

**Name of meeting:** Cabinet  
**Date:** 7<sup>th</sup> March 2017  
**Title of report:** Community Asset Transfer Policy

**Purpose of report:** The Asset Advancement Policy was approved at Cabinet in October 2013. The policy catered for a review of the Asset Advancement Policy at a later date. A revised Policy is attached to this report (Appendix A). This revised policy builds on the 2013 policy through experience and lessons learnt from Asset Transfers completed to date and rebrands the policy to the Asset Transfer Policy, a name more commonly used with regards to the process.

This report requests Cabinet:

- consider the draft revised Asset Transfer Policy and approve it.
- consider the implementation of the incentivisation as discussed in the report and whether to apply retrospectively or not.

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| <b>Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>   | Yes<br><br>This Policy will affect all Wards in Kirklees Council  |
| <b>Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a></b>  | Key Decision – Yes<br>Private Report/Private Appendix – No  |
| <b>The Decision - Is it eligible for call in by Scrutiny?</b>   | Yes   |
| <b>Date signed off by <u>Director</u> &amp; name</b><br><br><b>Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?</b><br><br><b>Is it also signed off by the Assistant Director (Legal Governance and Monitoring)?</b> | Jacqui Gedman, Director of Economy, Skills and the Environment, 24 February 2017<br><br>Debbie Hogg, 24 February 2017<br><br>Julie Muscroft , |
| <b>Cabinet member <a href="#">portfolio</a></b>   | Asset Strategy, Resources and Creative Kirklees (Arts) - Cllr Graham Turner   |

**Electoral wards affected:** All  
**Ward councillors consulted:** All Ward Councillors  
**Public or private:** Public

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## 1. Summary

- 1.1. Kirklees Council has a long history of empowering communities by giving communities the opportunity to own and/or manage community assets. At the time of writing this report 11 asset transfers have legally completed, 5 transfers have been approved by Cabinet and are being progressed to legal completion and 9 are in the process of being brought forward to be considered by Cabinet.
- 1.2. The new Asset Transfer Policy builds on the 2013 Policy. This revised policy builds on the 2013 policy through experience and lessons learnt from Asset Transfers completed to date and rebrands the policy to the Asset Transfer Policy, a name more commonly used with regards to the process. The main differences between the two being:
  - The definition of “Asset Transfer”/“Asset Advancement” is being refined from being *“the transference of responsibility for a council owned building or area of land to community management by means of an agreed long term arrangement that suits the needs of the community the managing association and the council”* [as per 2013 policy] to refining the definition to a freehold transfer or the grant of a lease [but no other long term arrangement] to a Community Organisation [as defined] at less than best consideration.
  - The pool of potential applicants has been changed. In the 2013 policy it was defined as being “Third Sector” organisations comprising of Voluntary and Community Organisations who are representative of the community etc. and social enterprises. In the 2017 policy the pool of applicants remains Voluntary and Community Organisations but is extended to include Town and Parish Councils and Schools. In addition Social Enterprises are restricted to cases where they are in essence Voluntary and Community Organisations.
  - It is no longer current practice for a successful applicant to enter into a statement of understanding with the Council.

The 2017 Policy introduces a grant application process for financial support for those groups that require it. The 2013 Policy had no mechanism for financial support.

## 2. Information required to take a decision

### Background

- 2.1. The Asset Advancement Policy was approved at Cabinet in October 2013. The policy catered for a review of the Asset Advancement Policy at a later date. This report builds on the 2013 policy through experience and lessons learnt from asset transfers to date.
- 2.2. Kirklees Council has a long history of empowering communities by giving communities the opportunity to own and/or manage community assets. Community Asset Transfer involves transferring the ownership, either freehold or long leasehold, of land or buildings from a statutory body to a community organisation at ‘less than best consideration’ – that is at less than its full market value – in order to further local social, economic and/or environmental objectives.
- 2.3. Transferring an asset to a local community organisation on long leasehold or a freehold transfer can unlock community enterprise, encourage volunteer commitment, help utilise local intelligence, and allow these organisations to attract the necessary capital investment to create a thriving community hub. Asset Transfer is an important policy in allowing the Council to empower communities whilst reducing the number of buildings the Council is

directly responsible for as part of the overall budget strategy. Individual Community Asset Transfers on this basis are subject to a Cabinet approval.

- 2.4. For the purpose of this policy, an asset is defined as either buildings or land owned by Kirklees Council.
- 2.5. The Policy will not explicitly exclude any asset from potential advancement to a community organisation and leaves this open for negotiation and discussion on a case by case basis.

The assets made available for Community Asset Transfer will be at the discretion of the Council but may include the following:

- Community Buildings
- Public Halls
- Park Land
- Woodland
- Public Service Buildings – e.g. Libraries, Children's Centres, Museums

The types of assets the Council may not consider for Community Asset Transfer include, but are not limited to:

- Sites identified in the Local Plan for uses such as Employment and Housing
- Strategic Assets such as Office Accommodation Hubs and Town Halls

- 2.6. A high level of co-ordination and internal consultation is required and a large amount of officer time is required on each Asset Transfer. If a group is ready for a transfer, i.e. robust and constituted and an asset is uncomplicated i.e. stand alone, no shared services, no boundary issues etc. a Community Asset Transfer can take anything from 6 months upwards to reach a Cabinet Decision, however, if one or more of these factors requires development, e.g. robust body to transfer to, assets with complexities e.g. funding conditions etc. then it can be upwards of 12 months before the Asset Transfer can be brought to Cabinet for decision.
- 2.7. As part of the assessment process for all potential transfers one of the main areas to be assessed is the constitution and governance arrangements and whether the group is representative of the wider community. Clearly bids from Parish and Town Councils would automatically pass the assessment as they are democratically elected by their local community, furthermore they have the capacity to raise additional funding through the precept and therefore Town and Parish Councils will be treated as preferred partners in the Asset Transfer process.
- 2.8. Whilst the Council will normally prioritise expressions of interest from organisations such as Town and Parish Councils because of the advantages of their governance arrangements and community representation i.e. democratically elected; support from the Council e.g. loan facility and grants will not normally be offered because of the alternative options open to Town and Parish Councils e.g. ability to raise precept and levels of school funding which aren't available to other Community Organisations. Similarly, expressions of interest from schools may also be prioritised, but, support from the Council e.g. loan facility and grants will not normally be offered because of existing levels of school budgets.
- 2.9. It is recognised that building and other related information provided by the Council to Applicants is often incomplete and inconsistent both in terms of age of information and detail and groups are encouraged to undertake their own building surveys etc.

2.10. Currently Communities and Engagement offer a Development Grant as a one off Grant up to a maximum of £4000. Funding is not guaranteed year on year. A decision was made by the Service to not support Parish Councils.

### **3. Implications for the Council**

#### **3.1 Early Intervention and Prevention (EIP)**

There can be many benefits derived through community ownership of a public asset transferred to them, an increase in opportunities for the community and better, more responsive services that engage with and empower local people.

In line with the ambitions of the Council to focus direct delivery on those activities for which they have statutory duties, whilst supporting and enabling individuals and communities to more for themselves, the new proposed EIP delivery model following consultation emphasises the Councils role in building capacity in communities and working with partners. Early help will be delivered through area based working and the Councils efforts focussed on a targeted offer whilst the wider community will deliver the Community Plus Offer for example D of E, Adventurous Activity, Engagement in Sporting Activities, U3A, Luncheon Clubs and other universal activities that will fulfil the Early Intervention Agenda. Community Asset Transfer can support the delivery of Universal Services.

#### **3.2 Economic Resilience (ER)**

Community Asset transfer links to the Councils journey towards New Council and supports the Councils vision of supporting communities to do more for themselves and each other. It promotes economic resilience on a localised basis and aligns to the Councils objective of focusing only on things that the Council can do and enables the Council to achieve its Asset Reduction Ambitions.

Groups applying for asset transfer may have access to external grants (for building refurbishment or to support staff training and development) that are not available to the Council. Ownership of a physical asset can also provide sustainable income generation opportunities and help organisations achieve greater financial stability and escape short term grant dependency.

#### **3.3 Improving Outcomes for Children**

The activities delivered from Community Asset Transferred assets vary according to the needs of the local community but typically the community facilities are involved in delivering activities which directly involve children and young people, e.g. playgroups, nurseries, stay and play, youth provision and other related activities.

#### **3.4 Reducing Demand of Services**

Asset Transfer can release benefits regarding reduced service demand and the wider community can deliver the Community Plus Offer for example D of E, Adventurous Activity, Engagement in Sporting Activities, U3A, Luncheon Clubs and other universal activities that will fulfil the Early Intervention Agenda and prevent demand for council services such as the targeted offer.

The benefit of transferring a community asset to the local community engages local activity in the creation of Friends of Groups, e.g. Libraries and Parks which allows the Council to focus on the delivery of core services and local groups supporting in the provision of ancillary or associated activities.

### 3.5 Legal Implications and other practical proposals/implications

It is recommended that for the purposes of this amended Policy; typically an asset transfer has two forms:

1. Freehold Transfer – a freehold transfer of an asset would mean the entire ownership of an asset would transfer from the Council to the Community Organisation. Covenants (restrictions) will prevent the public asset from being used for any other purpose other than community use and any ancillary business use.
2. Long Term Lease - a leasehold transfer will give the Community Organisation the right to use the property for the duration of the lease, typically, a 99/125 year lease will be issued.

3.6 The terms for each transfer will be negotiated on its own merits. The Council would normally transfer the asset for nil consideration and thereby forgo any Capital receipt, or rental income however, the Community Organisation will be wholly responsible for the asset.

3.7 Under the 2013 policy we have successfully completed 11 Asset transfers through to legal completion. There are also 5 which have been approved at Cabinet for an Asset Transfer but have not yet legally completed, these include:

- Kirkburton Library – Decision Made October 2015
- Mirfield Community Centre – Decision Made December 2015
- Chickenley Community Centre – Decision Made February 2016
- Marsden Mechanics – Decision Made July 2016
- Holmfirth Civic Hall – Decision Made September 2016

3.8 Besides the above transfers approved at Cabinet but not yet legally completed, there are also 3 asset transfers progressing to Cabinet Committee Assets on 28 March 2017. Whilst this new Policy, if approved, will take effect from 1 April 2017, Cabinet Committee Assets will be asked on a case by case basis to consider whether to apply this Policy in these cases.

3.9 Feedback from groups locally that have completed an Asset Transfer and from Locality nationally, is that additional support around legal costs, surveyors costs, feasibilities etc. would have both supported the group financially and assisted in moving the process forward in a more timely manner. Though not part of the 2013 Policy, grants of up to £4,000 have been available from Communities Transformation and Change to support Groups considering Asset Transfer, however it is expected that these will cease in 2017-18.

Within the revised Policy it is proposed that the Council offer groups revenue support, through the Corporate Landlord budget, towards the cost of asset transfer and to facilitate the process.

- Upon an Expression of Interest being successfully assessed and the Group being invited to submit a full asset transfer application a grant of up to £5,000 be made to assist with feasibility, legal, surveyor costs etc.
- In addition to the grant referred to above, at application and final business case stage a grant of up to 15% of the average of the previous two years Council revenue premises running costs (typically building costs, but not staffing, service delivery or

capital investment costs) can be applied for via the Final Business Case and if approved will be processed upon completion of legal transfer.

- At the same stage if the Community Organisation expect to apply for capital grant funding from an external organisation which requires matched funding e.g. lottery funding, the Community Organisation can apply to the Council for a loan facility to cover part or all of the match funding up to a maximum of £100,000. It would be an expectation that the grant or loan would be built into the Final Business Case and therefore will be assessed in preparation for a report being taken to Cabinet and if approved will be processed upon completion of legal transfer.

Grants will be subject to budget availability and it will be for officers to manage the allocation and number of grants awarded within the overall budget envelope.

### 3.10 Options for Cabinet to consider:

- 3.10.1 Apply the financial support retrospectively to those asset transfers already approved by Cabinet but not yet legally completed.

**Officers are of the opinion that this is not the preferred option as negotiations and approvals were undertaken under the 2013 policy.**

- 3.10.2 Do not apply the financial support retrospectively to those asset transfers already approved by Cabinet but not yet legally completed.

**Officers are of the opinion that this is the preferred option as negotiations and approvals were undertaken under the 2013 policy.**

NB The estimated revenue cost of applying 3.10.1 would be approximately £40,000.

## 4. Consultees and their opinions

*All Ward Councillors were consulted and the following comments were received:*

### ***Cllr Eric Firth***

How does KCA fit in with this? as you know we work in partnership with the council, reading through the policy, we don't fit, unless I have read this wrongly.

Say there was a semi derelict property that would cost many thousands to bring back to habitable use and the council couldn't do it, could this asset be transferred to us so we could bring it back into use and get a family of the housing list?

### ***Cllr Charles Greaves***

I can't find any reference to involving ward councillors in the process, though I may have missed it.

As a minimum, I would expect that the process includes informing affected ward councillors of the detail of the bid, seeks their approval to proceed along with any specific comments, and that where approval is not given that a meeting or mediation of some form occurs.

### ***Cllr James Homewood***

The "Basis of transfer section" states ".....the council will not pay a hosting fee i.e. Rent or service charge for the continued use of the asset". I can understand not expecting to pay a rent when they have transferred the building for free, but expecting completely free continued use I believe is unrealistic. A contribution through a service charge towards

utilities etc. would seem fair otherwise community groups will end up subsidising council services. If the policy goes ahead with this included the asset transfer of many buildings would be unsustainable (e.g. buildings which host children's centres).

I think there could be greater clarity regarding what constitutes commercial use (e.g. would a nursery be deemed commercial) and what the reasonable balance between the commercial and community use is. Often commercial use will cross subsidise community services and we don't want this to be lost.

There is no mention of multiple transfers – does this mean there would be no limit?

The policy says Town and Parish councils will be considered as “preferred partners”. Is there potential to extend this so other key organisations could also become preferred partners?

Agree that funding for feasibility/legal costs is important, but is the funding for this guaranteed especially as we can't quantify the use of it?

Match funding loan facility – there is no detail of what the terms of this facility would be.

***Cllr Robert Light***

As ward members we have worked with the policy as it is – it's not the same policy at a detail level that we would be working with if the Conservative Group were running the Council but as ward members we have and will continue to work with this policy to get the best solutions for the communities we represent.

***Cllr Darren O'Donovan***

Happy with what is in the attachment (Policy).

Although I think it useful to notify ward members of asset transfer requests too.

***Cllr Nigel Patrick***

The process is still convoluted and will take too long. Ten to 12 months to completion (without legal complications) is too long.

Two or more organisations interested in an asset with opposing visions for the future use of an asset cannot work together and should not be expected so to do.

Where restrictions apply to the contract between the Council and the transferee and where those restrictions are breached by the transferee there needs to be some form of action in place – that is effective to deter any breach, for example the asset is returned to Kirklees Council.

It says European State Aid Rules apply. I don't know what these do, but can we check if they will apply in two years hence?

There is no such thing as 'New Council' – it is not a legal entity in the Councils Constitution and as such it should not be recorded as such in any policy.

***Cllr John Taylor***

I am fine with this but do have one comment/question. This relates to the types of assets suitable for transfer & you include Public Halls as an example but exclude Town Halls & I do not understand why Town Halls would always be excluded. Our Town Halls are expensive to maintain and if there were a group which took them over I am sure they could access grants which are not available to the Council. This is a bit of a sore point with me as our local Town Hall is now a very nice expensive house in its own gardens on

Penistone Rd, Kirkburton. It was sold off by Kirklees back in the '70s after the creation of Kirklees.

I also note that Holmfirth Civic Hall is being transferred, so I do not understand why you could not consider transferring the other Town Halls as well. I am not saying that this is ever likely to happen but do question the rationale for specifically excluding them when all other Council heritage buildings including Museums, Libraries and Public Halls are considered suitable. Maybe one to consult other Officers on but I would like to understand the logic & rationale why for example Cleckheaton Town Hall could not be offered to the community but Holmfirth Civic Hall could be.

**Cllr Nigel Patrick** also sent an additional comment :

Cllr Taylor makes a fair point. All assets should be included in the policy otherwise the Council will have to revisit the policy to include them at a later date. The asset transfer process has been slow and the point of improving the policy is to make the process more efficient. It makes sense to get the policy right now and not have to revisit it.

***Locality were consulted and the following comments were received:***

We think this is one of the most forward looking policies in the UK.

The definition of community organisation is definitely a tricky one for us. Parish and Town councils are statutory bodies, and some schools/academies could be private.

Another question regarding prioritising some types of organisations: is this in contradiction with your paragraph on "multiple organisations applying"?

In the benefits to organisations, perhaps you can add that having an asset on an organisation's balance sheet helps attract finance and give the organisation a strong base for sustainability.

In our experience, restricting an organisation's commercial use is likely to cause issues, but as you explained, a case by case analysis should help with that.

Organisations with share capital are being refused access but have you considered "community share capital" such as HEART In Headingley where the community raised £100,000 of investment. This would have to be done through a Community Benefit Society, with charitable status. Would that be a possibility you would consider?

It is understandable that the Council may not be able to pay for space within buildings, but presumably applicants will have discretion as to whether a council service can feasibly seek to be a tenant under these circumstances, given potential requirements from the business plan?

***Kirklees Council Voluntary Community Sector (VCS) team were consulted and the following comments were received:***

We welcome the commitment to work with and strengthen the third sector in Kirklees through the Community asset transfer process. The commitment to freehold transfers where appropriate, and support to organisations to assist them with the process will contribute to sustainability. This will support community organisations role in early help by providing a local base for community activities. The policy is based on lessons from current transfers which have been predominantly to groups already occupying a building. More proactive and collaborative approaches may be needed for larger scale transfers if a number of council buildings become available for asset transfer e.g. due to service changes.



***Kirklees Council Engagement and Cohesion Team were consulted and the following comments were received:***

I think it's a really positive document, and is easy to understand and has the intention of the council clear for people to see, and sets out processes and expectations on both sides.

**5. Next steps**

If the updated policy is approved at Cabinet, it is proposed that the Policy will become effective from 1 April 2017 and will supersede the 2013 Asset Advancement Policy. Officers will publish the Policy and relevant documentation on the Councils Website and all future requests for Community Asset Transfer will follow the approved policy.

**6. Officer recommendations and reasons**

- 6.1 Members are requested to consider the updated Asset Transfer Policy, including comments received in Section 4 and approve it.
- 6.2 Members are asked to agree that this Policy will replace the 2013 Asset Advancement Policy and that it will become effective from 1 April 2017.
- 6.3 Members are asked to note that the new Policy will be applied to the 3 Asset Transfers as outlined in Section 3.8 when they are presented at Cabinet Committee Assets on 28 March 2017.
- 6.4 Members are requested to consider and approve 3.10.1:  
***Do not apply the financial support retrospectively to those asset transfers already approved by Cabinet but not yet legally completed as the negotiations and approvals were undertaken under the 2013 policy for the reasons stated in Section 3.10.1.***

**7. Cabinet portfolio holder's recommendations**

The Portfolio Holder, Cllr Graham Turner recommends the approval of the 2017 Asset Transfer Policy and that Cabinet agree not to apply the financial support retrospectively to asset transfers approved by Cabinet but not yet legally completed as they were negotiated under the 2013 Asset Advancement Policy.

The Portfolio Holder notes that the new Policy will be applied to the 3 Asset Transfers referred to in Section 3.8.

**8. Contact officer**

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**9. Background Papers and History of Decisions**

Appendix A - Community Asset Transfer Policy 2017

Appendix B - Asset Advancement Policy 2013

**10. Assistant Director responsible**

Paul Kemp, Assistant Director – Place



# **Community Asset Transfer Policy**

**March 2017**

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## **Introduction**

Kirklees Council adopted an Asset Advancement Policy in 2013, the policy enabled Community Organisations to Asset Transfer Council Assets to allow for the continuity of the asset and have a positive impact on the local and wider community.

This 2017 policy builds upon and supersedes the original policy and is now named Community Asset Transfer Policy.

The policy supports Kirklees Council's vision for New Council by:

- Connecting ideas, people and resources across boundaries of all kinds, supporting communities to harness and build their strengths
- Creating trust and synergy between institutions, businesses and citizens in Kirklees

The policy sets out how Community Asset Transfers will work within Kirklees Council, it outlines which assets the Council would consider for transfer and the type of transfer that will be offered. Community Asset Transfer is not an automatic right like some of the recent legislation i.e. Community Right to Bid (Assets of Community Value) but is a policy outlined by Central Government to guide Local Authorities on the use of their assets.

Whilst the Council is committed to the principle of releasing public assets to Community Organisations, the assets made available for Community Asset Transfer will be at the discretion of the Council and not all Council assets will be available. Moreover, the Council reserves the right to withdraw from the Community Asset Transfer process at any stage should suitable progress not be maintained.

## **Background**

Kirklees Council has a long history of empowering communities in managing community assets. The Quirk Review (Community Management and Ownership of Public Assets) of 2007 brought about a fundamental change in the way that Local Authorities viewed ownership of Assets within their areas.

Community Asset Transfer involves transferring the ownership and/or management of land or buildings from a statutory body to a Community Organisation at less than best/nil consideration – that is, at less than its full market value – in order to further local social, economic and/or environmental objectives. The transfer can be either leasehold or freehold.

Transferring an asset to a Community Organisation on long leasehold or freehold transfer can unlock community enterprise, encourage volunteer commitment, help utilise local intelligence, and allow these organisations to attract the necessary capital investment to create a thriving community.

## **Benefits to the People of Kirklees**

There can be many benefits derived through community ownership of a public asset transferred to them, usually an increase in opportunities for the community and better, more responsive services that engage with and empower local people. Additional benefits include increased local pride and ownership. This can attract new investment, reinvigorate the local economy, deliver significant positive outcomes for communities empowering them to become more self-sufficient, promote independence and help to create and maintain sustainable thriving centres. Social Value is about using the resources e.g. assets we have more strategically, to produce a wider benefit than would otherwise have been achieved from a typical disposal.

## **Benefits to the Community Organisation**

Transferring the ownership of a public asset to a Community Organisation can strengthen the organisations' confidence and community ties. Having an asset on an organisation's balance sheet helps attract finance and

gives the organisation a strong base for sustainability. It can also raise the profile of the organisation and improve credibility with local people and stakeholders. The organisation may have access to external grants (for building refurbishment or to support staff training and development) that are not available to the Council. Ownership of a physical asset can also provide sustainable income generation opportunities and help organisations achieve greater financial stability and escape short term grant dependency.

### **Benefits to the Council**

Community Asset transfer links to the Councils journey towards New Council and supports the Councils vision of supporting communities to do more for themselves and each other. It promotes economic resilience on a localised basis and aligns to the Councils objective of focusing only on things that the Council can do and enables the Council to achieve its Asset Reduction Ambitions.

### **Definitions**

A Community Asset Transfer for the purpose of this policy is defined as:

- The transference of ownership or management of a council owned building or area of land to a Community Organisation by means of either a long term lease or freehold transfer to the interested Community Organisation at less than best consideration, to further local social, economic and/or environmental objectives.
- Short term leases (25 years or below), at less than best consideration, to further local social, economic and/or environmental objectives are not considered within this policy.

A Community Organisation for the purpose of this report can be one of the following:

- Voluntary and Community Organisations who are representative of the community, are asset locked (so the asset cannot be disposed of except to another community/charity organisation), have aims and objectives of the voluntary and community sector, have the capacity to manage a community space and provide social value and contribute to Council priorities.
- Town and Parish Councils
- Schools

The suitability of a Community Organisation and its governance arrangements will be assessed as part of the Assessment of Application Form and Business Case stage.

### **Who Can Apply**

Community Organisation as outlined above can apply for a Community Asset Transfer.

The Council may prioritise expressions of interest from organisations such as Town and Parish Councils because of the advantages of their current governance arrangements and community representation i.e. democratically elected.

Expressions of interest from single interest groups e.g. where a groups membership is not open to all in the community to join and/or all members of the community are not able to access the community asset, will not be accepted but the Council will work with the group to develop a more inclusive organisation.

**Please Note:** Expressions of interest from Social Enterprises with share capital, commercial or privately owned organisations will not be accepted.

### **What Assets will the Council Consider for Community Asset Transfer?**

The assets made available for Community Asset Transfer will be at the discretion of the Council but may include the following:

- Community Buildings
- Public Halls
- Park Land
- Woodland
- Public Service Buildings – e.g. Libraries, Children's Centres, Museums

The types of assets the Council may not consider for Community Asset Transfer include, but are not limited to:

- Sites identified in the Local Plan for uses such as Employment and Housing
- Strategic Assets such as Office Accommodation Hubs and Town Halls

### **The Basis of Transfer**

For the purpose of this policy, a Community Asset Transfer has two forms:

- Freehold Transfer – a freehold transfer of an asset would mean the entire ownership of an asset would transfer from the Council to the Community Organisation. Normally, covenants (restrictions) will ensure that it cannot be used for any other purpose than community use (and the ancillary business use that is permitted as described below)
- Long Term Lease - a leasehold transfer will give the Community Organisation the right to use the asset property for the duration of the lease. A lease can run for any period, but for the purposes of this policy typically, a 99 or 125 year lease will be issued. This option may be considered if, for example, the asset and/or site is shared, Council or otherwise, and if the Council feels that restrictive covenants may not provide sufficient protection for the future use of an Asset.

The terms for each transfer will be negotiated on its own merits. The Council would normally transfer the asset for nil consideration; however, the Community Organisation will be wholly responsible for the asset unless it's situated on a shared site, in which case a lease with a service charge arrangement may be more appropriate.

When an asset is transferred with a Council Service operating from it e.g. library or children's centre service, the Council will not pay a hosting fee i.e. rent or service charge for the continued use of the asset. The allocation of space for such services within an asset can be negotiated to ensure the viability of the organisations future plans and to align with the Councils objectives.

The Council recognises that in some cases there is a potential need for an element of commercial use within a community asset in order for a successful business model. Each business case will be assessed individually and a report brought forward to Cabinet for consideration.

All disposals of land and buildings need to comply with European Commission's State Aid Rules whilst applicable, however, in most cases the State Aid Rules will not be applicable.

## **Application Process and Support**

There are 2 possible triggers that can start the Community Asset Transfer process:

1. Community Initiated Transfer – where the Council receives a direct approach for an asset from a Community Organisation.
2. Council Initiated Transfer – where through a review of a service or identification of surplus assets, the Council decides that its preferred delivery model includes the transfer of assets to a Community Organisation and will therefore invite expressions of interest from third parties.

Both triggers will require an initial expression of interest and an outline business case to be completed.

Following a successful assessment of the expression of interest and if the asset is available for transfer the organisation will be notified and asked to bring forward an application and final business case. Support will be offered and tailored to suit the Community Organisations needs where development of the organisation and/or final business case is required e.g. Officer support to develop the business case and governance as required, and a grant of up to £5,000 to assist groups with pre-feasibility and/or legal costs.

At application and final business case stage a grant of up to 15% of the average of the previous two years Council revenue running costs (typically building costs, but not staffing, service delivery or capital investment costs) can be applied for via the Final Business Case.

At the same stage if the Community Organisation expect to apply for capital grant funding from an external organisation which requires matched funding e.g. lottery funding, the Community Organisation can apply to the Council for a loan facility to cover part or all of the match funding up to a maximum of £100,000

It would be an expectation that the grant or loan would be built into the Final Business Case and therefore will be assessed in preparation for a report being taken to Cabinet and if approved will be processed following the Cabinet decision and upon legal completion of the Asset Transfer.

Expression of Interest and Outline Business Case, Application Form and Process Flow Chart are available on the Council Website.

Whilst the Council will normally prioritise expressions of interest from organisations such as Town and Parish Councils because of the advantages of their governance arrangements and community representation i.e. democratically elected, support from the Council e.g. loan facility and grants will not normally be offered because of the alternative options open to Town and Parish Councils e.g. ability to raise precept, which aren't available to other Community Organisations.

Similarly, applications from schools may be prioritised, however due to school funding arrangements financial support from the Council e.g. loan facility and grants will not normally be offered.

## **Assessment of Application Form and Final Business Case**

An assessment of the application form and final business case will be undertaken by the Council and Partner/s. The assessment looks at 3 main areas:

- The Organisation and Impact on the Community
- The Asset
- Business Planning, Risk and Financial Assessment

The Asset Transfer Self-Assessment tool will be published on the Council website.



## **Decision Making Process**

Following a successful assessment of the organisations application form and final business case, the request for Community Asset Transfer under the criteria within **The Basis of the Transfer** will be taken to Cabinet for consideration.

Kirklees have developed a Community Asset Transfer Process Flow Chart, (Appendix A) to enable Community Organisations to understand the overall process as well as the Decision Making Process.

**Please Note:** The Council is committed to the successful transfer of assets to a Community Organisation. In the event of two or more organisations expressing an interest in the same asset, the organisations will be encouraged to work together and submit a joint application, however, if one or more organisation will not agree to a joint application and none of the applicants are preferred partners, a report will be presented at Cabinet where a decision will be made.

## **Additional Support and Information**

Additional information relating to Community Asset Transfer is available from the following sites:

### Locality

<http://locality.org.uk/our-work/assets/>

Locality enables members to use assets to bring long term social, economic and environmental improvement to their local neighbourhoods.

They have the ability to offer assistance and guidance in Community Asset Transfer and have experience across the UK. The web information includes case studies, 2 of which are Kirklees Assets.

### Funding

One benefit of Community Asset Transfer for a Community Organisation is the ability to draw down funding that is not available to the Council. The Open 4 Funding Kirklees webpage <http://www.open4funding.info/kirklees/> provides access to a comprehensive database of funding opportunities including government, lottery and other funding streams within Kirklees.

## Community Asset Transfer Process Flow Chart



The above flow chart shows a basic process for an asset transfer.

Support is offered by the Council at all stages of the process to enable to work through each stage in more depth.

The process is complex and timescales are difficult to estimate as each transfer has its own issues to overcome and terms to agree. Realistic timescales for a transfer from start to completion could be 10-12 months, though, if there are complex legal issues it can take longer.

Corporate Landlord

# **Asset Advancement Policy**

## **Asset Advancement Policy**

### **What is Asset Advancement?**

### **Benefits of a robust Community Asset Advancement Policy**

### **Assets Covered by the Policy**

### **How Buildings are Advertised**

### **Basis of the Transfer**

### **Rent / Market Value**

### **Existing Process for the Transfer of Assets**

### **Community Asset Transfer Process**

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### **Where More Than One Application is Received**

### **Decision Making Process**

### **Identifying and Assessing Potential Risks**

### **Monitoring and Reviewing the Transfer**

### **Monitoring and Reviewing the Policy**

## **Appendix 1 – Application for Asset Transfer of Council Owned Building or Land.**

## **Appendix 2 – Statement of Understanding**

## **What is Asset Advancement?**

Kirklees Council has a long history of empowering communities in managing community assets. The Quirk Review (Community Management and Ownership of Public Assets) of 2007 brought about a fundamental change in the way that Local Authorities viewed ownership of property within their areas.

Community Asset Advancement involves transferring the ownership of land or buildings from a statutory body to a community organisation at 'less than best consideration' – that is at less than its full market value – in order to further local social, economic and/or environmental objectives. Transferring an asset to a local community organisation on long leasehold through to a freehold transfer can unlock community enterprise, encourage volunteer commitment, help utilise local intelligence, and allow these organisations to attract the necessary capital investment to create a thriving community.

This policy aims to provide community groups with the information they need to take them through the procedure of asset transfer.

## **Definitions**

An 'Asset Advancement' for the purpose of this report is defined as;

The transference of responsibility for a council owned building or area of land to community management by means of an agreed long term arrangement that suits the needs of the community, the managing association and the council.

For the purpose of this policy 'Community' Management is defined as 'Third Sector' Management and will encompass:

- Voluntary and Community organisations who are representative of the community and have aims and objectives of the voluntary and community sector and have the capacity to manage a community space.
- Social Enterprises.

## **Benefits of a robust Community Asset Advancement Policy**

The benefits associated with any application for asset transfer will be assessed in terms of the economic, social or environmental wellbeing of the community.

## **Benefits to the people of Kirklees:-**

There can be many benefits derived by the community when a community group or voluntary sector organisation has an asset transferred to them; usually an increase in opportunities for the community and better, more responsive services that engage with and empower local people. Additional benefits include increased local pride and ownership. This can attract new investment, reinvigorate the local economy, deliver significant positive outcomes for communities empowering them to become more self-sufficient, promote independence and help to create and maintain

sustainable thriving centres. Many of the assets that are transferred may have the opportunity to reinvest surplus income within the towns.

#### **Benefits to the Third Sector:-**

Transferring the ownership (via a range of transfer arrangements) can strengthen the organisations' confidence and community ties. It can also raise the profile of the organisation and improve credibility with local people and stakeholders. The organisation may have access to external grants (for building refurbishment or to support staff training and development) that are not available to the Council. Ownership of a physical asset can also provide sustainable income generation opportunities and help organisations achieve greater financial stability and escape short term grant dependency

#### **Benefits to the Council and other strategic agencies:-**

The benefits of asset transfer are both property and service focused. With regard to the provision of services asset transfer will provide opportunities for long term working between sectors (statutory and voluntary). Independence would enable organisations to identify and respond to ever-changing local need and help to strengthen community anchors. Transfer would enable the delivery of more accessible and responsive local services. The Council is likely to experience lower outgoing costs on building management, maintenance and other property related costs such as business rates.

#### **How the buildings are advertised**

When Council property becomes surplus, in accordance with Community Advancement policy, it may be appropriate for the council to invite interests from parties who may wish to take on the management and running of the property as a community asset.

#### **The basis of transfer**

'Transfer' may take a number of legal forms. At one extreme, a transfer of the 'freehold' of a property would mean the entire ownership of the building would pass from the Council to the community based group. However, restrictions (called 'covenants') would normally ensure the property remained available to local people to use and prevent it being sold for development. At the other end of the spectrum, a 'licence' would allow a community based group to use a building, but sharing its use with other groups or individuals. In between these extremes, a 'lease' will give a community based group the exclusive right to use the property for the duration of the lease. A lease can run for any period - commonly from a few months, up to 999 years. At the end of the lease or licence the building will either return to Council control or a further lease or licence could be negotiated. Should the management of a building fail then the council would accept the building back into its portfolio regardless of the transfer basis.

It is recognised that the needs of the community will be vast and varied and that there will be no simple solution to suit all circumstances.

The Council will determine rent payments or purchase costs based on the buildings market value. However, the Council will normally expect community based groups to be responsible for all running costs of the building, including repairs, maintenance and all insurance.

The Council is committed to the successful transfer of assets to community based groups. However, it is also recognised that running a building is an onerous commitment. The Council does not want local people to be deterred from engaging in community asset transfer because they are apprehensive about the possible risks of transfer. Therefore the binding agreement leading to Community Asset Transfer, will include (a) transfer return of building should the venture cease, (b) the Council retains the right to cease the agreement should conditions of transfer be breached and (c) appropriate covenants regarding future use of property. In the case of (a) dilapidations liability may well apply.

### **Rent / Market Value**

All rents / market valuations will be set based on a starting point of full market rent / value, with a transparent discounting framework based on key areas that include (but not limited to):

- Evidence of the benefits that the applicant will bring to the local community; this will be in the way of a 'statement of Understanding' which will be an agreement between the Building occupier and the Council. Appendix 2
- The expectation of the group to be responsible for all running costs of the building, including repairs, maintenance and all insurance.
- The commitment from a group to invest in the building during the transfer period.

If the Council has carried out any surveys on the building (condition survey or disability access audit) applicants will be provided with copies on the basis that there is no responsibility to any third party and no warranty or liability on the part of the Council.

It will be made clear that where a survey exists, the Council will share their survey with the applicant on the condition that if the applicant chooses to rely on this alone, and not commission an independent survey, then the Council cannot be held liable for anything detrimental to the applicant that may transpire at a later date.

### **Existing Process for the Transfer of Assets**

Leasing buildings to the Third Sector is not a new concept for Kirklees Council. However currently there is no formal policy or procedure in place or a need to ensure community benefit and there are many differing lease arrangements that have been agreed, perhaps inconsistently, over the years.

Once the Community Asset Transfer policy is adopted the Council will continue to offer a range of options for consideration and negotiation in a transparent and consistent way.

Current leases within community assets will be expected to adopt the policy when current leases expire or when negotiating a lease on an asset they are currently occupying.

## **Community Asset Transfer Application Process**

The process will require an application form (Appendix 1) to be completed to gather more details about the applicant. A Council officer will support the applicant to gain further evidence (where applicable) of key documents. Support will be offered where development of the organisation is needed. The approach taken will be a supportive partnership one and will be the beginning of an ongoing relationship between the Council and the potential transferee. The process will include a joint risk management assessment considering risks to the Council and the applicant.

Exact documents required will vary depending on type of organisation and whether the organisation is already operating or not.

Examples include: (note – this is not an exhaustive list)

- Evidence (an action plan, proposal or business plan) detailing how transfer of the asset would benefit the local community
- Checking that the applicant has a robust business case
- Evidence of a financial forecast
- Ensuring that the applicant has a sound governance structure
- Checking that the applicant is aware of (and has availability of) skills required to manage and maintain a building
- Confirming that the applicant has considered all elements within the Premises Pack
- Risk Management Assessment
- A Cost Benefit Assessment, completed in partnership, to ascertain the rent level that would be levied if the asset was to be transferred
- Detailed discussion around type of transfer required (and lease length if applicable)
- Access to accounts (either via Charity Commission website or direct from the organisation if accounts not available on line)
- Evidence of relevant policies and procedures (e.g. Child Protection if applicable)
- Applicants will be expected to demonstrate how they will maintain the asset and how they will adhere to legal requirements around Health & Safety and insurance.

A framework of support, based on the applicant's individual need, will be put in place to support any applicants who are considered unsuitable to proceed. They will receive details of which areas they need to strengthen in order to be considered for Asset Transfer, and offered names of agencies that may be able to offer support.

Applicants who successfully meet the requirements will be able to proceed towards an Asset Transfer and following negotiations and agreement on specific details the applicant will be encouraged to instruct a solicitor to action their behalf.

Any applicant that is unable to satisfy any part of the process will be informed what is required to remedy the situation and will be offered advice and support from either Council officers or partner agencies.



All applicants will be advised of current capacity building support available within the Council and through voluntary agencies.

### **Consultation**

Upon receipt of a business plan, the Community Engagement Team will provide intelligence and information on the viability of the group, this information will be included in the decision making process. Ward Members will also be consulted but will have no power over decision making.

### **Timescales**

In order to ensure an efficient transfer, it is necessary to apply a 12 month timeframe for the Asset transfer. The timescales will commence on the receipt of expression of interest and it is expected that the transfer will take place within the 12 month timeframe.

### **Where more than one application is received**

If the Council has received more than one viable application for a single asset, the applicants will be approached and requested to consider a joint application if they are able to co-locate.

If a joint application is not feasible then both applications will be presented at Cabinet where a decision will be made.

### **Decision Making Process**

If successful in their application, specific transfer details will be negotiated and the applicant will be advised to obtain independent professional advice.

The evaluation of the application will take place between Communities, Transformation and Change and Place Directorates.

Cabinet approval will be required prior to Community Asset Transfer completion.

### **Identifying and Assessing Potential Risks**

Based upon the information and intelligence provided during the application process, the Council will identify and assess potential risks of transferring the asset including (but not restricted to) the following:

- Potential to disadvantage particular individuals or groups or have a negative impact on the local community
- Potential to have a negative impact on community cohesion
- Conflict with the Council's Corporate policies
- Conflict with legal or regulatory constraints
- Potential conflict with other funders
- Potential loss of, or conflict with, existing community services
- Uncertainty around the capability of the applicant to manage the asset
- Potential for the asset to become a financial liability for the applicant

- Uncertainty around the capability of the applicant to deliver the promised services/outcomes
- Lack of Value for Money
- Potential breach of restrictive covenants
- Loss of existing revenue /income stream

If any one of the above, or any other risk(s) identified, cannot be eliminated or sufficiently mitigated the Council will have the right to decline an application.

### **Monitoring and Reviewing**

All transferred assets will have an appropriate level of monitoring and reviewing agreed within the terms of transfer, this is to ensure:-

- That the asset continues to be used for the benefit the community.
- That the asset is maintained (or improved) and that Health & Safety and all other lease terms are complied with.

### **Monitoring and Reviewing of the Policy**

The policy will be continually monitored. The policy will be reviewed after 6 months after implementation to incorporate learning from Asset Advancement projects.