asset transfers will be by means of leases or licenses. Nature of Tenure offered will be determined on case by case basis having regard to the particular circumstances of the project, strength of the applicant and sustainability of the business case etc.

As the management of assets and the support to communities falls across a range of Council departments and services it is considered that the asset transfer process be initially managed by the Community Asset Group cross service internal officer group.

The decision whether to charge an open market consideration for the benefit of an interest in an asset will be determined on a case by case basis. Factors influencing such a decision will include proposed uses, extent of revenue producing opportunities, benefits to the community. In all cases involving transfer of ownership /occupation appropriate legal mechanisms will be put in place to protect the Councils financial position. Any proposed asset transfer at less than best consideration will be subject to formal valuation in accordance with the Royal Institution of Chartered Surveyors Valuation Standards.

The Council's intention will be to transfer responsibility of all repairs and maintenance unless there is a compelling case that responsibilities remain with The Council. A dowry may be considered.

## Legal Issues

Asset transfers will generally be by means of a long-term lease, the terms of which will be agreed at the time of each individual transfer. Freehold transfer will only be considered in exceptional circumstances.

The organisation taking ownership will be responsible for:

- Upkeep, repair and maintenance of the building
- All running costs
- Compliance with statutory inspections and health and safety requirements

In all cases involving transfer of ownership/occupation appropriate legal mechanisms will be put in place to protect the financial position of the Council, such as restrictions on use and break clauses. For example, in the case of a long term lease we will write into such leases an appropriate clause (forfeiture or break clause) under which the asset would revert back to the Council, such as:

- In the case of bankruptcy/insolvency
- In the case of corruption
- In case of none payment of rent (if applicable)
- In the case of none performance of other terms such as serious repairs and maintenance (if applicable)
- The Council requires vacant possession of the asset as it forms part of a regeneration scheme
- If the transfer agreement is breached
- If the organisation wishes to develop and move into bigger premises.

In the case of all asset transfers, the property may not be sold or transferred to another organisation without written permission from the Council. The decision of the Council would be primarily based on ensuring that the benefits of the transfer as set out in the Partnership Agreement (see below) would be maintained or improved by the proposed sale or transfer.

Other issues may arise with regard to:

- Domestic law applicable to disposals at an undervalue
- EC law applicable to procurement issues, treaty obligations and state aid
- Domestic law relating to judicial review
- Domestic law applicable to employment contracts

All the above will need to be considered on a case by case basis and a guidance note is to be prepared by legal services.

## Timescales

The Council will endeavour to process applications promptly and will set a timeframe and milestones for each transfer.

## Risk Assessment

It is important that both the Council and the receiving organisation are sufficiently equipped to understand, assess and manage the risks that are inherent in the process of asset transfer and its policy. In managing this policy the Council will manage the associated risks as set out in Appendix 3.

## Statutory powers of acquisition

Local Authorities can only exercise functions which are authorised by statute. Specific legislation exists to enable the Council to acquire land that is required to perform its statutory functions and to implement proper planning proposals at the relevant time.

The Council has the ability to utilise Compulsory Purchase Orders (CPO) to acquire land within the County for specified purposes. In the event that these powers are exercised compensation is payable to the landowner in accordance with the Land Compensation Act 1961.

The procedure for exercising CPO is directed by the Acquisition of Land Act 1981 and this statutory procedure must be strictly observed.

The Council may acquire land by agreement either as an alternative to CPO or in the general exercise of its statutory powers, and these efforts will always be encouraged. The ability to acquire land by agreement is provided by S227 of the Town & Country Planning Act 1990 in the case of a specific alternative to compulsory purchase and, more generally, by S120 of the Local Government Act 1972. Where the Council has the ability to acquire land compulsorily acquisitions by agreement are often referred to as 'acquisitions under threat of CPO'. It will be assumed that the Council were prepared to utilise powers of CPO unless the land was publicly or privately offered for sale immediately before negotiations.

## Crichel Down Rules

Where a property has been previously acquired through or under the threat of compulsory means and is now surplus to Council requirements consideration of the Crichel Down rules may apply. In 2004 the Government produced a circular entitled "Compulsory Purchase and the Crichel Down Rules" which prescribed the way in which all Government departments and executive agencies that are subject to a power of direction from a Minister must manage the disposal of land previously acquired by use of compulsory powers. Local authorities that are not subject to a ministerial power of direction are not subject to such a prescription but are recommended to also follow the rules.

In particular the General Rule of these guidelines states that “where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given the first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition.”

Local Authorities are not under a statutory obligation to comply with the Crichton Down rules. Therefore any compliance with these rules will be at the discretion of the Assistant Director for Property and Capital Investments in consultation with the Lead Member for Resources.

# Appendix I18

## Key Considerations when assessing a transfer.

**The following key items should be considered when assessing the suitability of transferring an asset to the community:**

- There is a legal interest owned by the Council from which the transferee can demonstrate community benefit.
- The asset is in the freehold/leasehold ownership of the Council.
- An options appraisal has been carried out to identify that the asset is suitable for community transfer as the sole or one of the viable options. This process will be adopted in response to requests or properties identified through internal reviews. This will cover:
  - The asset is not currently needed or identified for future investment value or use for direct service delivery, which could best be provided directly by the authority rather than through the community.
  - The transfer will deliver the strategic priorities of the Council.
  - The asset is fit for purpose and would not impose an unreasonable liability to the Third Sector organisation or the Council
  - Transfer or management of an asset would not be contrary to any obligation placed on the Council
  - Details of current use, occupation and circumstances
  - Details of the condition of the asset
  - Suitability of the asset for existing use
  - Whether any other organisations will be affected by the ownership of the asset?

### Organisation Assessment

- Community-led, i.e. its governance arrangements must ensure that it has strong links with the local community and that members of the community are able to influence its operation and decision-making processes;
- Be a voluntary and community sector organisation which is a legal entity
- Be appropriately constituted and not for profit (e.g. a registered charity, community interest company or charitable incorporated organisation, a not for profit company)
- Have a strong financial background and/or a demonstrable financial plan moving forward. (The Council will wish to review copies of audited accounts and forward projections where appropriate)
- Exist for community/social/environmental/economic benefit (The Council will want to review annual reports)
- Be non-profit distributing and reinvest any surpluses to further its social aims/community benefits

- Have stated community benefit objectives

- Demonstrate strong governance by operating through open and accountable co-operative processes, with strong monitoring evaluation, performance and financial management systems
- Demonstrate it has the skills and capacity within, or available to, its managing body to effectively deliver services and manage the asset;
- Have a management proposal which includes a specific plan on health and safety issues and compliance with legislation and any statutory requirements arising from ownership or management of the building or running a service;
- Have a clear purpose and understanding of the activities it wishes to deliver and demonstrate how the asset transfer will enable and support these activities.
- Embrace diversity and work to improve community cohesion and reduce inequalities
- Abide by the principles and undertakings in the Third Sector Compact
- Demonstrate it is well established and/or track record of delivering services or property management.

### **Assessment of the Proposal, including finance and business plan**

For any transfer, the Council would require a proposal outlining the business case, covering financial viability, proposed utilisation, benefits to the organisation and community and evidence of wider community consultation and support. The decision on transfer will be made by the Council's Cabinet in all cases.

As a minimum the business case will need to clearly identify:

- At least three/five years revenue or capital funding plans and projections of managing and operating the asset
- How it will invest in and maintain the asset including a specific plan as to how all health and safety responsibilities will be met
- The planned outcomes and benefits to result from the asset transfer
- Demonstrate a community governance structure with capability to sustain asset transfer and has the identified necessary capacity building requirements within their organisation
- Any sources of finance asset transfer will release or attract
- Track record of delivering services and or managing property
- Financial sustainability and forward planning
- Risk assessment and mitigation plan
- Evidence of consultation on the proposals
- Details of how the proposed use and benefits of the asset will be monitored and details of 'fall back' arrangements should the transfer prove to be not sustainable
- Whether they would wish to start on the phased transfer of the asset and agreed milestones to justify progression to the next phase.
- Justification for transfer at less than market value either freehold or leasehold the applicant has justified and quantified the benefits to the community and Council to justify the subsidy. The Council will separately need to satisfy that any transfer is within its legal and financial powers

- How proposed use will demonstrably help in the delivery of the Council's community strategy, corporate needs and facilities for the use by the people of ESCC
- How the proposed use will ensure extensive and inclusive reach into the community and will be open to all
- How the proposed use will be maximised
- The applicant has established how much space it requires to deliver its proposals, and how they will make good use of such facilities
- Clear management structure demonstrating how premises will be managed on a day to day basis, and legislation affecting occupation of premises
- Demonstrate that the buildings will continue to support community and voluntary activities within the area and protect the use of the facility by other voluntary organisations
- Outline the future opportunities for enhancing the use of the building as a community facility that transfer would bring

### Assessment of potential benefits

- Community empowerment
- Area and neighbourhood agenda
- Promote a sustainable third sector
- Economic development and social enterprise
- Improvements to local services
- Value for money
- Create efficiency savings
- Corporate and partnerships priorities

### Assessment of risks

- Potential to disadvantage particular individuals or impact negatively on the local community or communities of interest
- Potential for a negative impact on community cohesion
- Potential loss of existing community services
- Capacity of recipient to manage asset
- Potential for the asset to become a financial liability for recipient
- Capacity of recipient to deliver promised services/outcomes
- Capture of asset by unrepresentative/extremist minority
- Transfer contravenes State Aid rules
- Conflict with other legal, regulatory constraints
- Potential for ongoing Council liability
- Lack of value for money
- Conflict with other funders



# Appendix I19

## Risk Assessment

Risk	Potential Solution
Organisation does not have the capacity /skills to take over and manage the asset	Agree expectations document at the outset incorporating skills audit and management plan, organisational development plan, detailed business plan, ongoing management plan, marketing plan, level of support offered and agreed at the outset
Community organisation cannot raise the cash needed to purchase or refurbish the asset offered	Identify extent of repair cost by detailed survey, prepare detailed business plan, identify and secure funding sources, phased transfer in line with finances available
The ability of the Council to support a particular project is limited by state aid rules or other restrictions or legal constraints which will impact on organisation's operation of the asset impact	Identify up front any issues that need to be addressed and allow time in programme for resolution
Inability of the community organisation to manage the asset effectively	Robust business plan identifying secured revenue streams, agreed organisational development plan, skills audit and training development plan
Asset not used in public interest, taken over by an unrepresentative or unaccountable minority, access to the asset is not inclusive	Adoption of ongoing expectation document, legally binding service level agreement or other legal agreement, council board members. Local Authority to ensure management group reflects diversity of local community interest
Community organisation is not able to invest in the asset to meet its longer term liabilities for upgrading and cyclical maintenance	Robust long term business plan. Agreed organisational development plan. Organisation has demonstrated appropriate financial skills or access thereto. Minimise liabilities through appropriate legal structures.
Reliance of smaller receiving organisations on volunteers through lack of resources or professional/ support staff	Adequate support/advice on organisational structure /management. Use of role descriptors for trustees.
Fragmented ownership of assets across an area could impair strategic objectives of local authority and/or its LSP partners	Council adopting strategic approach to use of its asset base. Use of LSP to engage /encourage joint working

<p>Confusion and lack of awareness over roles, responsibilities and liabilities between landlord and community organisations</p>	<p>Use of expectations document at the outset setting out roles and responsibilities of each party.</p>
<p>Community empowerment objectives of the receiving organisation are vague, weak, or not aligned to those of the Council</p>	<p>Organisation needs to undertake community needs survey to assess the needs /interests of the community; working in partnership with other groups</p>
<p>The Council does not have sufficient capacity either financially or through personnel to support the initiative</p>	<p>Support for the third sector should be part of a broader partnership with the third sector. Role of local authority to be set out in expectations document</p>

# Appendix I20

## Community Assets – Grants available

A number of grants are available towards the purchase/refurbishment of community assets depending on the location, status of the organisation applying and the use of the asset. Please bear in mind that where a capital element is requested there will be an expectation that the organisation applying for the grant owns the building/land or the freehold for a certain period of time.

Below is a summary of key funders for generic buildings and lands projects. Please note that whilst lottery funding is likely to remain unchanged, other funders will update their criteria every so often.

If funding is required for a particular scheme (i.e. listed building, energy saving features, etc), a search would be carried out and additional funders would be identified. Please contact [external.funding@eastsussex.gov.uk](mailto:external.funding@eastsussex.gov.uk) or phone 01273 482859.

The funders listed below are for capital grants, which also include some revenue costs and they are also the larger funders. There are however smaller grants available that would support small capital projects, for example:

[Awards for All](#) which supports projects that meet one or more of the following outcomes:

- People have better chances in life – with better access to training and development to improve life skills
- Stronger communities – with more active citizens working together to tackle issues within the community
- Improved rural and urban environments – which communities are able to better access and enjoy
- Healthier and more active people and communities

### **Chidham and Hambrook Village Hall (West Sussex)**

**£9,850**

This village hall in Chichester used the funding to equip its new kitchen in the village hall to bring the hall up to an acceptable standard and allow the current senior luncheon club to continue.

[Sussex Community Foundation](#) which awards grants to community and voluntary groups. They are particularly interested in supporting smaller community based groups where a small grant can make a significant difference.

The majority of grants are in the region of £1,000 to £5,000.

### **Community Wise**

**£3,500**

This Eastbourne based organisation received a grant to refurbish their kitchen and toilets.

### [Gatwick Airport Community Trust](#)

The priorities of the trust include improvements to community facilities and they have funded village hall improvements in Newick and Forest Row. Eligibility to apply depends on project location and a list of eligible areas is available on their website (in broad terms the area is bounded by the A272 to the south; the A283/A281 to the west, the A25 to the north and the A21 to the east.)

The normal level of grants is from £1,000 to £5,000. Occasional larger may be considered if the impact is targeted to benefit a significant number of people and is considered to make a valuable and noticeable difference longer term.

As well as grant opportunities, other sources of income might be available through:

- applying for a loan, for example through the [Charity Bank](#), if your project will generate an income that will help repay it
- raising a precept tax through local taxation in a Parish or Town, as long as the local Council can demonstrate that the area in question would benefit from the updates to the community facility - funds can cover buildings or revenue projects
- renting out space in the building, charging a fee, etc

It is worth noting that the Joseph Rowntree Foundation have recently published a report "[Community Organisations controlling assets: a better understanding](#)" which contains a wealth of information on community assets.

## Lottery

### [Reaching Communities](#)

Reaching Communities funds projects for up to 5 years and up to £500,000 that help people and communities most in need. Projects can be new or existing, or be the core work of an organisation. All projects have to meet at least one of the four outcomes of the programme – same as Awards for All (see above).

The Reaching Communities programme has two strands:

1. Reaching Communities revenue and small capital – funding from £10,000 to £500,000 for revenue projects and/or smaller capital projects up to £50,000 for which all organisations can apply to

#### **Wave Leisure Trust Limited**

**£180,986**

This project aims to save an essential youth facility Shakespeare Hall in Newhaven Sussex. It will form a community hub incorporating a skate park BMX course, outdoor green gym, cricket and bowls clubs, employability training, walking groups healthy living classes and Friday night discos. A number of volunteers will provide sports training in football, BMX, swimming and basketball and participants will have the opportunity to gain national qualifications in sporting activities nutrition and IT.

2. Reaching Communities Buildings – funding of between £100,000 and £500,000 for large capital projects where only selected geographical can apply to. Geographical eligibility is at super output level and postcodes need to be entered to check eligibility as one area in a town might be eligible whilst another might not.

#### **Peasmarsh Parish Council**

**£270,000**

The Peasmarsh Revived project aims to create a community hub to host services and activities to enhance and improve the opportunities and social wellbeing of residents. The memorial hall will be refurbished and extended to meet modern requirements. It will provide a meeting place for people to engage in a variety of activities including Guides, an over 60s choir, a luncheon club, a youth club mother and toddler group and Zumba. Other plans include adult education classes.

Voluntary/community organisations, schools, local authorities, health bodies, not-for-profit organisations or social enterprises can apply at any time.

### [Heritage Lottery Fund](#)

The Heritage Lottery Fund gives grants to heritage projects (including parks and buildings) of all sizes, with grants from £3,000 to over £5million. All of the funding programmes expect projects to achieve one or more of the following outcomes

**Outcomes for heritage** - so that heritage will be better managed, in better condition, better interpreted and explained and identified/recorded

**Outcomes for people** - so that people will have developed skills, learnt about heritage, changed their attitudes and/or behaviour, had an enjoyable experience and volunteered time

**Outcomes for communities** – where environmental impacts will be reduced, more people and a wider range of people will have engaged with heritage, the local area/community will be a better place to live, work or visit, the local economy will be boosted and organisations will be more resilient.

<b>Kings Road, St Leonards</b>	<b>£1.8m</b>
Hastings Borough Council's conservation team stumbled across artwork believed to have been by the campaigner and author of <i>The Ragged Trousered Philanthropists</i> , Robert Tressell, also known as Robert Noonan.	
Through two Townscape Heritage Initiative schemes and Heritage Lottery Fund grants the Council have been able to restore shop fronts, install public art and bring back to life several decaying properties.	
<a href="http://www.bbc.co.uk/news/uk-england-sussex-18592103">http://www.bbc.co.uk/news/uk-england-sussex-18592103</a>	

#### Sport England

Sport England invests in organisations and projects that will grow and sustain participation in grassroots sport and create opportunities for people to excel at their chosen sport. They do this through a number of programmes, in terms of capital funding [Playing Protecting Fields \(PPF\)](#) is one of the programmes they run which could be of interest.

<b>Chailey Sports Club</b>	<b>£50,000</b>
The grant will be used towards the building of a new pavilion.	

The programme will fund capital projects (between £20,000 and £50,000) that create, develop and improve playing fields for sporting and community use and offer long term protection of the site for sport. Local authorities, schools, voluntary or community organisations, sports clubs and playing field associations can apply.

They will pay for purchase of land, Improvements to existing pitches through levelling, drainage, reseeding and realignment.

[Inspired Facilities](#) is another programme which focuses on making it easier for local community and volunteer groups to improve and refurbish sports clubs or transform non-sporting venues into modern grassroots sport facilities.

- Community and voluntary organisations, including parish and town councils can apply for grants worth between £20,000 and £50,000. At least 70% of the available funding available is set aside for these groups
- Local authorities, statutory bodies and education establishments such as schools, can apply for grants between £20,000 and £150,000

However, £150,000 grants will be exceptional and only given to projects that can demonstrate a strategic rationale to their application - for example, a review of a local authority's sports facility stock that identifies this project as a top priority. No more than 30% of the total amount available will be invested through these organisations.

Round 5 will be open between 21st October 2013 and 16<sup>th</sup> December 2013.

**Robertsbridge Community College**

**£150,000**

The award will contribute towards a new dual use sports hall with changing areas and a reception office area, all with disability access. This public sports facility will be the only facility of its kind in the local community.

## Landfill Communities Fund

Funding programmes are available through the [Landfill Communities Fund](#), an initiative which allows landfill operators to release tax credits to environmental and community groups.

A number of schemes exist to benefit local communities in the vicinity of a landfill site.

Grants are normally available for physical improvements to community and sports facilities, and to historic buildings/structures to a maximum of £500,000 for a “flagship” project.

A postcode checker is available to ensure that applicants are eligible. The following are the key schemes that are available to some East Sussex organisations.

### [Veolia Environmental Trust](#)

**Birling Gap Café**

**£27,725**

This project aims to make use of redundant space to create and expand the facilities, enabling the National Trust to meet the high demand for meeting spaces for groups, and creating new and diverse volunteering opportunities.

### [Biffaward](#)

**All Saints Parish Hall, Sidley**

**£50,000**

The Parish Hall used the money to improve its facilities to make it more accessible to the local community. The hall's three toilet areas were fully refurbished, while improvements were made to the hall's outdoor paths to make them safe for use and allow better access to the facilities.

### [SITA Trust](#)

**Felbridge Village Hall**

**£11,500**

Felbridge Village Hall in West Sussex received the grant to replace selected windows and doors.

## Trusts and Foundations

Below are examples of Trusts and Foundations that will fund community buildings:

### [Henry Smith Charity](#)

Capital grants of £10,000 or more are available through the Main Grants Programme towards the purchase of equipment, or for the purchase or refurbishment of a building.

**Escape Family Support Ltd**

**£125,000**

This Northumberland based organisation received the grant towards building refurbishment costs that provides support and services to people with drug and alcohol addiction.

### [Garfield Weston Foundation](#)

The Foundation makes a large volume of grants every year to community projects covering the following categories: Arts, Education, Youth, Health, Community, Environment, Religion and Welfare.

They award capital grants, for example for restoration of village halls and community centres.

### [Percy Bilton Charity](#)

Registered charities whose primary objectives are to assist one or more of the following groups:

- Disadvantaged/underprivileged young people (persons under 25)
- People with disabilities (physical or learning disabilities or mental health problems)
- Older people (aged over 60)

They offer one off payments for capital expenditure of approximately £2,000 and over for items such as furniture and equipment (excluding office items); building or refurbishment projects.

### [Charles Hayward Foundation](#)

The Foundation only funds capital costs. Project funding may be offered for start-up or development activities where these are not part of the on-going revenue requirement of an organisation.

Grants are between £1,000 and £25,000, but from time to time, they may make larger grants to fund projects of an exceptional nature which show outstanding potential.

**If you would like a copy of the strategy in a different format, such as large print, Braille or a different language, please contact us.**

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# Property Disposals Policy

June 2013

# H



INVESTORS  
IN PEOPLE



## Amendments history sheet

Issue Number	Changes Made	Issue Date
1	Policy written	2007
2	Update	2010
3	Update	2013

**If you would like a copy of the strategy in a different format, such as large print, Braille or a different language, please contact us.**

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- Late Bids & Other Considerations
- Achievement of best consideration where Land or Property has Redevelopment Potential

### Appendix H14 - Formal Tender Procedure

### Appendix H15 - Equality Impact Assessment

### Appendix H16 - Crichel Down Rules

# 1 Introduction

## Scope & Purpose

When property assets become surplus and are no longer required for the day to day provision of service a number of options need to be considered such as;

- Effective and efficient management for their re-use within the Council;
- A relevant use by the Community;
- A disposal to help facilitate the capital programme's aims whilst minimising any ongoing maintenance and revenue implications.

This policy and guidance document supports the Council's sound management of the disposal of those assets that are surplus to its requirements and therefore the capital receipts that will be generated to contribute towards funding the Council's capital programme.

For the purposes of this policy, a disposal of land means land and or building(s). A disposal is either a freehold disposal by sale or exchange of land in perpetuity, or by the granting of a lease for a period greater than 7 years. Leases of 7 years or less are not covered by this policy document. This policy is only intended for East Sussex County Council disposals. It does not apply when the Council acts on behalf of other parties.

The purpose of this document is to make the Council's policies, guidance and procedures transparent and public. It is intended for use by Council officers and to inform developers and members of the public.

## Best Value and Section 123 Local Government Act 1972

It is important that each land disposal is treated on its own merits and nothing in this document will bind the Council to a particular course of action in respect of a land disposal. Alternative methods of disposal, not specifically mentioned in this policy, may be used where appropriate, subject to obtaining proper authority, (Appendix 1). The Council's actions in disposing of land are subject to statutory provisions, in particular to the overriding duty on the Council under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of land. This duty is subject to certain exceptions that are set out in a government document, referred to in this policy as 'the General Disposal Consent' - see below.

In this Policy and Guidance document:

**"the General Disposal Consent"** means the 'Local Government Act 1972 : General Disposal Consent (England) 2003'

<https://www.gov.uk/government/publications/disposal-of-land-for-less-than-the-best-consideration-that-can-reasonably-be-obtained-circular-06-2003>

**"the Guidance"** means the 'Local Government Ombudsman's Guidance on Good Practice 5 : Disposal of Land.' November 1995

## General Disposal Consent

The General Disposal Consent makes provision for the Council to dispose of land at less than full market value, known as an 'under-value'. Specified circumstances must apply as follows:-

- a. The Council considers that the purpose for which the land is to be disposed of is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the whole or part of its area, or any person resident or present in its area.
- b. The difference between the unrestricted or market value of the land to be disposed of and the consideration for the disposal does not exceed £2 million.

For example, land may be sold at an under-value for only affordable housing rather than all residential types, as long as the difference between the consideration obtained for development for affordable housing and the land's unrestricted value for all residential types is less than £2 million.

The Council must still comply with its duty to obtain best consideration for the restricted value. So, using the above example, the Council must ensure that it achieves the best consideration that may be reasonably obtained for land restricted to development for only affordable housing.

The Council must also comply with normal and prudent commercial practices including obtaining the view of a professionally qualified valuer as to the value with voluntary restrictions imposed. If the Council wishes to dispose of land for less than best consideration, and is not covered by the General Disposal Consent, the Council can resolve to do so, but will require the formal consent of the Secretary of State for Communities and Local Government (CLG). Such disposals can also be subject to a challenge that the Council is needlessly foregoing receipts and it is therefore essential that such disposals only take place in clear furtherance of Council priorities.

<https://www.gov.uk/government/publications/disposal-of-land-for-less-than-the-best-consideration-that-can-reasonably-be-obtained-circular-06-2003>

## Community Transfers

If it is considered that an asset is used for social, community and public purposes and the benefits of that service are deemed to outweigh the value of continuing ownership by the County Council on behalf of all Council Tax payers, then the Council may consider the transfer of the asset to a community group. Any such transfer will be in accordance with the Council's Community Asset Transfer policy.

All Council property disposals will be in accordance with the Localism Act 2011. It will consider if the surplus property has been registered as an "asset of community value" and if it has, the Council will ensure that there is opportunity for a Community Right to Bid prior to any disposal process commencing as specified in this policy paper.

[Link to Community Asset Transfer Policy](#)

## 2 Policy

### Policy Statements

The Council will dispose of land in accordance with:-

- Key Council Priorities
- Statutory provisions;
- The policies and procedures recorded in its Constitution;
- The Council's Disposal Procedure;

### Our Principles

The Council's Asset Management Plan 2012/13 identified the following four key principles that will underpin our management of all property assets in the ownership of East Sussex County Council. By adopting these principles we will strive to rationalise the estate, reduce backlog maintenance and provide fit for purpose buildings which are efficiently used and support service delivery. Therefore the adoption of this policy will support these principles as follows;

#### Principle 1 – Improve or replace

Out of scope

#### Principle 2 - Release

The authority needs to streamline its estate in order to be able to provide fit for purpose buildings to support service delivery. This means releasing buildings which are not fit for purpose where investing in improvement is not viable and gaining capital receipts from sales to fund replacement or improvement of other properties and other capital assets or maximising the community use to support core priorities.

#### Priority – Review Our Assets

##### Challenges

- Understand the evolving demands on property and review the service delivery model to identify poorly performing properties which are inadequate or surplus to service delivery needs. To ensure that all properties currently identified as surplus are disposed of in the agreed timescales to achieve best value.
- Identify and confirm accuracy of data through a comprehensive single process for the Council
- To reduce extra revenue spend by identifying and subsequently disposing of property no longer fit for purpose.

### **Pledges**

- To provide accurate service performance management information to feed into the property review process.
- To report property performance information to Cabinet on an annual basis.

### **Priority – Disposal of assets**

#### **Challenges**

- To ensure that all properties currently identified as surplus are disposed of in the agreed timescales to achieve best value.
- To balance competing priorities for surplus assets

### **Pledges**

- To hold an accurate and up to date record of surplus properties and expected capital receipts.
- To dispose of properties no longer required as efficiently as possible

## **Principle 3 – Reduce our Carbon Footprint**

### **Challenges**

- To identify the least efficient properties

### **Pledges**

- We will dispose of the least efficient properties taking into account service needs.

## **Principle 4 – Work in Partnership & empower our communities**

### **Challenges**

- To ensure the community has been fully consulted before and during the disposal process and that equality issues have been fully addressed

### **Pledges**

- We will make detailed option appraisals to ensure that we have assessed each disposal reflects the needs of the community.
- To work strategically with our partners to ensure that we learn from our common experience and share best practice.

## Our approach to Disposals

When a property is declared surplus to the service, we ensure that it will not be suitable to any other of the county's service departments, and ensure that its disposal will support the Council's key priorities as adopted in the Council Plan 2013/14 (Link). These key priorities are:

**Priority** – Driving Economic Growth.

**Priority** – Keeping vulnerable people safe and free from harm.

**Priority** – Building Resilience for individuals and families to live independently.

**Priority** – Making best use of resources.

Before placing any property on the open market, a process of consultation is undertaken with our partners such as SPACES (Strategic Property Asset Collaboration in East Sussex) and other community interests groups. We will also consult with the local member in accordance with practices summarised in section entitled Council procedures below

We will review opportunities to enhance disposal receipts by investigating potential alternative uses, and partners whereby a number of mechanisms can be put in place to ensure any future enhancement of value is properly shared with the Council.

When ESCC sells or leases a property in its ownership, the Property Department will complete an Equality Impact Assessment (EIA) to ensure any impact or results from such disposal or letting does not unintentionally disadvantage or discriminate against any group or individual as identified in the Equality Act 2010 (See Appendix H15)

### Summary of Land Disposal Types

The Council may consider one of the following options for the disposal of an interest in land.

- Freehold Transfer - Disposal of the freehold interest in land means the complete transfer of all rights and responsibilities of continuing to hold that property. Although the transfer may be subject to certain claw back or overage restrictions that seek to secure further payments in the event of excess development profits being secured.
- Leasehold Transfer – The grant of a lease, the term of which is to be determined, where the Council wishes to retain control of a surplus asset or where the income stream is assessed to be of greater value than the foregone capital receipt that may be achieved through its sale.
- Grant of Licence - A licence is the grant of a right by the licensor to the licensee to use the subject land in a certain prescribed manner. A licence differs from a lease in that the freeholder retains paramount control of the land and that a licence may be revoked at short or immediate notice.



- Grant of Easement – An easement is the right by a dominant landowner to use the land of a servient landowner in a certain prescribed manner such as a right of way, right of support, right to light etc.

## Summary of Marketing Methods

The Council will usually use one of five means to dispose of land. Further guidance upon when it will be appropriate to use any particular means of disposal is contained in Part C below. The means of disposal are:-

- Private Sale - a sale of land negotiated with one or a small number of purchasers. The land may or may not have been marketed as available for sale. A binding legal agreement is created on 'exchange of contracts' between the Council and the purchaser.
- Public Auction - a sale of land by open auction available to anyone. The sale will be advertised in advance. A binding legal agreement is created upon the acceptance of a bid by the auctioneer.
- Informal Negotiated Tender - a sale of land after a public advert that requests informal offers or bids that meet a given specification or set of objectives. The Council may then negotiate further or more detailed terms with one or more individuals submitting the most advantageous bid or bids. A binding legal agreement is not created until the exchange of contracts between the authority and the chosen bidder.
- Formal Tender - a sale of land by a process of public advert and tenders submitted by a given date in accordance with a strict procedure. A binding legal agreement is created upon the acceptance of a tender by the Council.
- Exchange of Land - a transaction involving the exchange of Council owned land with another land owner. The land acquired by the Council will meet at least one of its corporate objectives and will be 'equal' in value to the land exchanged or there can be an equality payment made by either party.

For further details in respect of any of the above please see Appendix H13.

## Council Procedures

The following procedures relate to the disposal of land:-

- Approvals for declaring land surplus to the Council's requirements, and authorising its disposal will be obtained in accordance with procedures set out in Part 3 of the Constitution (Responsibility for Functions).
- The processes followed by the Council in disposing of land and buildings.
- Local Members are to be consulted on all property disposals at an early stage including when the land is in the process of being declared surplus. It is recognised that local members, because of the local knowledge of the district that they represent, will be able to contribute to the discussion as to the value or otherwise of continued retention of the asset and also provide valuable market intelligence such as potential special purchasers. Therefore engagement should be sought and encouraged at an early stage of the disposal process.
- The final decision to dispose of a property and at what terms will be at the discretion of the Lead Member for Resources as advised by the Assistant Director, Property and Capital Investments in accordance with the scheme of delegation.
- Decisions to approve the terms of any disposal of land are made by either the Assistant Director Property and Capital Investments, under Delegated Authority, or in conjunction with the Lead Member for Resources, or on some major projects the Chief Operating Officer. This can be exercised according to the following financial criteria:
  - the Assistant Director – Property and Capital Investments, under Delegated Authority of the Chief Operating Officer where the payment from the other party does not exceed £250,000 (in case of a lump sum payment) or £25,000 per year (in respect of an annual rental).
  - The Chief Operating Officer, in consultation with the Lead Member for Resources where the payment from the other party exceeds £250,000 (in case of a lump sum payment) or £25,000 per year (in respect of an annual rental).
- Where a property has been previously acquired through or under the threat of compulsory means and is now surplus to Council requirements consideration of the Crichel Down rules may apply and is set out in Appendix H16.

# Appendix H13

## Guidance

### Disposal by private sale

A disposal by private sale may take place after a period during which the land is put on the open market including advertising and generally marketing including signage that it is available for sale. In this case, the Council will be able to consider the highest bid as representing the best consideration that can be reasonably obtained. A disposal by private treaty can have a closing date and be by way of inviting sealed bids by that date if considerable interest is anticipated.

If land is to be sold by private sale without being marketed, then the reasons justifying a private sale must be recorded in writing. In some circumstances the Council may seek an independent valuation to verify that 'best consideration' is being obtained.

A private sale without the land being marketed may be justified where:

- a) the land to be disposed of is relatively small in size and an adjoining or closely located landowner(s) is (are) the only potential or likely purchaser(s);
- b) the nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained;
- c) the Council's corporate objectives and best consideration can best be achieved by a sale to a particular purchaser;
- d) the sale is to a non-profit making organisation and the role of that organisation is conducive to the improvement of public services and facilities available within East Sussex;
- e) the purchaser has a particular interest in purchasing the premises or a particular association with the premises and where open marketing of the premises may lead that particular purchaser to reduce the value of their offer for the premises or withdraw their interest in the premises altogether;
- f) the purchaser has a particular interest in purchasing the site or a particular association with the site and where in the opinion of the Lead Member for Resources open marketing of the site may cause undue hardship or unrest for that particular purchaser or where the sale of the premises to a party other than that particular individual would substantially and detrimentally affect the normal operation of the business associated with the premises;
- g) the disposal is as a result of the Right to Buy scheme.
- h) the Crichel Down Rules, which are commended to but are not binding on a local authority, apply and the Council has decided to sell the land to the person from whom it acquired the land. Specific procedures relating to the disposal of property where Crichel Down Rules do apply is set out in Appendix 6 of this policy document.

A legally binding agreement will not be reached until either contracts for the lease or sale of land are exchanged or a development agreement is signed.

## Disposal by public auction

Sale by public auction may be appropriate where there is no obvious potential purchaser and where speed and best price can be publicly demonstrated.

The authority of either the Assistant Director – Property and Capital Investments or the Lead Member for Resources will be required, providing the reasons for a sale by public auction.

An auction reserve is used to ensure that a property is not sold below certain agreed level. Prior to the sale it will therefore be necessary for the Assistant Director for Property and Capital Investments or Chief Operating Officer to determine the auction reserve to be applied in accordance with the scheme of delegated authorities for the Council. A Council Officer shall attend the auction to act on behalf of the Council.

The contract for sale or lease must be ready for exchange at the auction.

The binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed and exchanged.

## Disposal by informal negotiated tender

A disposal by informal/negotiated tender differs from a formal tender in that neither the Council nor the successful bidder is legally obliged to enter into a contract for the disposal of the land. The informal/negotiated tender process allows the Council to identify one preferred bidder with whom it may then negotiate further detailed terms or proposals for the development of the land concerned.

The Council may, as a part of the disposal process, request best and final offers for a sale, or informal development proposals for land that either meet a given specification, or a request for proposals. This process is particularly useful for large or complex development or regeneration sites requiring development and where the proposals may need to be developed in co-operation with the preferred bidder to meet the Council's corporate objectives and to achieve the best consideration that can be reasonably obtained.

Although not a formal tender, after the closing date these are recorded by the relevant case officer.

A binding legal agreement is not created until the exchange of contracts for sale or lease or the signing of a development agreement.

This method is suited to sales where there are uncertainties, particularly planning, and allows for use of conditional contracts, including clauses which can allow for further sums to become payable upon grant of planning permission at different points in the future. It is therefore essential that officers considering disposal of property by informal or formal tender consult with the relevant planning and transport authority to ensure that if the disposal is dependent upon a planning consent that there is reasonable prospect of that consent being approved.

## Disposal by formal tender

A sale of land by formal tender may be appropriate where:

- a) the land ownership is not complex;
- b) legal documentation for contracts/transfer are in place together with statutory searches and replies to standard enquiries;
- c) there are no uncertainties as to grant of a planning consent; and
- d) the Council is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance.

Alternatively, this method can be considered where all matters to enable a tenderer to come to a firm price and raise funding for the purchase are in place and available as part of the tender package. For example, where the disposal of land is to a developer with an obligation to build industrial units for lease.

Other situations which may benefit from this type of sale are land or property sales which have attracted intense local interest from several local parties with a particular interest, or where late bids have, or are considered likely to be made.

This method can provide a well organised, transparent way of achieving completion when a timeframe is essential, but is often more costly and a longer lead in period is required.

Formal tenders will not be appropriate where the land ownership position is complex or the development proposals for the land are insufficiently identified or otherwise incapable of detailed specification at the pre-tender stage. This is particularly so where a detailed planning permission is required, such as a listed property or property in a Conservation Area. Therefore prior to the commencement of a formal tender process advice of the relevant planning and transport authority will be sought.

Authority to use this method will be by either by the Lead Member for Resources, or the Assistant Director – Property and Capital Investments, under Delegated Authority of the Chief Operating Officer. In either case, the reasons justifying a sale by formal tender must be recorded in writing. The formal Tender Procedure to be adopted in such cases (subject to any amendments to this agreed by the Assistant Director of Legal and Democratic Services) is set out in Appendix H14. Any exceptions to this procedure must be authorised and recorded.

With a formal tender process a legally binding relationship is formed when the Council accepts a tender in writing. It is essential therefore, that every aspect of the disposal is specified in the tender documents. The tender documents should include a contract for sale or lease which should be completed with the tenderer's details, the tender price, include a deposit cheque to preclude withdrawal of the tender prior to acceptance and be signed by the tenderer. It will be released unconditionally to the Council on submission of the tender.

Sale of land by formal tender will require a detailed specification to be drawn up. This needs to specify the land to be sold, any requirements to be met by the tenderer and any obligations that must be met.

The Council will place a public advertisement stipulating the property for sale. Those who have expressed their interest will then be invited to submit their tender bids, in accordance with the tender procedure outlined. Details are included under Appendix H14.

## **Disposal by exchange of land**

Disposal by exchange of land will be appropriate when it will achieve best consideration for the Authority and is advantageous to the Council and other parties to exchange land in their ownerships.

Authority for a disposal of land by exchange with another land owner for alternative land will be by either the Lead Member for Resources, or the Assistant Director – Property and Capital Investments, under Delegated Authority. In either case, reasons for justifying this manner of disposal must be recorded in writing. A binding legal agreement will be created when a contract is exchanged for the exchange.

The exchange will usually be equal in value. However, an inequality in land value may be compensated for by an equality payment or by other means where appropriate. For example, where the Council in exchange for a larger piece of land receives a smaller piece of land but the recipient of the larger plot agrees to build industrial units on the Council's smaller area to equalise the consideration. In such circumstances the Council may seek an independent valuation to verify that 'best consideration' will be obtained.

## **Exceptions**

Other methods of disposal may be used where circumstances warrant. A notable exception to the standard methods of disposal is the Council supporting government policy in the transfer of maintained schools to Academies who self determine on conversion.

The Council typically transfer the Council's land under a 125 year lease at a peppercorn rent in accordance with the Academies Act 2010. Whilst a long lease is preferable, the Department for Education (DfE) recognise that at times parties will seek to enter into local agreements. The expectation is still however that all land and facilities used wholly or mainly for the purpose of the converting school will transfer and be made available for Academy use.

The following link provides DfE Land Transfer Advice (Version 10.1, dated April 2013):-

[DfE Land Transfer Advice V10-1 April 2013 Final.docx](#)

## Late bids and other considerations

The Guidance from the Local Government Ombudsman recognises the problem caused to local authorities by 'late bids'. The Guidance says that difficulties are less likely if Councils ensure that exchange of contracts take place as quickly as possible after the decision to sell (or lease) is made. It suggests that local authorities should be allowed to sell at an agreed price within a reasonable period of reaching a 'subject to contract' agreement.

In the context of the methods of land disposal dealt with in this document, a late bid may occur:-

- a) in the case of a private sale, after a sale or lease has been agreed, but before exchange of contracts.
- b) in the case of a public auction, after the auction has been closed, but the reserved price not having been met.
- c) in the case of a formal tender, after the closing date for tenders, but before acceptance by the Council of the successful tender.
- d) in the case of an informal or negotiated tender, after receipt of bids, but before exchange of contracts or signing of a development agreement.
- e) in the case of disposal by exchange, after a sale or lease has been agreed, but before exchange of contracts.

Each 'late bid' must be considered in the context of the individual circumstances at the time. The Council's approach to 'late bids' will vary depending upon the method of land disposal used. In each case, its overriding duty will be to obtain the best consideration that it can reasonably obtain (subject to any exceptions in the General Disposal Consent). The Council's approach to late bids is as follows:

- a) The Council discourages the submission of late bids in all cases when it is disposing of land. It will attempt to minimise problems by aiming for early exchange of contracts.
- b) Where land is being disposed of by way of formal tender, bids received after the deadline for tenders, will be recorded as late, together with the time and date of receipt. The Lead Member for Resources should decide whether to consider late bids after taking advice from the Assistant Director of Legal and Democratic Services and the Chief Operating Officer.

- c) Except as provided in "b" above, until the Council has entered a legally binding contract or agreement with another person it will consider late bids unless there are good commercial reasons for not doing so. This should be explained to any purchaser when a disposal of land by private sale or negotiated/informal tender is agreed.
- d) Consideration of a late bid does not mean that it will necessarily be accepted even if it is the 'highest' bid. The Council will take into account the likelihood of the late bid proceeding to completion in a timely manner and the possibility of late bids being used as a spoiling or delaying tactic.
- e) Subject to the above, the Council may, in appropriate circumstances, ask both the late bidder and other interested parties, to submit their best and final bids in a sealed envelope by a set deadline.
- f) A decision on whether to accept a late bid for a private sale, informal tender or by exchange are to be made either by the Lead Member for Resources or the Assistant Director – Property and Capital Investments.

A last minute bid may be rejected for sound commercial reasons. For example, if there is no real certainty of it leading speedily to a contract or is suspected as a spoiling bid.

The Council will at all times bear in mind that the overriding duty, unless a specific decision has been made to take advantage of certain exceptions as mentioned in the General Disposal Consent in order to further corporate objectives is to obtain best consideration.

In considering what amounts to 'monetary value' in terms of best consideration to be obtained, the creation of jobs or desirable social outcomes, although desirable, cannot be quantified by the Council.

Where land or property is sold at a restricted value in accordance with the General Disposal Consent or with the consent of the Department for Communities and Local Government, provision shall be incorporated into the contract and transfer requiring that any difference between the price paid and the full unrestricted value (as assessed by the Assistant Director – Property and Capital Investments) shall be repaid to the Council should the land not be developed so as to provide for the non-monetary benefits which the Council sought to achieve. This refund of the effective land subsidy shall be referred to as "claw back".



## **Achievement of best consideration where land or property has redevelopment potential**

Where in the opinion of the Assistant Director – Property and Capital Investments land has potential for redevelopment which will enhance its disposal value, outline planning consent for such development will be obtained prior to disposal. Prior to any application property officer's will consult with the appropriate planning and transport development control officers to ensure that any such application is likely to be approved and is in accordance with partner's core strategies.

Where the form of development which will maximise value cannot readily be identified it will be appropriate to market the land with bids invited subject to grant of planning consent for a specified form of development, on agreement by the Assistant Director – Property and Capital Investments.

Contracts for the sale of land will include a restrictive covenant limiting development of the land to that specified in the outline planning consent or the form of development proposed in any bid made subject to the grant of planning consent.

Should any revised planning consent be obtained subsequent to a disposal which increases the value of the property sold, the County Council will not agree to waive or vary any covenant restricting the form of development without receipt of best consideration reflecting the increase in land value accruing. This uplift in land value maybe by an "overage" provision or a mechanism for "claw back".

# Appendix H14

## Formal Tender Procedure

- a) No tenders shall be invited unless Public Notice has been given in at least one local newspaper giving details of the property and the proposed transaction, and inviting interested persons to apply to tender within a period of not less than 28 days.
- b) Where an agent has been appointed to act on the Council's behalf, their name and address will also be given.
- c) Interested parties will then be provided with property particulars and details of the tender process.
- d) All tenders must be delivered in the envelope provided or in a sealed envelope addressed to the Assistant Director of Legal and Democratic Services, bearing the words "Tender for ....." and the address of the land or property for sale, but without any name or mark indicating the sender. Applicants who wish to make their offers by post must do so by Recorded Delivery.
- e) No bid shall be accepted that is not specific, or made in reference to another bid, such as £100 over the highest bid.
- f) The Council will make it clear that it does not bind itself to accept the highest tender or indeed, any tender.
- g) Tender envelopes will remain unopened in the custody of the Assistant Director of Legal and Democratic Services until the appointed time for opening.
- h) All tenders will be opened together after the Closing Date has expired by one senior officer nominated by the Assistant Director of Legal and Democratic Services and another officer. This may be a representative of Chief Operating Officer, if this is considered appropriate by the Assistant Director of Legal and Democratic Services.
- i) The Assistant Director of Legal and Democratic Services will maintain a record of tenders received.
- j) Any tenders received after the expiration of time for tendering, or which contravene any provision of the tendering conditions or instructions will only be opened with the authority of the Assistant Director of Legal and Democratic Services after consultation with the relevant Lead Cabinet Member.

# Appendix H15

## Equality Impact Assessment

*(Form to be completed before the sale or Letting of a Council Property is completed – and placed on Estates' File)*

**Application:** all freehold sales and lettings of 3 years or more.

### Purpose

- To ensure that all prospective purchasers or lessees are treated fairly and given equal opportunity to participate in the bidding process.
- To ensure no individual or group are intentionally or unintentionally prevented from participating in the bidding process on grounds of ethnicity, race, gender, age, sexual orientation or disability.
- If selling at auction, to make sure reasonable measures are taken to ensure the auction room is accessible everyone, as far as is reasonably practicable.
- When selecting a bidder or lessee, to consider the impact, if any, the decision could have on the unsuccessful bidder or lessee, to ensure they are not intentionally or unintentionally disadvantaged by the Council's decision.

*Tick as appropriate*

No	Assessment	Yes	No	N/A
1.	Have all individuals or groups been treated on an equal basis without favour during the sale / letting process?			
2.	Was any individual or group prevented from participating in the sale / letting process on account of their ethnicity, race, gender, age, sexual orientation or disability?			
3.	In selecting your purchaser /lessee, are you aware of any impact your decision might have on any unsuccessful bidder or lessee which might result in their being disadvantaged?			
4.	If selling at auction, was the auction room reasonably accessible to all potential bidders, including those with a disability?			

If answering "No" to Q. 1 and Q 4, or "Yes" to Q. 2 and Q.3 – please complete a separate sheet giving reasons for your answer.

**Signed**.....**Date**.....

**Estate Surveyor: Name**.....

# Appendix H16

## Crichel Down Rules

In 2004 the Government produced a circular entitled “Compulsory Purchase and the Crichel Down Rules” which prescribed the way in which all Government departments and executive agencies that are subject to a power of direction from a Minister must manage the disposal of land previously acquired by use of compulsory powers. Local authorities that are not subject to a ministerial power of direction are not subject to such a prescription but are recommended to also follow the rules.

In particular the General Rule of these guidelines states that “where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given the first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition.”

It is recommended that the Council has regard of these rules when disposing of land of formerly acquired by compulsory means subject to the following guidance.

### **Guidance for the disposal of Council owned land that has been acquired by or under threat of compulsory means.**

#### **Stage 1 – Identification of land.**

The Crichel Down rules will relate to land that has been compulsorily acquired by the Council and is no longer required. Subject to the following exceptions:

- Agricultural land acquired before the 1st April 1935.
- Agricultural land acquired on or after the 30 October 1992 which becomes surplus to requirements more than 25 years after its acquisition.
- Non Agricultural land which becomes surplus and available for disposal more than 25 years after its acquisition.
- Land that has materially changed since acquisition.
- Land where boundaries of agricultural land has been obliterated.

There is also an exception in relation to the disposal of small areas of land where the attempted identification of an absent former owner who has now disposed of his/her interest in land adjacent to the subject property would be out of proportion to the value of the land. Only where the current market value of the subject is likely to exceed the value of £25,000 will the Council be obliged to take steps as specified within the Rules to identify a previous owner.

Despite these exceptions it is acknowledged it may still be appropriate to first offer to the adjacent landowner unless there are overriding local circumstances or best value may not be achieved.

## **Stage 2 -Consultation**

Consultation shall take place within ET&E and other departments to declare the land surplus in consultation with the Lead Member for Resources.

Local Authorities as previously stated are not under a statutory obligation to comply with the Crichel Down rules. Therefore any compliance with these rules will be at the discretion of the Assistant Director for Property and Capital Investments in consultation with the Lead Member for Resources.

For instance where it is concluded that there is an overriding local or community interest such as a disposal to a parish council, registered charity or other properly constituted body where best value may not be achieved then upon the direction of the Assistant Director – Property and Capital Investments a disposal may proceed to such a body even when it was not the former owner of the property.

