

COMMUNITY ASSET TRANSFER & USE POLICY – V6 25 2 20



Aim

This is an updated policy to govern the use of certain council owned assets, especially those which are vacant, surplus or suitable for long-term or meanwhile uses that could be utilised by the community. It sets out the Council's requirements for making decisions about leases.

This policy is aimed at organisations that provide services for the benefit of citizens in their community without distributing profit to private owners. This is sometimes referred to as voluntary sector, third sector, social enterprise sector or not-for-profit sector.

The Council is sometimes asked to make special considerations for these types of organisations and this policy sets out the requirements and processes for the Council to make decisions that are fair and transparent. This policy would not normally apply to the Council's commercial property estate where a full market rate would be expected.

Background

The Council operates in an environment where resources are scarce and it must make increasingly difficult decisions about balancing investments that increase community resilience with the costs of providing services. The impact of these decisions has implications across the Council.

Council decisions are guided by strategic policy. The Council's prime policy is the Plymouth Plan which collates and integrates policy from all areas of the Council. This policy is guided by, and refers to The Plymouth Plan.

The Council owns and manages assets whose use falls across multiple departments and within each department, officers are assigned to working with tenants. The departments include:-

- Arts and Culture
- Green and Blue Estate
- Youth and Community centres
- Play and childcare
- Economic Development
- Wellbeing and Family Hubs
- Libraries
- Corporate Estate
- Street Services

The Council makes assets available to the public in different ways. Some are available for hire on an hourly or daily basis, others are leased longer term. Leases can be short (including meanwhile use of up to 6 months), medium (up to 7 years) or long term.

Generally, the same requirements and processes apply for vacant properties as they do for lease renewals (except where a lease has statutory protection under the Landlord and Tenant Act 1954).

The Council is legally required by virtue of section 123 Local Government Act 1972 to get 'best consideration' for leases over 7 years. This is usually achieved by properties being publically advertised and leased at full market rent where possible. Assets that are managed commercially by the Council fall outside of the remit of this policy.

Allocating assets for community use

In allocating assets, the desirability is to see better managed community facilities and improved relationships with leaseholders to ensure cohesion with our communities is achieved and job opportunities are created through the third sector.

Indeed, community ownership of land and buildings can transform neighbourhoods, support thriving community businesses and unlock the power of community.

Community Asset Transfer (CAT) is the transfer of a publically owned asset to a community organisation often at less than market value or for nil consideration. There are four possible scenarios that could apply to making a CAT.

1. The Council advertises (as opportunity arises) the availability of an asset that is being considered for CAT
2. The existing tenant applies for CAT
3. Application for CAT of a property that is not already in 'community use'
4. Meanwhile and hiring use

A decision is made internally about whether an asset should be primarily for community benefit at a subsidy by the Council. When choosing the best organisation as a tenant factors to be considered are:

- The Council may seek an organisation to run an asset on their behalf
- There are no substantive barriers to prevent councils transferring assets into community management or full ownership.
- The Local Government Act 1972 Section 123 specifies that a council must dispose of land for the best consideration reasonably obtainable but the Localism Act 2000 allows disposals at less than best consideration for social, economic or environmental reasons up to an undervalue of £2m which would mean that land can be let to community organisations at below market value where it is clear that it is for the good of the community. Any undervalue in excess of £2m requires the consent of the Secretary of State.
- If there is more than one organisation interested in a property then an officer from Land & Property will be consulted.
- Other assets that could be transferred included redundant police stations, old hospital sites, empty shopping parades and closed down pubs on estates.

If an asset is let at an undervalue because of the social, environmental and well-being benefits it brings to a community there is a possibility that there will be illegal State Aid unless one of the exemptions applies.

Council requirements

Length of leases

Short /meanwhile use and hiring

Short term leases of up to 6 months (to avoid security of tenure) are generally suited to temporary occupation of empty town centre retail premises by non-commercial occupiers, who will be able to contribute to town centre vitality but who would otherwise be unable to afford normal commercial rents.

These may include voluntary or charitable groups and are leased / hired on a no profit-no loss basis. It is normally expected that there will be ongoing advertisement of the asset to commercial tenants.

Long-term use

The Council is required to get best consideration on leases over 7 years. It is recognised that longer leases can be advantageous to raise capital.

In the existing CAT policy, as a guide, a lease of a minimum of 10 years and up to 35 years will be considered for community asset transfer. This policy updates the 2013 CAT policy to include a wider range of scenarios.

More detailed guidance is provided by Power to Change.

<https://www.powertochange.org.uk/research/understanding-cat-communityorgs/>

Process

The process must be fair and transparent to all.

Annex 1 shows a flow diagram that explains the two registers kept by the Council – one of its assets, the other of Expressions of Interest from community organisations who are looking for land or property to use for the benefit of the community.

The process is concerned with:-

- Information about Assets
- Registering interest in using a Council asset
- Decision making
- Avoiding challenge
- Agreeing rent, maintenance and community benefit
- Monitoring

Information about Assets

Through the Council's website a list of all the Council owned properties is readily accessible and includes tenure details and whether the land or property is being used by the Council, used by the community or is a commercial asset.

<https://www.plymouth.gov.uk/landandproperty/listcouncilownedproperties>

Register of Expressions of Interest

Annex 2 sets out the subheadings that community group or organisations should use for compiling an expression of interest. In order to assist with this exercise, council officers are on hand from the appropriate department linked closest to the type of benefit being sought – e.g. for young people, wellbeing, economic development. It is expected that applicants who are seeking tenancies at below market rent would be engaged in a Business Support programme

Decision Making

The process of decision making will be shared between designated officers and Members in line with the Council's Constitution requirements for financial decision making.

At the time of writing this policy, decision making thresholds where properties are to be leased at less than best consideration are applied to the total value of the lease for its entire duration. They are:-

- Strategic & Service Directors – undervalue up to £200,000
- Cabinet Portfolio Holder Member – undervalue between £200,000 to £3 million
- Cabinet decision – undervalue over £3 million

As part of the process, Ward councillors of the asset location would be consulted and their comments taken into consideration before any decision is made.

Avoiding Challenge

The 'Expression of Interest' and 'Business Case' process provides a transparent assessment framework where more than one organisation has expressed interest in an asset.

Annex 3 provides the means of making a full business case based around the 'HM Treasury' five case model for a business case. The hyperlink below helps users with a short guide in non-technical language for assessing business cases in 'Plain English'

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/190609/Green_Book_guidance_short_plain_English_guide_to_assessing_business_cases.pdf

This provides a transparent assessment for comparison of business cases if there are competing applicants. It allows the business case to be built gradually.

Setting Rent, Maintenance and Community Benefit

Where occupation at an under-value is being requested, the rationale must be based around the economic, social or environmental wellbeing that the proposed use of the asset would bring to the area. Subsidised occupiers should be receiving business support with a view to creating a business development plan for increasing income to enable commercial sustainability and growth, and payment of a market rent.

There will be a requirement for a full repairing and insuring lease where the tenant will be responsible for the maintenance and repair of the assets either directly or by enforcing repairing covenants contained within occupiers' agreements.

A linked 'Service Level Agreement' will specify key performance indicators to measure the community benefit derived from the asset.

Service Level Agreements (SLA) for Community Benefit

The purpose of the SLA is to provide an addendum to the lease/licence that monitors the delivery of certain services and outcomes for community benefit and performance targets by the community occupier in return for a subsidy.

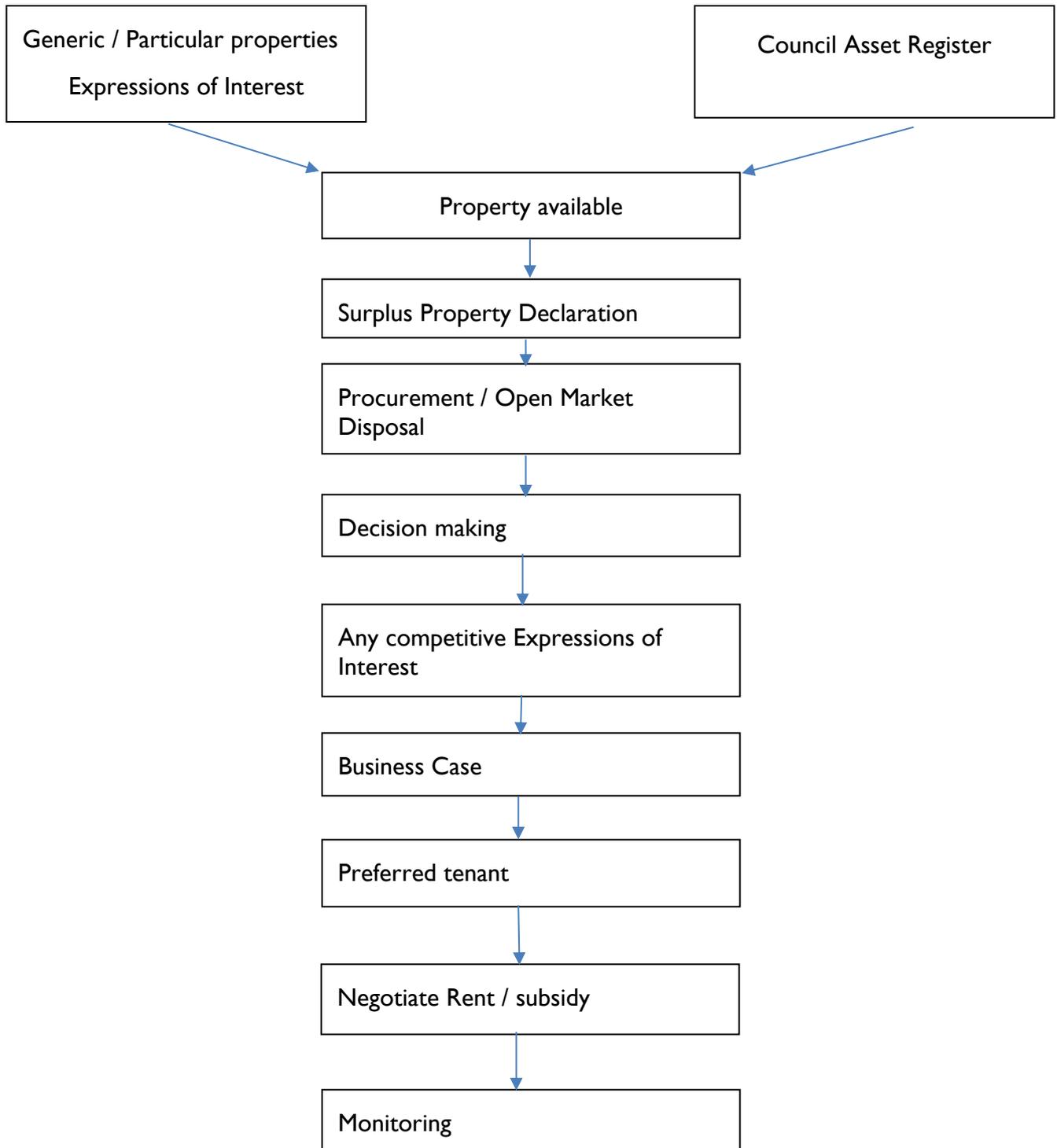
A lead Council officer will be assigned to serve as a point of contact for the tenant and will meet at least twice a year to ensure that any issues arising from the SLA are properly monitored. Measurable outcomes could for example include the level of community engagement and diversity / inclusion metrics.

The nature of the Agreement will be proportionate to the value of the subsidy.

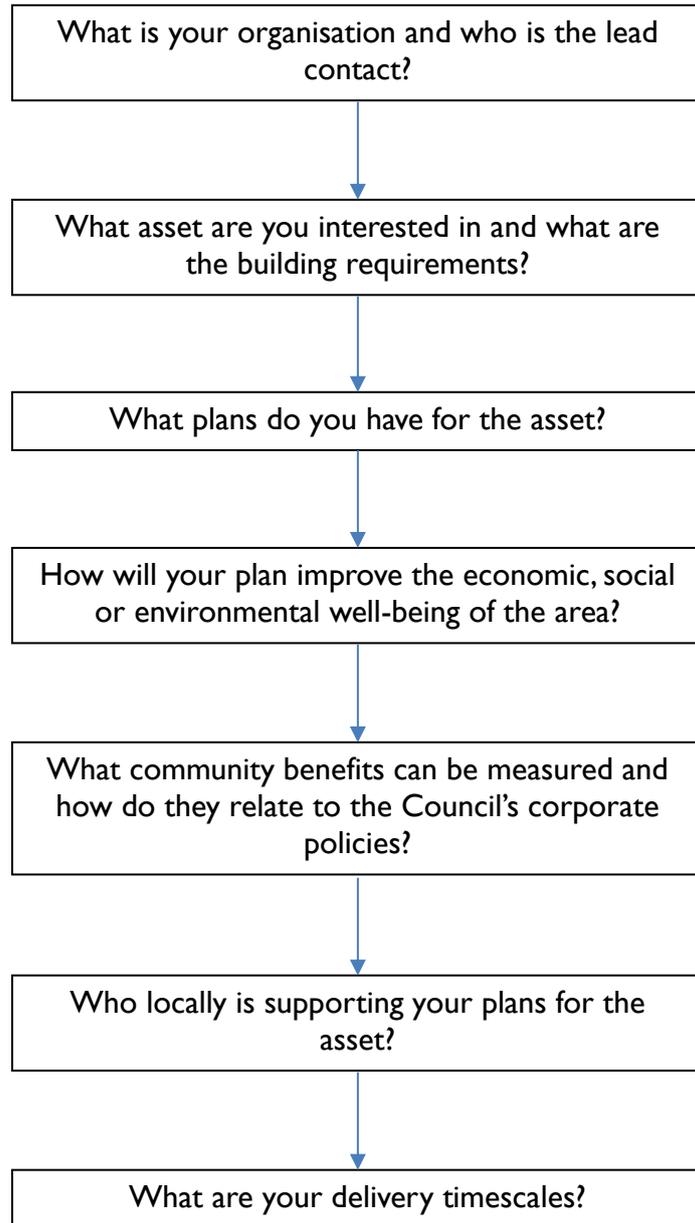
Monitoring

Nominated account managers, according to the sector served (community development / economic development / arts & culture / wellbeing / green & blue estate), will provide on-going support and use the SLA monitoring meetings (as a means of establishing a business relationship) to maximise community impact as well as encourage tenants to engage with business support programmes so that they become commercially sustainable and grow.

Annex I



Annex 2 - Expressions of Interest



Annex 3 Business Case

The Business Case is based on a 5 case HM Treasury model.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/190609/Green_Book_guidance_short_plain_English_guide_to_assessing_business_cases.pdf

The stages below should revise / develop these 'cases' as the business case progresses

1. Strategic Case
2. Economic Case
3. Commercial Case
4. Financial Case
5. Management Case

