

## Policy for Property lettings and disposals to the third sector, voluntary and community groups

### (Appendix H)

The Cabinet considered and adopted a policy framework for Community lettings to the voluntary or third sector on 16th March, 2010.

#### General Principles

As a guiding principle, the Council seeks to maximise the return on its non-operational portfolio. However, where a property is occupied by a registered charity or community group which clearly supports the Council's priorities, the authority will consider a rent subsidy. The subsidy will be calculated against the total assessed rental value of the property on the open market and will be counted as grant aid.

In future all lettings by the Council will start from the basis of a commercial or market rate clearly set out in the tenancy agreement and any subsidy, either in the form of a specific performance-related grant or reduction in the market rent will be explicitly identified.

The decision on whether a particular third sector organisation should be offered Council property at less than 'best consideration' needs to be related to the assessed benefits of the service it provides to the community. If the arrangement is subsidised in any way, it must avoid falling foul of European legal requirements relating to state aid. State Aid occurs when financial assistance is given by a public body which favours certain organisations and distorts, or threatens to distort, competition between Member States of the EU. In addition the use of the building must achieve or promote social, economic or environmental well-being and that it falls within the state aid exemption.

State Aid occurs when financial assistance is given by a public body which favours certain organisations and distorts or threatens to distort competition between Member States of the EU.

The current position is that the letting at an undervalue to community organisations will not be State Aid if:

- The proposed tenant is a not for profit organisation;
- The use of the building will be for a community purpose; and
- The activities carried out by the organisation(s) are of local interest only.

In this process it is the responsibility of the Asset Management Working Group, acting on the advice of the Head of Property and Asset Management, to determine the lease conditions and the market rent for the property.

It is the responsibility of the Cabinet, acting on advice from the Cabinet Member responsible for Community Development, in consultation with appropriate officers and Cabinet portfolio holders, to decide whether or not the organisation contributes sufficiently enough to the Council's Corporate Plan, or the Local Strategic Partnership's Community Plan, to merit a discount on the rent and what the level of discount should be. The total discount will be considered to be grant aid.

As a general rule, when leases are due to be renewed and at the Cabinets discretion, buildings that are operating primarily as social or sports clubs with a paying membership should be given the standard 20% discount against the full market rent, that applies to all charities hiring Council property.

Buildings being leased to organisations that are open to the community at large and are working to further the aims of the Council's Community Plan can be given up to 100% discount, subject to a business plan outlining their activities, how they align with the corporate or community plan and how they intend to make their activities sustainable.

## **Disposals**

This policy will not apply to public services which are commissioned or contracted out to third sector organisations and which have a clear monetary or commissioned value to the Council to i.e. Instances such as where a third sector group takes over the management or provision of a service on behalf of the Council should be dealt with separately. In these cases formal contracts or service level agreements would invariably be applicable.

## **New lettings**

The proposed disposal must fall within a general disposal consent (see below).

The proposal must contribute towards meeting identified priorities in the current Community Plan and/or Corporate Business Plan;

A business plan must be submitted, clearly indicating the community benefits of the proposed operation and its financial viability over both the short and longer term;

If a planning consent will be required, there must be a reasonable prospect that this can be obtained in a timely fashion, as advised by the Council's Development Control Manager;

In the case of municipal shops, any related shopping facilities must not be adversely affected;

The current state / condition of the premises and any proposed repairs by the incoming tenant will be taken into account in assessing the market rent.

## **Existing leases**

The proposed disposal must fall within a general consent;

The proposal must contribute towards meeting identified priorities in the current Community Plan and/or Corporate Business Plan;

A business plan should be submitted, clearly indicating the community benefits of the proposed operation and how it will be viable in the longer term;

In the case of municipal shops, any related shopping facilities must not have been adversely affected by the existing tenancy.

## **Temporary licences**

E.g. Access licences to cross Council land. These are not classed as a disposal and therefore the disposal strategy does not apply and neither does 'opportunity cost'.

Access must be necessary to allow the organisation to function;

The applicant must exempt from the State Aid rules as set out under Legal implications

An 80% discount will be applied in the case of temporary licences, to align with the discount given to charities on business rates.

## **Legal documentation**

The unrestricted market value of any disposal should be noted in the legal documentation, so as not to risk undermining the value of other Council assets;

The unrestricted market value of the disposal should be noted in the financial accounts;

The Council should be able to request an annual progress report on the operation if it so chooses;

The Council will include appropriate rent review periods and mutually acceptable break clauses in all new letting arrangements, to provide financial assurance for both the authority and its tenants;

If the tenant or use changes, the Council will have the option to withdraw from the agreement;

The disposal must comply with European legislation relating to state aid.

### **General disposal consent**

Under S123(2) of the Local Government Act 1972 the consent of the Secretary of State is required to carry out a disposal at less than best consideration.

From time to time, the Secretary of State issues so-called 'General Consents' which apply to disposals meeting specified criteria. Where a general consent has been issued, a qualifying disposal can proceed without the need for referral to the Secretary of State. The General Disposal Consent (England) 2003 applies to disposals where:

The local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the following objects in respect of the whole of the whole or any part of its area, or of all or any persons resident or present in its area:

the promotion or improvement of economic well-being;

the promotion or improvement of social well-being;

the promotion or improvement of environmental well-being; and

the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds)