



## South Somerset District Council

### Asset Transfer Policy

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<b>Programme:</b>	Refresh of Asset Transfer Policy to incorporate implementation checklist, process flow chat and guidance from Asset Transfer Unit
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## SSDC Asset Transfer Policy

The purpose of this policy is to provide a transparent, robust and strategic framework to enable Asset Transfer decisions to be made, together with a clear process for both SSDC and community organisations to progress with Asset Transfers, with long term sustainable benefits both to the Council and the community.

### Background

Asset Transfer refers to the ability of local communities to acquire land and buildings from the local authority property portfolio, normally at a discount, in order to deliver local services that meet local needs.

Local authorities were given discretionary powers under the Local Government Act 1972 to dispose of land in any manner they wish, normally for the “best consideration” obtainable. However, the General Disposal Consent 2003 permits the local authority, in certain circumstances, to transfer land at an “undervalue” or “less than best consideration” without the need to seek specific permission from the Secretary of State. This is subject to the condition that the “undervalue” does not exceed £2 million and that land is held under powers which permit disposal under the 1972 Act.

Under the Act, the authority can transfer its land/property at less than best consideration if it is likely to contribute to the achievement of any one or more of the following:

1. the promotion or improvement of economic wellbeing;
2. the promotion or improvement of social wellbeing;
3. the promotion or improvement of environmental wellbeing.

These conditions mirror the wording of the “well-being power” in section 2 of the Local Government Act 2000

The spectrum of transfer options can range widely, from a short term leasehold to freehold acquisition, but at the present time SSDC has chosen to only consider transfers on a leasehold basis.

### Context

The previous government had been promoting the concept of asset transfer to communities through a number of different reports since 2003, including:

- The DTI Social Enterprise Strategy: Social Enterprise: A Strategy for Success (2002)
- In 2006, 2 reports from the **ODPM/Home Office** recommended the need to promote more widely the benefits of community ownership and management of land and property assets
- The Quirk Review – **Making Assets Work** – in May 2007.
- A £30 million **Community Assets Fund**, managed by the Big Lottery Fund in 2007, to facilitate transfer of management or ownership of local authority assets by providing capital for refurbishment of properties.

More recently, the Coalition Government has been encouraging community-based organisations and volunteers to play an increasing role in delivering services and improving their local area, as part of its vision for the 'Big Society.'

The pressures on local authority finance have also focussed attention on the opportunities for voluntary sector/community groups to deliver services in a more cost effective manner, whilst at the same time developing active communities.

Community and voluntary groups are themselves being made aware of the Governments promotion of asset transfer through organisations such as the Development Trusts Association (DTA).

In 2010, the government's Asset Transfer Unit launched the final round of its **Advancing Assets** programme, which will provide specialist support for local authorities and their third sector partners considering community asset transfer. Although the programme is now closed to new applicants, the ATU can help local authorities with producing community asset transfer strategies, developing systems for valuing transfers and can support TSOs with technical and business planning advice.

The council recognises that the way its physical assets are managed can have a significant impact on local services. The council considers community organisations as key partners in the delivery of services and recognises the role of community organisations in ensuring strong, sustainable and cohesive communities.

Our Corporate Plan includes a target **4.22.2** Continue asset transfer to the third sector (3 buildings by 2012).

### **What are the benefits?**

Community benefits of acquiring assets include:

- The ability to plan longer term, generate income and develop the capacity of local groups – strengthening the local community, local communication and involvement
- Greater financial stability through having ownership (or long term security through a lease) of a physical asset. This financial sustainability can help the organisation become less dependent on grants, provide collateral for further borrowing and opportunities for further growth.
- Attract external grants/funding currently not available to local authorities
- Restore and maintain buildings using local trades people
- Provide a more accessible and responsive base from which to deliver local services
- Deliver social, economic and environmental benefits in response to local community needs such as providing local employment and purchasing opportunities, advance neighbourhood community/regeneration plans or encouraging new business

Benefits to SSDC include:

- Attract new investment into an area and provide an impetus for wider regeneration activities in the area

- Could ensure the sustainable refurbishment of a number of otherwise out-of-date buildings, redesigned and managed to meet the needs of the local community.
- Opportunities for more flexible, responsive service delivery out in local communities
- Reduction of property maintenance and security costs
- Reduction in grants currently “silted up” in payments to organisations renting properties from SSDC
- Better partnership working with the third sector
- Improved sense of place and maintaining quality of place where it might otherwise depreciate in the face of spending constraints

Typically, organisations that would be considered appropriate are Voluntary and Community Groups/Associations, Trusts or Charities, Social Enterprises or regeneration groups and Community Interest Companies. Town or Parish Councils are also a possibility and SSDC will look at these on a case by case basis.

To be successful, asset transfer requires a long term partnership approach on the part of the council and the community organisation.

### **The risks**

Not every building or piece of land will be an asset for the community, in fact some will represent liabilities (e.g. poor condition, wrong size/location/configuration, listed, expensive to maintain etc.), creating a drain on resources, generating too little income and potentially setting the group up for failure. To mitigate this risk the community group will need to provide a robust business plan that is deemed to be achievable. Equally, SSDC will make a full assessment of the building’s condition and future maintenance liabilities, and will not withhold or delay in providing information on historical running costs and condition surveys, to assist groups in preparing their ‘business case.’

Community access to assets should not be restricted through the process of transfer. Legal agreements should be in place to ensure they are not sold on or privately appropriated, except with the authority’s consent and relevant financial clawback provisions, notwithstanding that ‘asset-lock’ provisions are provided in the common legal forms that guarantee assets remain in community benefit in perpetuity.

There is also a risk that the Government’s initiative will create expectation with community groups of a host of property being available to them. Our property portfolio is subject to regular review and any surplus property is disposed of through normal procedures, of which community asset transfer is one option.

In some instances an asset transfer could mean the loss of rental income. However asset transfer may lead to a reduction in both the Council’s property costs and the grant monies currently paid to organisations renting those properties.

### **The Policy**

This policy is an addition to the existing Disposal Policy for Council Owned Property and forms part of the Asset Management Plan. It was adopted by SSDC District Executive in July 2007.

- The Council will look through its ownership of land and property and explore ways of achieving community objectives through asset transfer, recognising that “best consideration” in terms of asset use and disposal is not necessarily always measured simply in monetary terms.
- Using discretionary powers the Council will (where appropriate and compatible with the General Disposal Consent 2003) include the option of community management or ownership within the options appraisal process for surplus, underused or other suitable assets where such disposal is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of its area where:
  - a community partnership can be entered into based on public access to and use of an asset;
  - the local body, group or association is properly constituted and managed and is prepared to enter into an appropriate agreement with the Council; the charity must be incorporated\* with a business like structure and include succession planning for its board/trustees
  - the group provide a business plan that is acceptable to the Head of Finance; the business plan must be realistic and include no future expectation/request for funding from SSDC, unless wider service re-design makes it desirable to do so, or new project work which is suitable for a grant application is proposed. Where the business plan is a radical change from before the transfer, the group need to demonstrate their ability to raise the revenue. Evidence will be needed to reflect future maintenance and ability to fund repairs.
  - there is evidence that both the future management of the building and the services delivered would improve/respond better to local needs
- Transfers will be on a leasehold basis,
- Where land or buildings may have future development value the Council will covenant with the group to safeguard its long-term interests.
- Before consideration of asset transfer, in each instance, the Council will:
  - assess the building’s condition and future maintenance liabilities;
  - ensure that legal agreements are in place to ensure the asset(s) are not sold on or privately appropriated, except with the authority’s consent and relevant financial clawback provisions.
- Once the property is transferred SSDC will continue its annual inspections, in particular the general maintenance of the property.
- The District Executive will have absolute discretion in determining those assets that can be considered for transfer.
- Each party will bear their own legal costs.

## Implementing the Policy

It is likely that enquiries will in the first instance be made through the SSDC Area Development Teams as they are generally in contact with community groups seeking to benefit from asset transfer.

To ensure that the policy is implemented consistently, and any opportunities for asset transfer fit within our legal and policy framework, the following criteria/checklist should be implemented:

Criteria	Score
Do the multiple benefits of transfer, for the group, the LA and the community fit with the Council's Corporate Priorities?	Yes/No
Is there already a strong partnership between the local authority and the relevant third sector organisation?  <i>NB. It is important that there is historically a strong partnership which shows a good track record of service delivery, governance and financial management, or, if a new group, the track record of the lead individuals will be considered</i>	Yes/No
Does the local authority currently own the asset?  <i>The asset must be held under powers which permit disposal under the 1972 Act and is compatible with the General Disposal Consent 2003</i>	Yes/No
Does the transfer comply with state aid rules?  <i>The local authority must ensure that the nature of the "subsidy" complies with state aid rules, particularly if there is no element of competition in the disposal process</i>	Yes/No
Is the transfer to one Third Sector partner only?  <i>NB. Assets will only be considered for transfer to one party/accountable body</i>	Yes/No
Is the Third Sector partner one of the following: <ul style="list-style-type: none"> <li>Registered (Incorporated) Charity?</li> <li>Town or Parish Council</li> </ul> <i>NB. Evidence of the legal status of the organisation must be provided. We can advise on this. Town &amp; Parish Councils may be considered in exceptional circumstances</i>	Please state
Has initial feasibility work with the area CDO been undertaken? <ul style="list-style-type: none"> <li>Is the asset the most appropriate to meet the needs of the Third Sector and wider community?</li> <li>Will the asset offer real opportunities for successful and independent Third Sector organisation to become more sustainable in the longer term?</li> <li>Will the asset provide opportunities for improved service delivery?</li> </ul>	Yes/No
Does the Third Sector organisation have the capacity to manage the asset effectively? Have the risks been assessed?  <i>A detailed Business Plan is required as set out in the policy above</i>	Yes/No
Will the asset be made fully available to a wide range of local groups/people, especially those working with disadvantaged communities?  <i>As set out in the business plan and constitution of the managing group</i>	Yes/No
Will the asset be maintained / refurbished appropriately. Is there a future maintenance plan and the ability to fund repairs? <ul style="list-style-type: none"> <li>to reflect the needs of users</li> <li>to reflect sustainability e.g. use of materials, waste reduction, minimise energy use</li> </ul> <i>Evidence must be provided. NB. SSDC will carry out a full conditions survey prior to any transfer</i>	Yes/No

Is there adequate insurance cover?	Yes/No
<i>Evidence must be provided</i>	
Have all the suitable transfer arrangements been explored (e.g. length of lease etc.)	Yes/No
Do the objectives of the Third Sector organisation meet with the Council's Corporate Aims & Objectives, and fit with SSDC policies on Community Grants?	Yes/No
Has the Council covenanted where land or buildings may have future development value, to safeguard its long-term interests?	Yes/No
Has SSDC assessed the building's condition and future maintenance liabilities?	Yes/No
Are the relevant legal agreements in place to ensure the asset(s) are not sold on or privately appropriated, except with the Council's consent and have relevant financial clawback provisions been agreed?	Yes/No
Do both parties agree to pay their own legal costs involved in the transfer?	Yes/No

It's an assessment of existing / potentially competing provision

\*The Charities Act 2006 introduced a new form of incorporation for charities to reduce the administrative burden of registering both with the Charity Commission and Companies House, called the Charitable Incorporated Organisation (CIO). This gives the charity a separate legal identity from that of its trustees, which is often seen as appropriate for organisations managing buildings.

## References

ODPM, 2003. Circular 06/03: Local Government Act 1972 General Disposal Consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained. See [www.communities.gov.uk](http://www.communities.gov.uk)

Communities and Local Government, 2006. *Strong and Prosperous Communities: the Local Government White Paper*. See [www.communities.gov.uk](http://www.communities.gov.uk)

Department of Trade and Industry, 2002. *Social Enterprise: a strategy for success*. See [www.dti.gov.uk](http://www.dti.gov.uk)

Office of the Deputy Prime Minister and Home Office, 2006. *Communities Taking Control: Final report of the Cross-sector Work Group on Community Ownership and Management of assets*. See [www.communities.gov.uk](http://www.communities.gov.uk)

Thake, S., 2006. *Community Assets: The Benefits and Costs of Community Management and Ownership*, London, Communities and Local Government. See [www.communities.gov.uk](http://www.communities.gov.uk)

Communities & Local Government, 2007. *Making Assets Work – the Quirk Review of Community Management and ownership of public assets*

Big Lottery. *Community Assets Fund Consultation Document (2007), guidance notes (2007) and evaluation (2009)* see [www.biglottery.org](http://www.biglottery.org)

Teignbridge District Council *Teignbridge Asset Disposal Programme* MJ Awards 2009

## Community Asset Transfer – SSDC Process

