

EXECUTIVE MEMBER FOR FINANCE AND GOVERNANCE

Date: Thursday 6th October, 2022
Time: 11.00 am
Venue: Oberhausen Room

AGENDA

1. Estates Strategy - Lettings Policy 3 - 36

Charlotte Benjamin
Director of Legal and Governance Services

Town Hall
Middlesbrough
Friday 30 September 2022

MEMBERSHIP

Councillors S Walker

Assistance in accessing information

Should you have any queries on accessing the Agenda and associated information please contact Susie Blood 01642 729645, Susie_blood @middlesbrough.gov.uk

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MIDDLESBROUGH COUNCIL	
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Report of:	Executive Member for Finance and Governance – Councillor Stefan Walker Director of Finance – Helen Seechurn
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Submitted to:	Executive Member for Finance and Governance
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Date:	6 October 2022
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Title:	Estates Strategy – Lettings Policy
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Report for:	Decision
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Status:	Public
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Strategic priority:	Physical environment
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Key decision:	Yes
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Why:	Decision(s) will have a significant impact in two or more wards
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Urgent:	No
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Why:	For the purposes of the call-in procedure, this report is not urgent
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Executive summary
<p>The report seeks an Executive decision to approve further enhancement of the Council’s Estates Strategy.</p> <p>The report sets out and recommends adoption of a framework of transparent, consistent and impartial processes that are to be used during the letting of land and premises owned or managed by the Council.</p> <p>As implementation of the Lettings Policy Framework forms part of the Council’s Estate Strategy and has the potential to impact upon all wards, the enhancement being proposed is a key decision.</p>

Purpose

1. The purpose of the report is to seek approval for further enhancements to the Estates Strategy that clarify the processes for letting land and premises owned or managed by the Council.

Background & relevant information

2. Middlesbrough Council holds a significant asset portfolio that is used to deliver services, support businesses and contribute to the well-being of the Town.
3. The letting and management of assets is essential to enable the Council to help meet the changing needs of Middlesbrough.
4. The Lettings Policy Framework sets out a comprehensive framework and governance structure for the letting and management of the Council's land & property assets.
5. Operation of the policy ensures that all lettings have clear objectives, decisions are made based on full information and there is a full audit trail leading to the grant of legal interests in the Council's Estate Portfolio.
6. The Council's Estate Strategy was approved by Executive in September 2020 and sets out the strategic basis and high level purpose for holding and managing the Council's Estate Portfolio.

Implementation of the estates strategy

7. Following on from a review of the Council's Non-Operational Commercial Estate Portfolio in March 2020, this policy seeks to adopt a framework of transparent, consistent and impartial processes that are to be used during the letting of any land or premises owned or managed by the Council.
8. Adoption of the policy will ensure that the Council complies with standing legislative requirements.
9. Because land and premises held by the Council represents a valuable public asset, it is essential that the Authority seeks to maximise the return on the investment it makes in any land or property assets held for commercial purposes.
10. Implementation of the policy will ensure that the Council is also able to maximise the social, environmental and economic benefits of holding the same by driving revenue, maximising utilisation and minimising costs.
11. It is intended that the policy will provide a framework for the letting and leasing of all land and premises across the Authority, regardless of the Directorate managing or holding the asset – by using principles authorised at Corporate Level.
12. These principles will guide Heads of Service, existing and prospective tenants, helping to inform decision making and improving community awareness of the Council's policy for the leasing of its land and premises.

What decision(s) are being recommended?

13. That the Executive Member for Finance and Governance approves the further enhancements to the Estates Strategy in order to:
- a) Clarify the processes that are to be used during the letting of land and premises owned or managed by the Council;
 - b) Adopt a framework of transparent, consistent and impartial processes for the letting of land and premises owned or managed by the Council; and
 - c) Ensure that the Council's standing Community Asset Transfer Policy is revised and brought up to date.

Rationale for the recommended decision(s)

14. To ensure that the Council introduces a policy governing the letting of land and premises which is responsive, fit for purpose and allows the Council to clearly demonstrate Value for Money in relation to the management and letting of council owned assets, whilst also being supportive of local communities and reflective of their requirements.

Other potential decision(s) and why these have not been recommended

15. Do nothing – although the Council's processes might continue to have a positive financial impact, by not adopting principles adopted and authorised at Corporate Level, decision making would in the main remain isolated and uninformed, with the strategic impact across both services and local communities being reduced due to a lack of awareness.

Impact(s) of the recommended decision(s)

Legal

16. The letting of Council owned land and property assets is governed by the Council's standing financial orders and Government legislation.
17. Adoption of the enhancements outlined in paragraph 13 does not create any specific legal issues, although the process actions and any subsequent steps to implement the policy would need to be undertaken within the Council's legal framework.

Strategic priorities and risks

18. Adoption and implementation of the Lettings Policy will help address risk and remove potential for challenge by the adoption of a robust and responsive, fit for purpose decision making framework.

Human rights, equality and data protection

19. There will be no negative, differential impact on protected groups and communities.
20. A Level 1 (Initial Screening) Impact Assessment (IA) will be carried out on individual lettings of land and property assets, if deemed appropriate.
21. The proposed decision does not involve the collation and use of personal data.

Financial

22. There are no direct financial implications to report.

23. The letting of Council land and property will continue to be progressed in accordance with the delegation of responsibilities outlined within the Asset Disposal Policy.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
Adopt the policy amendments from the date of determination	Valuation & Estates Manager	October 2022
Revise all necessary documentation	Valuation & Estates Manager	October 2022

Appendices

1	Lettings Policy Framework
2	
3	

Background papers

The following background papers were used in the preparation of this report:

Body	Report title	Date
Executive Committee	Estates Strategy – Commercial Property Portfolio Review	17 th March 2020
Executive Committee	Estates Strategy	29 th September 2020

Contact: David Velemir, Valuation & Estates Manager

Email: david_velemir@middlesbrough.gov.uk



Lettings Policy Framework

Live from: October 2022

Live until: October 2025

Title	Estates Strategy – Lettings Policy		
Creator	Author(s)	David Velemir	
	Approved by	Content to be approved by Executive Committee	
	Department	Finance	
	Service area	Valuation & Estates	
	Head of Service	Louise Grabham	
	Director	Helen Seechurn	
Date	Created	September 2022	
	Submitted	September 2022	
	Approved	TBC – October 2022	
	Updating Frequency	Every three years or as case law/legislation require changes	
Status	Version: 1.1		
Contributor(s)	David Velemir, Valuation & Estates Team, Louise Grabham & Andrew Perriman		
	Legislation	Best Value Statutory Guidance, General Disposal Consent (2003), Local Government Act 1972.	
Subject	Lettings Policy Framework		
Type	Policy		
	Vital Record		EIR
Coverage	Middlesbrough Council		
Language	English		

Document Control

Version	Date	Revision History	Reviser
1.0	October 2022	Policy content to be agreed within a report to Executive Committee	David Velemir

Distribution List

Version	Date	Name/Service area	Action
1.0	October 2022	LMT, Asset Management, Economic Development, Finance, Legal and Valuation & Estates Teams	Disseminate

Purpose

1. The purpose of this policy is to set out a framework of transparent, consistent and impartial processes that are to be used during the letting of any land or premises owned, or managed, by the Council. The aims of the policy are to ensure that the Council complies with standing legislative requirements and that it also maximises the return on the investment it makes in any land or premises held for commercial purposes.

Policy Statement

2. Because land and premises that is held by the Council represents a valuable public asset, it is essential that the Authority seeks to maximise the social, environmental and economic benefits of holding the same by driving revenue, maximising utilisation and minimising costs.
3. The policy provides a framework for the letting and leasing of all land and premises across the Authority, regardless of the Directorate managing or holding the asset – by using principles authorised at Corporate Level. These principles will guide Heads of Service, existing and prospective tenants, helping to inform decision making and improving community awareness of the Council's policy for the leasing of its land and premises.

Policy Context

4. In September 2020, the Council's Executive approved the Estates Strategy – the aim of which was to assist the alignment of the Non-Operational Estate Portfolio to the strategic priorities of the Council. This led to the identification and adoption of the Council's five categories of asset:
 - Direct Service Provision
 - Investment
 - Economic Development & Regeneration
 - Community Enterprise
 - Capital Receipts Programme
5. The definition of each of the above categories of asset is clear within the Estates Strategy, and this in turn drives the principles that inform how an asset should be let. However, should the primary purpose for holding the asset change, for example if a former direct service provision premises is no longer required, then the future management of the asset will be governed by the Asset Disposal Policy and the Lettings Policy Framework.

Direct Service Provision

Current Operational Assets

6. These properties will be managed by the Asset Management Team in accordance with the principles of the AMF (Asset Management Framework). A cost centre will be identified, to which running costs will be charged. Planned Preventative Maintenance (PPM) will be monitored and managed by Property Services. Building Managers must not put in place their own contracts in respect of the premises, for example, this includes provision of evacuation chairs, defibrillators, lift maintenance, fires safety, and waste management – all of which should be sourced centrally via the Council's Commissioning and Procurement Team.

7. All repairs must be reported via the Helpdesk.
8. Building Managers will be supported by the Council's Health & Safety Team to ensure safe systems of operation and management of the premises are in place.
9. Should services have additional requirements, or no longer require premises, then this must be reported to the Valuation & Estates Manager in the first instance, who will co-ordinate the next stage

Additional Service Requirements

10. Where a Head of Service identifies the need for additional accommodation, the request should be put forward to the Valuation & Estates Manager. The Head of Service should clearly identify their requirements in respect of accommodation size, location and above all, the budget that is available. The following principles will then be adopted to secure additional resources:
 - Consideration will be given to the use of any vacant Council owned premises, currently held for direct service provision by another Directorate, or alternatively a vacant commercial premises.
 - Should a commercial premises be used for operational purposes, then the relevant Directorate will be required to cover all running costs, insurance and service charges.
 - If neither of the above are available, only then would the Valuation & Estates Manager consider the purchase, or lease, of a third-party asset in accordance with guidance set out within the Council's standing Asset Acquisition Policy.

Surplus To Operational Requirements

11. Should a service identify land or premises that is no longer required for operational purposes, they should immediately advise the Head of Property & Commercial Services that the premises are vacant. Thereafter, the Valuation & Estates Manager will follow the principles below in order to make the best future use of the asset:
 - Seek an alternative user from within the Council
 - Assess if there is any commercial viability in marketing the asset
 - Consider if it is suitable for CAT (Community Asset Transfer)
 - Follow guidance set out within the Asset Disposal policy if the asset is no longer required

Investment Portfolio

12. This category of asset is often referred to as the '*Commercial Portfolio*' and includes all land and premises let by way of a formal/informal agreement, be that a Lease, Licence, Farm Business Tenancy, Wayleave, Easement, Tenancy at Will or Operational Agreement.
13. For the avoidance of doubt, the treatment and administration of any land and property assets that are held by the Council for the purposes of servicing the Teesside Pension Fund falls outside the remit of this policy.

Commercial Leases/Licences

14. A lease is an agreement in which the landlord agrees to give a tenant the exclusive right to occupy land or premises for a specific term, subject to the terms and conditions of the lease.
15. A lease differs from a licence, in that a licence gives permission to the holder to carry out a permitted activity without the right of exclusive occupation.

Consistency & Transparency

16. To ensure consistency, transparency and adhere to legislative requirements, all leases must be granted in accordance with the Council's approved scheme of delegation – using the appropriate Delegated Authority (DA) Forms signed by the relevant nominated Officer.
17. Generally, a competitive selection process will apply to the allocation of vacant commercial land and premises, although in special circumstances, direct negotiations will be permitted.
18. The selection of tenants through a competitive selection process is particularly relevant to commercial leasing – improving probity, being better able to address conflicts of interest (whether real, or perceived) and ensuring maximum transparency in the decision-making process. It also provides an opportunity for interested parties to openly compete for a lease, whereas the closed nature of a direct negotiation creates a perception that private interests could perhaps influence, or be seen to influence, the outcome of a selection process.
19. Where a competitive selection process is followed, it must be conducted in accordance with the Council's procurement guidance. It is important that all prospective tenderers receive consistent information about existing assets, capital improvement/expenditure expectations, rent estimates and are aware of the criteria that will be used to evaluate subject offers.
20. There are, however, special circumstances where it may be impractical to use a competitive process and direct negotiations would be considered to be an acceptable way to achieve an outcome that best serves the community's interest.
21. The information below gives an example of how a vacant premises will be dealt with, when not using a formal application process of tendering via the NEPO portal, or other accepted open market tender process. Regardless of whether a competitive or direct negotiation lease allocation process is used, it must be fair, open and impartial.

Direct Negotiations

22. Circumstances that may justify direct negotiations include:
 - Where, after an assessment of the land or premises, it can be determined that direct negotiation with a prospective tenant would maximise benefit to the community (for example where the land or premises is currently occupied by a community group that has acted as a good tenant)
 - When the current market rental value of a property is low, relative to the cost of conducting a competitive process
 - When an appropriate competitive process has not produced a satisfactory outcome
 - When it is clear beyond reasonable doubt that there is only one prospective tenant for a property asset
 - When the lease is short term, and does not include obligations on the tenant to carry out capital works
 - Where there is evidence that conducting a competitive process may place a project of regional, or state, significance at risk
 - Where the only practical access is available from adjoining land owned by the proponent
 - When it can be demonstrated that the process of selection will be open, fair and impartial.

Vacant Premises

23. Vacant property is to be advertised on the Council's website via the monthly vacant land and premises register, and the following process followed:
- Available 'To Let' signage placed on site
 - Applicants to complete a Tenant Enquiry Form
 - Applicants to be checked against the Council Debt Register
 - The financial standing of Sole Traders must be verified via a Credit Reference Agency or the procurement of a financial reference
 - Trade/personal references should also be obtained
 - Ltd companies to provide a personal guarantor
 - Rent deposits to be requested should additional financial security be required.

Charities/Community Groups In Commercial Premises

24. Community use tenants who are permitted under their lease to conduct commercial activities may be eligible for a rent subsidy. To be eligible, tenants must meet criteria such as:
- Under the terms of its lease, the tenant provides or promotes community, cultural, sporting, recreational or similar facilities or activities; or
 - Tenants apply their profits toward promoting their objectives and prohibit the payment of any dividend or amount to their members; and
 - Activities undertaken on the leased land are not in direct competition with the same, or similar, services in the local area of interest.
25. Where the applicant is a registered Charity or Community Group seeking to secure the premises for less than the market value, they must satisfy the criteria listed below
- The completed DA form must clearly identify the rationale behind the decision
 - The Constitution/Incorporation documentation must clearly specify that the body has the right to hold an interest in land/premises
26. Once the successful party has been selected, the direct negotiation process will commence.

Term

27. The term of the lease, or licence, may depend on many factors, including:
- Applicable legislation
 - The tenant's financial contribution to building, structural and infrastructure works including new, renewal/refurbishment or upgrade works
 - Financial stability of the tenant
 - Funding requirements of Capital Finance Agreements
 - Suitability of the premises for the tenant's use
 - The Council's long term plan(s) for the premises
 - The Council's current key initiatives

Rental Valuation

28. The annual rental value of new leases will be set using established RICS valuation methods applied by the Council's Valuation & Estates Team, in consultation with the Head of Finance and the relevant Head of Service. A rental offer below market value may only be accepted where the relevant officer completes a delegated decision form, outlining the rationale for acceptance and signed off by the relevant Delegated Officer, or agreed by Executive Committee.

Condition Of Premises

29. All premises should be let in good repair and condition, namely:
- Roof structure should be secure and watertight
 - All windows should be secure and watertight
 - Doors should be secure and watertight
 - Shutters, if fitted, should be operational
 - Electrics should be compliant and fully tested
 - Gas, if any, should be compliant and fully tested
 - An Asbestos register, if applicable, should be up to date and a copy supplied to the incoming tenant

Ownership and maintenance of existing and new improvements

30. Unless the tenant is required under the terms of the lease to remove improvements or structures at, or before, the end of the lease all improvements and structures on the leased premises will become the property of the Council at the end of the lease term. Generally, it is standing policy that all structures and improvements are to be maintained by the tenant, at the tenant's cost, during the term of the lease.

Power To Sub-Let

31. All sub-leases and sub-licences made under a lease must be consistent with the purpose of the head lease and require the consent of the Valuation & Estates Manager in his/her capacity as Landlord.

Assignment & Mortgage

32. All assignments or mortgages of leases require the consent of the Valuation & Estates Manager in his/her capacity as landlord. Standard practice would be to permit assignment with Landlord's consent subject to an Assured Guarantee Agreement (AGA).

Financial security

33. Leases should contain provisions to ensure compliance with the respective obligations under the lease, such as payment of rent, or maintenance and repair. This may take the form of a bond, bank guarantee or similar instrument. Given recent changes in GDPR, tenants will be subject to a financial reference check in addition to a rent deposit and/or acting as guarantor

Insurance

34. The tenant shall procure and maintain public liability insurance in accordance with the terms and conditions of the lease, or occupancy agreement.

35. The Council will take out and maintain building insurance for the premises. The tenant will reimburse the Council in accordance with the terms and conditions of their lease, or occupancy agreement. The Council will not insure the contents or the property of the tenants. Responsibility lies with the tenants to take out their own contents insurance and maintain adequate cover for the duration of the occupancy.

Occupation

36. Tenants must not be granted early access to premises unless there are exceptional circumstances. Should this be the case, then access can only be permitted if a Tenancy at Will (TAW) has been prepared and signed by the Head of Legal Services.
37. TAW will be valid for a maximum period of 6 months only. Should completion of the lease not occur during that period then the TAW must be terminated, and the tenant must vacate. Tenants should be made aware that additional fees for the preparation of a TAW will be charged.

Renewal Of Leases To Incumbent Tenants

38. Proposals to grant new leases to incumbent tenants are to be considered by the relevant officer, subject to the same considerations as that of a new lease. Where possible, proposals to issue a new lease to an incumbent tenant will be considered within 12 & 6 months of the scheduled expiry date. Any further term offered to an incumbent tenant will only be made through the grant of a new lease. A lease variation cannot be used to extend the term of a lease to an incumbent tenant.
39. Officers will be formally notified of any scheduled renewals that become due, via notices generated by the Council's Estates module on TF Cloud.

Holding Over

40. If a lease expires, and the tenant remains in occupation of the leased premises with the consent of the landlord, the holdover provisions in the lease will apply for, and not exceed, the period permitted by the relevant Act (if any).

Costs

41. In accordance with the requirements of the Council's standing financial orders, the initial letting of any Council asset will be subject to the payment of both Legal and Surveyors fees by the tenant. A schedule of fees chargeable is attached at Appendix 1. The authority to depart from the Council's standard fee approach will be at the discretion of the Valuation & Estates Manager.
42. In respect of the renewal of an agreement to an incumbent tenant, each party is to bear their own costs.

Management Of The Portfolio

43. Day to day management of the portfolio and its tenants, regardless of type, is the primary responsibility of the Valuation & Estates Team (V&E Team).
44. Any Heads of Service who utilise an asset for operational purposes held within the Commercial portfolio, must keep the V&E Team advised of all changes to the premises.
45. The V&E Team will take a proactive role in the management and monitoring of the portfolio, in terms of regular inspections of premises, ensuring tenants maintain statutory compliance documentation and ensuring maintenance and decoration is carried out in accordance with the terms of the lease/agreement of occupation.

46. In line with the Council's scheme of delegation, it will be the responsibility of the V&E Team to manage the process of alterations to premises, and the process will be as follows:
- Upon the tenant requesting permission to carry out alterations, an assessment will be made to understand if these are internal non-structural and can be authorised via letter by the V&E Team, or alternatively if the works require more detailed consideration. Should the latter be the case, then the case officer will request that full detailed drawings and specifications be passed to Design Services for consideration and comment.
 - If acceptable, a relevant DA will be completed and issued to Legal Services with a written instruction to prepare a Licence To Alter. On completion, the works must be fully inspected to ensure compliance, the tenant will then submit as built drawings to the Council and relevant compliance certification is to be held on TF.
47. Where there is a service charge provision within a lease, this should be used to ensure the portfolio is maintained to the required standard without causing additional pressure on the relevant budgets.
48. The management and monitoring of tenant's payments will be a joint approach with the Revenue & Collection Team. The V&E Team must ensure that correct instructions using appropriate forms are issued to the relevant team in a timely manner. It is always the responsibility of the case officer to ensure that the correct subscriptions are being charged, and that any changes required to the said charges are notified.
49. Case officers will prepare and manage debt reports on a regular basis to ensure that the Council is in a position to maximise revenue income. Case officers should work with their tenants to ensure debt is kept to a minimum by following the protocols set out in the Council's Debt Management & Recovery Policies.

Data Management

50. The Council's single data source is held within Technology Forge (TF Cloud), and it is the responsibility of all staff to ensure that this data source remains accurate and up to date. All completion reports received from Legal Services are to be recorded on TF. Any other portfolio changes and documentation pertaining to the Council's assets is to be recorded and held upon the data base, and not within personal data sources.

Economic Development and Regeneration

51. Assets that fall under this category are held by the Council to provide a revenue stream and support business development, job creation and/or promote the regeneration of an area.

Business Centres

52. The Council holds several Business Centres that serve the needs of new start-up companies and sole traders. The centres contain small commercial units, let on shorter lease terms and often are inclusive of service contributions.
53. These centres typically offer concessionary start-up rents initially, to provide businesses with an opportunity to become financially viable, stable and establish themselves.
54. At the end of the initial lease period, the tenants are encouraged to move into commercial units. If nothing suitable is available at that specific moment in time, the tenant would be permitted to stay – but upon renewal, they would be required to pay a commercial rent.

55. It should be noted that the lettings of the units will follow all the basic principles of the Lettings Policy Framework (LPF), namely:
- They are required to pass a credit search
 - Guarantors will be required for Ltd companies
 - Rent deposit may be required
 - Occupation should not be granted until all documentation has been completed
 - A Delegated decision approval is required

Boho Digital

56. The Boho Digital quarter comprises several business centres. As above, the units are specifically designed to support new and developing businesses, primarily in the digital sector. The range of available commercial units range from incubator premises to support those start-up businesses straight from University, to slightly larger stand-alone units situated in the centre/complex with serviced support still to hand. The principles for letting these units must follow the Lettings Policy Framework, and tenants should be encouraged to move on as they grow and develop.

Community Enterprise

57. Assets held for Community Enterprise are let not to produce rental income, but are used to support the social, health and wellbeing needs of the community. As outlined above, this may be a commercial premises let for Community use, or a premises specifically built with the aid of grant funding, etc – run and managed by a Community Group, but with the land it is situated on remaining in the ownership of the Council.

Premises Subject To Community Asset Transfer (CAT)

58. Despite the terminology, the freehold ownership of premises in this group is not actually transferred away. The transfer will usually be provided via a 25 year leasehold interest that is granted to the tenant. The Council's CAT Policy governs the process of letting such premises and is attached at Appendix 2.

Capital Receipts Programme

59. Land and premises that fall within this category is held for the purposes of generating capital receipts, or the linked disposal and delivery of regeneration proposals. Whilst these assets are held for the purposes of generating a revenue stream in the interim, their primary role is to support the delivery of the MTFP in the long term, through disposal of land and premises either considered to be surplus or required to deliver local and area based regeneration proposals.
60. The lease or licence of any land and premises that falls within this category of asset must follow the LPF principles that apply to the treatment of the investment portfolio – namely, to ensure consistency, transparency and to adhere to legislative requirements, all leases must be granted in accordance with the Council's approved scheme of Delegation. Although a competitive selection process will apply to the allocation of land and premises within this category of asset, in special circumstances direct negotiations may be permitted.

Appendix 1

Third Party Transaction Costs: MBC Professional Fee Schedule – Up To 31/10/2022

WORK TYPE	FEES TO BE RECOVERED		ADDITIONAL COMMENTS
	LEGAL	SURVEYORS	
Grant of lease by MBC – standard lease of whole	£750	Min £350 up to a rental value of £10,000 thereafter 3.9% of agreed rental value	If an agreement for lease, add £200 drafting & reviewing time. If lease is to be contracted out add £100 for notices.
Grant of lease by MBC – standard lease of part	£850	Min £350 up to a rental value of £10,000 thereafter 3.9% of agreed rental value	If an agreement for lease, add £200 If to be contracted out add £100 for notices.
Grant of lease by MBC – non-standard	Hourly rate estimated on 10 hours drafting, reviewing, amending and engrossing	Min £350 up to a rental value of £10,000 thereafter 3.9% of agreed rental value	If an agreement for lease, add £250 or hourly rate estimated based on complexity.
Lease renewal – standard	-	-	Each party is to bear their own costs, providing there are no substantial changes required.
Lease renewal – revised terms	£1,000	£300 up to a min rental value of £10,000, thereafter 3.9%	Only to be applied where major changes to existing lease terms are requested.
Academy lease and commercial transfer agreement	£1,000	£1,000	The total fee of £2,000 is to be split 50/50 between the professions.
Licence to assign	£750	£350	
Licence to assign with AGA	£800	£350	
Licence to underlet	£750	£300	
Licence for alterations	£750	£300	
Licence to occupy	£700	£300	
Deed of variation of lease	£750	£300	
Deed of surrender of lease	£600	£300	

Sale of garden land	£450 plus advertising costs	Min £350 to disposal value of £17,000 thereafter 2% of agreed sale value	
Sale of freehold – simple land sale under £350,000	Subject to min of £1500 as per asset disposal policy	Freehold sale 2% of agreed sale value subject to a capped minimum of £2,000 as per asset disposal policy	NB unconditional contracts only: prepare contract & TR1; replies to CPSE and responding to enquiries. Over £500,000 standard hourly rate estimated 12 hours as it will normally be development land with overage (see below).
Sale of freehold – simple land sale over £350,000	Standard hourly rate estimated on 12 hours	Freehold sale 2% of agreed sale value subject to a capped minimum of £2,000 as per asset disposal policy	NB usually development land with overage (see below).
Sale of land for development (usually conditional contract)	Percentage of sale price – starting point should be 1.5%	Freehold sale 2% of agreed sale value subject to a capped minimum of £2,000 as per asset disposal policy	Difficult to quantify as generally work will involve complex suite of documents, over a long period of time.
Overage Agreement	£2000	£1,000	NB generally overage dealt with within a development scheme/disposal for development – see above for comments.
Option Agreement	£2000	£1000	As above
Funding Agreement	£1,000	£500	
Section 106 agreement	£1200	£600	
Section 106 variation	£600	£450	
Section 38 or 278 agreement	£600	£450	
Deed of grant of easement	£600	£450	
Wayleave	£650	£450	
Request for consent/removal of restriction	£150 applicant draft deed of covenant £300 if applicant requires MBC to draft deed of covenant	£250	Based on review of title and assessment of requirements, letter of consent. Additional costs based on MBC having standard Deed of Covenant precedent or RX4 to be drafted and sealed
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Deed of covenant	£150 to £500	£250	If standard deed of covenant for a lease/estate charge £150 this assumes the deed is executed without amendments. If deed is not required as per a restriction or lease/transfer term estimated cost of £500 to be reviewed based on time spent
Rights of Way Orders	£600	£250	
Providing copy of document	£25	-	NB this is up to five documents and each additional document thereafter is £5
Providing title plans and copy leases	-	£25	
Standard Hourly rates	Solicitor: £135 Legal Assistant: £85	Valuer: £135 Valuation Assistant: £85	

Third Party Transaction Costs: MBC Professional Fee Schedule – From 01/11/2022

WORK TYPE	FEES TO BE RECOVERED		ADDITIONAL COMMENTS
	LEGAL	SURVEYORS	
Grant of lease by MBC – standard lease of whole	£950	Min £400 up to a rental value of £10,000 thereafter 3.9% of agreed rental value	If an agreement for lease, add £210 drafting & reviewing time. If lease is to be contracted out add £110 for notices.
Grant of lease by MBC – standard lease of part	£1,000	Min £400 up to a rental value of £10,000 thereafter 3.9% of agreed rental value	If an agreement for lease, add £210 If to be contracted out add £110 for notices.
Grant of lease by MBC – non-standard	Hourly rate estimated on 10 hours drafting, reviewing, amending and engrossing	Min £400 up to a rental value of £10,000 thereafter 3.9% of agreed rental value	If an agreement for lease, hourly rate to be charged.
Lease renewal – standard	-	-	Each party is to bear their own costs, providing there are no substantial changes required.
Lease renewal – revised terms	£1,100	£400 up to a min rental value of £10,000, thereafter 3.9%	Only to be applied where major changes to existing lease terms are requested.
Academy lease and commercial transfer agreement	£1,650	£1,650	The total fee of £3,300 is to be split 50/50 between the professions.
Licence to assign	£825	£400	
Licence to assign with AGA	£850	£400	
Licence to underlet	£825	£350	
Licence for alterations	£825	£350	
Licence to occupy	£680	£750	
Deed of variation of lease	£825	£350	
Deed of surrender of lease	£680	£350	
Sale of garden land	£450 plus advertising costs	Min £400 to disposal value of £17,000 thereafter 2.2% of agreed sale value	

Sale of freehold – simple land sale under £350,000	Freehold sale 1.65% of agreed sale value subject to a capped minimum of £1,650 as per asset disposal policy	Freehold sale 2.2% of agreed sale value subject to a capped minimum of £2,200 as per asset disposal policy	NB unconditional contracts only: prepare contract & TR1; replies to CPSE and responding to enquiries. Over £500,000 standard hourly rate estimated 12 hours as it will normally be development land with overage (see below).
Sale of freehold – simple land sale over £350,000	Standard hourly rate estimated on 12 hours	Freehold sale 2.2% of agreed sale value subject to a capped minimum of £2,200 as per asset disposal policy	NB usually development land with overage (see below).
Sale of land for development (usually conditional contract)	Freehold sale 1.65% of agreed sale value subject to a capped minimum of £1,650 as per asset disposal policy	Freehold sale 2.2% of agreed sale value subject to a capped minimum of £2,200 as per asset disposal policy	Difficult to quantify as generally work will involve complex suite of documents, over a long period of time.
Overage Agreement	£2,200	£1,100	NB generally overage dealt with within a development scheme/disposal for development – see above for comments.
Option Agreement	£2,200	£1,100	As above
Funding Agreement	£1,100	£550	
Section 106 agreement	£1,320	£660	
Section 106 variation	£750	£500	
Section 38 or 278 agreement	£750	£500	
Deed of grant of easement	£750	£500	
Wayleave	£750	£500	
Request for consent/removal of restriction	£165 applicant draft deed of covenant £330 if applicant requires MBC to draft deed of covenant	£275	Based on review of title and assessment of requirements, letter of consent. Additional costs based on MBC having standard Deed of Covenant precedent or RX4 to be drafted and sealed

Deed of covenant	£165	£275	If standard deed of covenant for a lease/estate charge £165 this assumes the deed is executed without amendments. If deed is not required as per a restriction or lease/transfer term estimated cost to be reviewed based on time spent
Rights of Way Orders	£660	£275	
Providing copy of document	£30	-	NB this is up to five documents and each additional document thereafter is £5
Providing title plans and copy leases	-	£30	
Standard Hourly rates	Solicitor: £150 Legal Assistant: £90	Valuer: £150 Valuation Assistant: £90	

Appendix 2

Estates Strategy – Community Asset Transfer Policy



Community Asset Transfer Policy

Live from: October 2022

Live until: October 2025

Title	Estates Strategy – Community Asset Transfer Policy		
Creator	Author(s)	David Velemir	
	Approved by	Content to be approved by Executive Committee	
	Department	Finance	
	Service area	Valuation & Estates	
	Head of Service	Louise Grabham	
	Director	Helen Seechurn	
Date	Created	September 2022	
	Submitted	September 2022	
	Approved	TBC – October 2022	
	Updating Frequency	Every three years or as case law/legislation require changes	
Status	Version: 1.1		
Contributor(s)	David Velemir, Valuation & Estates Team, Louise Grabham & Andrew Perriman		
	Legislation	Best Value Statutory Guidance, General Disposal Consent (2003), Local Government Act 1972.	
Subject	Community Asset Transfer		
Type	Policy		
	Vital Record		EIR
Coverage	Middlesbrough Council		
Language	English		

Document Control

Version	Date	Revision History	Reviser
1.0	October 2022	Policy content to be agreed within a report to Executive Committee	David Velemir

Distribution List

Version	Date	Name/Service area	Action
1.0	October 2022	LMT, Asset Management, Economic Development, Finance, Legal and Valuation & Estates Teams	Disseminate

Introduction

1. Community Asset Transfer is an established mechanism used by Local Authorities to transfer surplus assets into community ownership and management.
2. This policy outlines the Council's approach and process for the transfer of assets to VCO's (Charities, Community Interest Companies, Community Groups and other Volunteer Led Organisations).
3. Community Asset Transfer supports the aims of the Strategic Plan 2021-2024 '*working with communities and other public services in Middlesbrough to improve the lives of local people*' and also the Estates Strategy, which considers a coordinated approach to building management, letting, maintenance and asset transfers.
4. The approach to Community Asset Transfer will be underpinned by the following principles:
 - support for the development of the Voluntary & Community Sector (VCS)
 - commitment to the promotion of sustainable community-led regeneration
 - flexibility in negotiations and support offered to VCOs, within financial constraints
 - transparency in decision making
 - building condition, life expectancy and running costs

Purpose and Context

5. Middlesbrough Council holds an extensive property portfolio, valued at over £400m. In addition to land holdings, commercial property and office accommodation, the portfolio includes a range of community assets.
6. This policy document describes the Council's approach to the transfer of surplus community assets to Voluntary and Community Organisations.
7. The term '*Community Asset Transfer*' relates primarily to long leasehold, or freehold arrangements at less than market value. Community Asset Transfer is viewed positively, as it offers many benefits to local communities, the local VCS (Voluntary & Community Sector) and the Council itself.
8. The Quirk Review of community management and ownership of public assets concluded strongly in favour of the local ownership and management of public assets. This position was supported by the then Labour Government through a number of new initiatives, including the establishment of the National Asset Transfer Unit, which supports Councils in pursuing this agenda.
9. Due to dramatic changes in operating context, the Council faces significant challenges as a result of major reductions in public spending and will increasingly need to consider Community Asset Transfer as an enabling tool to achieve corporate aims in a mixed service economy, with significantly reduced resource.

Risk Management

10. As some of the VCOs applying to the Council for the transfer of assets may have limited financial history or facilities management experience, it is important that any Community Asset Transfer is given the best possible chance of success.

11. The following requirements must therefore be met if organisations are to be considered as *'fit for purpose'* to assume responsibility for Council held assets:
- Appropriate skills, knowledge and understanding of the responsibilities of being a Corporate Landlord to ensure the sustainability of the asset in the long term
 - Robust governance structures, decision making processes, financial resilience and management controls
 - Support from the community and stakeholders for the specific community focused project.
 - Sufficient financial resources based on whole life costings for the building
 - The VCO is constituted for social benefit
12. The Council recognises the importance of building the capacity of VCOs to enable them to meet these requirements, and to that end the Council will work with Middlesbrough Voluntary Development Agency and/or others, where appropriate and practical, to put in place packages of development support at the pre-application stage – to build the capacity of organisations to manage assets, where a clear benefit to the community for the transfer of assets has been identified.

Detail and process

13. The Council will undertake a Community Buildings Review and publish a list of assets potentially available for transfer. Notification will be provided to VCO's by Middlesbrough Voluntary Development Agency, via their website, of assets considered to be surplus to operational requirements and not significantly contributing to the Council's commercial portfolio. The list will be reviewed annually to show ongoing applications as well as completed applications.
14. Prior to an asset being advertised as available, a full condition survey will be undertaken detailing requirements necessary to bring the same up to the legal standard required for occupation of a public building. Applicants should consider this requirement carefully, and obtain advice and costings for the works required
15. The Council will generally pursue long leasehold arrangements when considering Community Asset Transfer, with 25 years being the preferred term length.
16. A freehold transfer could be considered in particular circumstances, for example where not doing so might significantly jeopardise the commitment of third-party resources to support the proposal – however, that requirement would need to be balanced with a re-assurance that community benefit will be reasonably maintained in the long term.
17. A single asset, in its entirety, would be transferred to a single organisation or cooperative who can then sub-let part of the property to others – provided that this accords with the use and principles agreed for the transfer
18. Discounted levels of market value will be set on a case-by-case basis, predicated upon the nature of the property, robust assessment of the VCO business plan and the extent of community benefit to be derived.

Stage I – Outline Proposal

19. The request for transfer is assessed against an outline proposal (see form attached at Appendix 1), and the submission of a business plan.

20. Interested parties will submit an outline proposal within four weeks of the Council making the opportunity available.
21. The proposal will then be considered by an officer group which will include representatives from the Asset Management and Valuation & Estates Teams.

Stage II – Business Plan

22. Should the outline proposal be approved in principle, the VCO will subsequently be asked to submit a business plan (see form attached at Appendix 2) to the Council in support of the proposed transfer.
23. The business plan must be submitted to the Council within 6 weeks of the approval of the outline proposal. The Council will retain a degree of flexibility over this timescale – for example, if the feasibility of the proposal is either not in question, or where external sources of funding may take additional time to come to fruition.
24. Within their business plan, the applicant must provide information addressing the following sub-headings:
 - Organisation information – including key skills of the board/management committee, copies of governing documents, accounts, evidence of external advice and expressions of support
 - Summary of the project proposal
 - Evidence project resources
 - Financial projections considered against the building's condition survey
 - Risk management – evidencing proposed building management processes, inspection regimes and health & safety procedures
 - Community beneficiaries
 - Publicity

Stage III - Approval Process

25. The business plan will be assessed and scored by the nominated officer group, against weighted criteria set out in the scoring matrix attached at Appendix 3.
26. The decision to transfer an asset will not be considered as setting a precedent. Each transfer is to be judged on its own merits, and the detail of the transfer arrangements will be arrived at through individual negotiation.
27. Working closely with the VCO, the Council's Valuation & Estates Team will draft and issue heads of terms, and lease arrangements to complete the process.
28. As part of the lease arrangements, the VCO will be required to submit a statement of community benefit annually. This should briefly summarise the activities taking place as a result of the transfer, and also the impact this has had on the community.
29. The Council will retain the role of indirect duty holder, and as outlined in the lease it will request evidence of statutory compliance. Where this cannot be made available by the leaseholder, the Council retains the right to carry out the necessary works and recharge the leaseholder.
30. A written report will then be prepared as part of the Asset Disposal Business Case (and/or Delegated Authority) by the Head of Property & Commercial Services, and signed off by the Valuation & Estates Manager, if agreed.

Appendix 1

Community Asset Transfer (CAT) – Stage I Outline Proposal

Outline Proposal

The approval process for Community Asset Transfer (CAT) is managed in two stages – Stage I being an outline proposal, and Stage II a business case.

The attached form is used to confirm an outline proposal and must be completed by applicants within Stage I of this process. Interested parties wishing to apply for an asset transfer are expected to fill in all sections of the form.

If parties should require any assistance in completing the form, please contact the Head of Property & Commercial Services. Completed forms should be forwarded to the Head of Property & Commercial Services: david.jamison@middlesbrough.gov.uk for initial consideration.

Following receipt of the applicant's submission, the outline proposal will be considered by a nominated officer group – the Head of Property & Commercial Services will contact applicants to discuss outcomes, and also next steps where appropriate.

Stage I – CAT Outline Proposal Form

Name	
Address	
Contact telephone number	
Email address	

Name of organisation	
Is the organisation incorporated?	Yes / No
Type of organisation	

If you are enquiring about a specific asset, please state which building it is.	
If your enquiry is general and you do not have a specific asset in mind, please specify your requirements.	

To confirm that your organisation is eligible for a CAT please provide details to support the three statements below.	
1) The VCO is constituted for social benefit.	
2) The VCO has a constitution and governance structures in place.	
3) Support from the community and stakeholders for the CAT	

Please print the name of the authorised signatory	
Signed	
Date	

Appendix 2

Community Asset Transfer (CAT) – Stage II Business Case

Business Case

The approval process for Community Asset Transfer (CAT) is managed in two stages – Stage I being an outline proposal, and Stage II a business case.

The attached form is used to set out the applicant's business case and must be completed to conclude Stage 2 of this process. Interested parties wishing to apply for an asset transfer are expected to fill in all sections of the form.

If parties should require any assistance in completing the form, please contact the Head of Property & Commercial Services. Completed forms should be forwarded to the Head of Property & Commercial Services: david_jamison@middlesbrough.gov.uk for initial consideration.

Following receipt of the applicant's submission, the business case will be considered by a nominated officer group – the Head of Property & Commercial Services will contact applicants to discuss outcomes, and also next steps where appropriate.

4. Proposal details

Objectives:

Programme of delivery:

Physical regeneration proposal:

Investment in the project:

5. Community Considerations

Please outline (including supporting evidence) the community support for your proposals

Please outline the educational benefits of the proposals

Please detail how your proposals will support the social regeneration of the area

6. Sustainable Operational Model

Please provide full financial details of how you propose to fund your proposals – this must include:

- Maintenance and repair of the premises for the duration of the lease
- Running costs
- Staffing costs
- Programme delivery

7. Track Record & Management Capacity

Please provide detailed evidence of the organisation's management structure, including previous experience in the management of buildings, health & safety, project delivery.

8. Supporting documentation

Financial accounts for the last 3 years where possible, and:

- Financial Business Plan for the project
- Health & Safety Policy of the Organisation
- Marketing Plan
- Customer/Community support evidence

Appendix 3

Community Asset Transfer (CAT) – Stage III Scoring Matrix & Criteria

Scoring Matrix

Premises	
Bidder	
Date Reviewed	
Name of Review Officer	

TOTAL BID SCORE	0	out of	1300
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Business Case Summary

Total Point Achievable	100			
	Score Range	Score Awarded	Weighting (%)	Weighted Score*
Current Organisation detail	0 - 5	0	25	0
Evidence of previous projects	0 - 5	0	50	0
Proposal	0 - 5	0	25	0
Total Score for Section	0			

Proposal Details/Quality of Bid

Total Point Achievable	200			
	Score Range	Score Awarded	Weighting (%)	Weighted Score*
Aims/Objectives	0 - 5	0	25	0
Programme of activities	0 - 5	0	15	0
Physical regeneration	0 - 5	0	25	0
Investment Proposals	0 - 5	0	25	0
Project delivery timescales	0 - 5	0	10	0
Total Score for Section	0			

Community Considerations

Total Point Achievable	100			
	Score Range	Score Awarded	Weighting (%)	Weighted Score*
Community support	0 - 5	0	30	0
Education benefits	0 - 5	0	30	0
Social Regeneration/Cohesion	0 - 5	0	40	0
Total Score for Section	0			

Sustainable Management

Total Point Achievable	500			
	Score Range	Score Awarded	Weighting (%)	Weighted Score*
Evidence of funding	0 - 5	0	5	0
Understanding and detail of maintenance/repair costs	0 - 5	0	25	0
Clear understanding and detail of running costs	0 - 5	0	25	0

Clear understanding and detail of potential staffing costs	0 - 5	0	25	0
Estimated income potential with supporting evidence	0 - 5	0	20	0
Total Score for Section	0			

Facility Management/Track record and capacity

Total Point Achievable	300			
	Score Range	Score Awarded	Weighting (%)	Weighted Score*
Management Arrangements/Structure	0 - 5	0	20	0
Evidence of previous building management	0 - 5	0	40	0
Understanding of Legal Obligations	0 - 5	0	40	0
Total Score for Section	0			

Supporting Documentation

Total Point Achievable	100			
	Score Range	Score Awarded	Weighting (%)	Weighted Score*
Financial business Plan	0 - 5	0	60	0
Health and Safety Policy	0 - 5	0	20	0
Marketing Proposal	0 - 5	0	10	0
Research evidence	0 - 5	0	10	0
Company/Business Accounts	0 - 5	0	10	0
Total Score for Section	0			

Scoring Criteria

5	Response exceeds requirements.
4	Response meets requirements with minimal weaknesses, issues or omissions.
3	Fit for purpose. Good in many respects. No significant weakness, issue or omissions.
2	Response meets requirements to a minimum acceptable standard, however lacking detail and/or clarity.
1	Response partially meets requirements but contains material weaknesses/issues.
0	No response submitted.