

Policy on the Voluntary, Community, Social Enterprise, and Faith Group use of Property – draft v0.3

1. Introduction

- 1.1 The Council owns, generally freehold, a wide range of property. This includes its direct operational facilities such as offices, depots, civic accommodation, libraries, and parks; community buildings such as community centres; and commercial property including shops, warehouses, and factories. All of this property is intended to support achievement of the Council's objectives, whether through service provision, income generation, regeneration, or a combination of these. Preserving some historic properties is an objective in its own right. In some cases, property is deliberately placed in the hands of others to deliver a service, typically one focused on community needs but also some operational properties such as depots.
- 1.2 Owning property can be financially beneficial, but – particularly where the property is not efficient for service provision or in occupation by a commercial tenant – it also carries costs. These costs include maintenance, security, general management, and typically business rates. Where a property has a positive capital value retaining it also carries an opportunity cost; if sold or rented out commercially, the income could be used for other purposes supporting the Council's objectives.
- 1.3 The Council also receives frequent requests to provide property, often at below market rates, from groups or organisations which provide some form of benefit to the community. This policy is designed to provide a means by which the Council can make well-founded decisions about which properties should be made available for community uses, on what terms, and to whom.

2. Definitions

- 2.1 For the purposes of this policy, the following definitions are used.
- 2.2 'VCS group' – a voluntary, community, social enterprise, or faith group which complies with 2.3 and is one of the following:
 - 2.2.1 A charity under the law of England & Wales, Scotland, or Northern Ireland.

- 2.2.2 A community benefit society (or, under the previous law, an industrial and provident society which exists for the benefit of the community and is not a co-operative).
 - 2.2.3 A community interest company with a no distribution rule.
 - 2.2.4 Another form of company registered under the law of England & Wales, Scotland, or Northern Ireland with articles which provide for a community purpose, with a no distribution rule.
 - 2.2.5 A community amateur sports club (CASC) registered with HM Revenue & Customs as such.
 - 2.2.6 An unincorporated association with rules which provide for a community benefit purpose, and a no distribution rule.
- 2.3 In all cases to be considered a VCS group the entity must not have borrowing or other arrangements which side-step the no distribution rule, for example debt with equity characteristics. For VCS groups of the types described in 2.2.4 to 2.2.6 there must be credible arrangements for the no distribution rule to be protected from change.
- 2.4 'Asset lock' – a prohibition on distributing assets except to another organisation which itself meets the criteria of a VCS group.
- 2.5 'Available property' – property belonging to or under the control of the Council which it has included on a list of available property under section 3.
- 2.6 'Core requirements' – all of the following:
- 2.6.1 Meeting the provisions of Section 7 as applied in the listing for that available property.
 - 2.6.2 Providing a credible business plan which shows that the proposed tenancy can be sustained.
 - 2.6.3 Demonstrating that any proposed works to the available property can be funded (see 6.6).
 - 2.6.4 Demonstrating the ability to carry out any proposed works to the available property safely and competently.
 - 2.6.5 Showing how the requirements of Section 123 of the Local Government Act 1972 (or other relevant powers to dispose) and/or the UK subsidy control regime can be met, including (if applicable) by charging a rent or premium.
- 2.7 'Near future' and 'shortly' – typically within the next 12 months but may be longer if applicable to the type of property and the scale of investment and planning likely to be needed to occupy it.
- 2.8 'No distribution rule' – an asset lock and provisions prohibiting the distribution of profits to (as applicable) members or shareholders.

2.9 'Tenancy' – a lease or a license to occupy.

3. Available property

3.1 The Council will maintain three lists of property available to VCS groups:

3.1.1 **Type I:** Property which is intended for community sporting use (for example, football pitches and clubhouses).

3.1.2 **Type II:** Other property which is intended for community use (for example, community centres).

3.1.3 **Type III:** Property which is not intended for community use, but which is not currently required for its intended purpose (for example, shops or offices). The motivation for offering these for VCS group use would be to mitigate the Council's holding costs.

3.2 The lists will be published on the Council's website, with details of the property concerned. Property which is not currently available, but which is expected to become available in the near future will also be listed.

3.3 The lists will indicate:

3.3.1 The periods after which the Council will consider applications for each available property. Typically, this will be quarterly, but depending on the circumstances of each property this may vary.

3.3.2 The type of occupation the Council intends to offer (see 3.4), including any special terms or considerations which would apply.

3.4 The standard types of occupation will be as follows:

3.4.1 **Category A:** Room use. This would provide regular or near-constant use of a room or rooms, but without exclusive occupation.

3.4.2 **Category B:** Exclusive occupation of a building, or a discrete part of a building, or an area of land.

4. Application process for property on an available property list

4.1 The Council will publish on its website an application form for VCS groups wishing to be considered for use of a Council property. This form will include:

4.1.1 Details of the VCS group, including an explanation of how it meets the requirements set out in paragraphs 2.2 and 2.3. Alternatively, it may explain how the VCS group would be constituted so as to meet the requirements of paragraphs 2.2 and 2.3 if it is not yet so constituted.

- 4.1.2 Details of the activities which the VCS group proposes would be carried out in or by means of the available property.
- 4.1.3 An explanation of how the activities would meet WNC's corporate objectives.
- 4.1.4 An outline of the business plan for the proposed use of the available property, including how this would be financially sustainable. This must address the financial and risk consequences of its proposals under 4.1.5 and 4.1.6.
- 4.1.5 Proposals for the form and terms of occupation of the available property, which must reflect the requirements of section 7.
- 4.1.6 Proposals for any changes or improvements the VCS group would wish to make to the property.
- 4.1.7 Evidence of the VCS group's ability to fund (see 6.6), and safely and competently carry out, the works proposed in 4.1.6.
- 4.1.8 An explanation of how the proposed tenancy would comply with Section 123 of the Local Government Act 1972 (or other relevant powers to dispose) and the UK subsidy control regime, including (if applicable) any rent or premium the Council should charge.

4.2 To express interest the VCS group would complete and submit the form.

5. Interest in property that is not on an available property list

5.1 If a VCS group identifies a property owned or controlled by the Council which is not on an available property list but which it considers is, or will shortly become, available, and the VCS group wishes to be considered to occupy it, the following shall apply:

5.1.1 The VCS group shall contact the Council at [insert email address], giving brief details of the property and its proposals.

5.1.2 The Council will respond either indicating that it does, or does not, consider there is a realistic prospect of the property becoming an available property in the near future.

5.1.3 If the Council indicates that it considers that the property may become an available property in the near future, then it will include it in the relevant list under Section 3.

5.1.4 The VCS group may then apply to occupy the property in accordance with Section 4.

5.2 This process will also apply if a VCS group wishes to use a Type I available property for a non-sporting use. In this case, if the Council considers the property should be recategorised as Type II it will do so, and then Section 4 will apply.

6. Consideration of applications

6.1 After the date specified on the applicable list, the Council will consider all applications made for an available property.

- 6.2 The value of the proposed use will be considered in line with the Council's policy and procedures for assessing applications for grants current at the time. This assessment will result in a score being awarded to the proposed use.
- 6.3 Applications to use Type I available properties will be tested on the grounds of sporting uses only. (For the avoidance of doubt, unless specifically excluded in the listing both sporting and non-sporting uses will be assessed for Type II available properties.)
- 6.4 If there is only one application then provided it meets the Council's minimum requirements for the award of a grant, it will be considered the highest scoring application and the process proceed accordingly. If it does not meet the minimum requirement, then it may proceed at the Council's discretion but would be treated as if the available property was Type III (whether or not it actually was).
- 6.5 An assessment of the other elements of the application with the highest score will be made to ascertain whether it was likely that the VCS group would be able to meet the core requirements.
- 6.6 Where the VCS group is also applying for grant funding from the Council which would enable it to comply with core requirement 2.6.3 ("that any proposed works to the available property can be funded"):
 - 6.6.1 The Council will where practical consider the grant application and the application to use the available property in parallel.
 - 6.6.2 If the grant application would be successful if the VCS group was awarded occupation of the property, it will be assumed for the purposes of assessing the application for occupation of the available property that the grant will be awarded.
 - 6.6.3 If the grant application would not be successful even if the VCS group was awarded occupation of the property, both applications will be rejected.
 - 6.6.4 If the Council cannot practically consider the two applications in parallel, it will be assumed that the grant application would be unsuccessful when considering the application to be awarded occupation of the available property.
- 6.7 If it appears likely that the highest scoring application will be able to meet the core requirements, then formal negotiations to agree the legal terms will be commenced in accordance with Section 8. If the highest scoring application does not appear likely to be able to meet the core requirements, or if after a reasonable period of negotiations no agreement on legal terms is reached, then the highest scoring application will be disqualified and the next highest scoring application will become the highest scoring. The process will then repeat until a successful VCS group is identified or there are no remaining applicants to consider.

6.8 If it appears justified in any case, for example if there are a large number of applications for one available property, then an initial sifting assessment of both aspects of the applications may be made. This would be used to exclude applications which were either unlikely to achieve a competitive score for the proposed use or were unlikely to be able to meet the core requirements. The remaining applications would then be subject to the process outlined in paragraphs 6.2 to 6.6 above.

7. Terms for use of property

7.1 The matrix below indicates the main terms which would normally apply to each type of available property and category of occupation.

| | Type I | Type II | Type III |
|---------------------|--|--|--|
| A: Room use | <ul style="list-style-type: none"> • License to occupy. • Maximum 12 months term (renewable). • Service charge will reflect actual costs to WNC such as utilities and postal services. • No repairing obligations. | <ul style="list-style-type: none"> • License to occupy. • Maximum 12 months term (renewable). • Service charge will reflect actual costs to WNC such as utilities and postal services. • No repairing obligations. | Not granted. |
| B: Exclusive | <ul style="list-style-type: none"> • Lease for buildings. License for playing fields etc. • Maximum term 7 years (but see 7.4). • Where only part of building, service charge may typically include wider range of items. | <ul style="list-style-type: none"> • Lease. • Maximum term 7 years (but see 7.4). • Where only part of building, service charge may typically include wider range of items. | <ul style="list-style-type: none"> • Lease. • Maximum 12 months term (renewable). • Internal repairing obligations. |

7.2 In all cases:

7.2.1 Tenancies will granted be without a statutory right of renewal ('contracted out').

- 7.2.2 There will be a service charge or similar payment applied to cover actual costs (e.g., utilities, facilities management, and insurance) to WNC. This is most likely to be relevant in occupation Category A.
 - 7.2.3 Rent will normally be a peppercorn and no premium will be charged. However, where it is necessary to comply with Section 123 of the Local Government Act 1972 (or other relevant powers to dispose) and/or the UK subsidy control regime, a rent or premium will be charged at a level which makes the tenancy legally compliant.
- 7.3 The term of tenancies for Category B occupation of Types I and II property may be longer than seven years in the following cases:
- 7.3.1 Where this is reasonably necessary to deliver a sustainable business plan (typically if borrowing is required).
 - 7.3.2 Where this is a requirement of an external funder, such as a grant-giving body, and the amount of grant is material to the works to be undertaken.
- 7.4 Where a tenancy term of longer than seven years is justified under 7.3 the term will be the minimum period reasonably required to meet the requirements of the case which applies.

8. Agreements and occupation

- 8.1 The Council will prepare initial drafts of legal agreements, drawing on its templates and reflecting the requirements of this policy.
- 8.2 The Council will ensure that in granting a tenancy it is compliant with Section 123 of the Local Government Act 1972 (or other relevant powers to dispose) and the UK subsidy control regime.
- 8.3 Each party is to bear its own legal costs in preparing legal agreements.
- 8.4 No occupation of property may take place until the relevant legal agreements are in place.

9. Renewal

- 9.1 In the case of leases or licenses granted for up to 12 months, these may be renewed without a further competitive process for periods of up to a further six years in total. Shortly before the end of the seven years the property will be listed as a property which will become an available property and subject to the competitive process outlined above.
- 9.2 However, if the Council concludes at any time that a change in circumstances means that it is likely to be in the public interest to run a competition for occupation of such a

property it will be listed as a property which will become an available property at the end of the current lease or license term and subject to the competitive process outlined above.

10. Special cases

10.1 Sections 3 to 8 above do not apply where a VCS group has been procured to deliver a service on behalf of the Council using Council property. In such cases:

10.1.1 The procuring team is responsible for agreeing with the Assets & Environment team the proposed occupation arrangements prior to commencement of procurement. These will normally involve the VCS group being granted a license to occupy relevant WNC property but may sometimes involve the grant of a lease.

10.1.2 Such licenses or leases will be without the statutory right of renewal ('contracted out') and contain provisions terminating them in the event that the service agreement terminates, irrespective of the cause.

10.1.3 Either the VCS group or the procuring team will pay a service charge covering WNC actual costs in providing the space.