

Appendix A

DRAFT ASSET TRANSFER POLICY – WYRE FOREST DISTRICT COUNCIL

1. Why have an asset transfer policy?

1.1 The purpose of this policy is to set a transparent framework to enable the assessment of all requests from Voluntary and Community Sector (VCS)¹ organisations to manage or own Council assets. An asset is land or buildings in the ownership of the Local Authority.

1.2 The Council recognises the potential benefits that assets can bring to the community, to the organisation proposing the asset transfer and to the Council. Changing ownership or management of an asset potentially 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. It may offer additional opportunities to secure resources within an area, attract inward investment and to empower local citizens and communities.

1.3 This policy seeks to balance the particular benefits of any proposal from a VCS organisation to manage or own an asset, against the wider benefits to the community of Wyre Forest through the expenditure on other services or priorities made possible as a result of a 'commercial' disposal. When making its decision the Council will seek to balance community benefit, the risks involved in any such transfer and the opportunity costs i.e. what will have to be foregone to enable the transfer to proceed.

2. The legal position

2.1 Section 123 of the Local Government Act 1972 imposes a legal obligation not to dispose of land (other than tenancies of seven years or under) for consideration "less than the best that can reasonably be obtained" – unless the Secretary of State gives consent to such a disposal at undervalue. The Courts have taken a restrictive interpretation of "consideration", effectively requiring it to have commercial value of some form to the Council in question. The General Disposal Consent 2003 relaxes the situation by giving blanket general consent of the Secretary of State to under value disposals, subject to certain pre-conditions clearly linked back to the well-being powers in the LGA 2000:

- The Council "considers that the purpose for which the land is to be disposed is likely to contribute to the achievement" of any or all of the promotion or improvement of the economic, social or environmental well-being of the whole or any part of its area, or of all or any persons resident or present in its area
- The undervalue is no more than £2m.

2.2 The consent gives authorities autonomy to carry out their statutory duties and functions and to fulfil such other objectives as they consider to be necessary or

¹ The definition of the VCS used by the Home Office is: "Registered charities, as well as non-charitable, non-profit organisations, associations and self-help groups and community groups. Must involve some aspect of voluntary activity, though many are also professional organisations with paid staff, some of which are of considerable size. Community organisations tend to be focused on particular localities or groups within the community; many are dependent entirely or almost entirely on voluntary activity." This policy does not apply to land for affordable housing or to private educational institutions or government led charities (e.g nhs institutions)

Appendix A

desirable but authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people. None of the above removes the Council's discretion in deciding whether or not to dispose of an asset in the first place.

3. What does “transfer” mean?

3.1 This policy covers scenarios where the management / ownership of a building, or piece of land is required by a VCS organisation in order to promote a particular community benefit (see 4. below). It does not refer to the letting or leasing of rooms within Council owned or managed premises. These arrangements are covered by Wyre Forest District Council's Terms and Conditions for Civic building hire.

3.2 The Council recognises that asset transfer may cover a spectrum of arrangements ranging from:

- Licence to occupy
- Short / medium term lease
- Long lease
- Freehold (i.e. sale)

3.3 The Council will deal with all proposals for asset transfer on a case-by-case basis. Each case will be considered on its merits – and the most appropriate form of disposal will be explored with the organisation, always having regard to the business case presented and the Council's responsibility to manage its property assets for the benefit of all of Wyre Forest communities.

3.4 Where it is agreed that sale of an asset is the preferred option in most cases this sale will be at the market value for the asset taking account of planning potential and market conditions. Where necessary and appropriate the District Valuers Service may be asked to provide an independent valuation.

3.5 The Council recognises however that it can demonstrate its support for asset transfer in a variety of ways. For example the Council can support transfer by dealing with VCS organisations on a one to one basis (negotiated sales should not be assumed as being at less than market value), or by bearing the costs of retaining an asset for a defined period of time to enable an organisation to finalise its business case.

4. What factors will the Council consider when assessing requests for asset transfer?

4.1. The asset transfer decision is essentially a choice between:

- Retention of the asset
- The expenditure on other services or priorities made possible as a result of a 'commercial' disposal
- The benefits generated by the transfer of the asset to the community

4.2 In assessing proposals for asset transfer the Council will want to carefully consider the **relative risks and benefits** of these options.

4.3 Critical to the success of any transfer is having a clear **rationale** for the proposal. The Council will need to have a clear understanding of the community benefits of any proposal and how these will be measured before it will consider the release of an asset

Appendix A

for community transfer. This will need to be clearly articulated as part of the business case.

4.4 The Council recognises that communities may be geographical or communities of interest. In some cases there may be tensions between the two. The Council will look for evidence of positive engagement with local geographical communities, but accepts that in some cases a further balance may be between the interest group involved and local support for a proposal. Any proposal which involved a change of planning use would still need to go through the proper planning process.

4.5 The Council will want to establish a clear **link between the proposal and its priorities** as expressed in the Corporate Plan, the Local Area Agreement and the Sustainable Community Strategy. In order to demonstrate this link the Council will usually expect that the proposal has the support of the Legal and Corporate Services Directorate and that this support is provided as a written statement as part of the Business Case.

4.6 The Council will need to see **evidence** that the organisation proposing the transfer is **effectively managed**, and has the appropriate structures in place to ensure the **good governance** and long term **sustainability** of the organisation.

4.7 The Council will require a **robust business case**, which demonstrates the ability of the recipient to manage the asset effectively, including an assessment of the financial and organisational capacity of the organisation.

4.8 The Council has prepared a framework business case, which sets out the information that will be required in order to assess the proposal. This is attached as Appendix One.

5. What process will the Council use to assess requests?

5.1 The Council has developed a process for considering applications from VCS organisations to lease or own council assets.

5.2 A simplified, indicative process map is attached as Appendix Two. The Council reserves the right to vary this process from time to time in response to the nature of the request being made.

5.3 The Council has developed a set of model criteria against which it will assess the benefits of any asset transfer proposal. These criteria will be weighted as appropriate, dependent upon the asset under consideration and any other appropriate weighting criteria that the Council may wish to apply. The model criteria are attached as Appendix Three.

5.4 A key element of the assessment will be an appraisal of the business case, including the identified risks and statements about mitigation of such risks. The Council will want to see evidence that the proposal is sustainable in the long term both in financial terms and in the organisations capacity to sustain its proposals in the face of turnover of volunteers or staff.

5.5 The Council has used best practice tools to develop a “checklist” approach to this assessment. This is attached as Appendix Four.

Appendix A

5.6 Ultimately however the decision on whether to proceed will be based on a judgement by the Council of the relative benefits to the community of the options set out in 4.1. above.

6. Ongoing monitoring of transferred assets

6.1. Where an asset is disposed of at less than full market value, or where a leasehold has been negotiated, it is likely that some form of on-going monitoring will be necessary.

6.2. This is because the articulation of social benefit is likely to be a *prediction* of future uses. The Council will be seeking to ensure that the asset is used on an ongoing basis for the benefits that were critical to the agreement of the transfer and that the interests of the wider community are safeguarded for the future.

6.3. There are a range of methods available by which this can be achieved, for example through “expectations” documents or Service Level Agreements. The terms of the lease or freehold may include clauses that would safeguard the future use of the asset from the perspective of the community and the Council to achieve the benefits envisaged.