


<p><b>Cabinet</b></p> <p>1 December 2015</p>	
<p><b>Report of:</b> Corporate Director, Development &amp; Renewal</p>	<p><b>Classification:</b> Unrestricted</p>
<p><b>Community Buildings: Allocation and Charging Policy</b></p>	

<b>Lead Member</b>	Councillor David Edgar, Cabinet Member for Resources
<b>Originating Officer(s)</b>	Service Head, Corporate Property & Capital Delivery
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Community Plan Theme</b>	One Tower Hamlets

### **Executive Summary**

The council currently owns some 79 community buildings (as listed at appendix 1) located across the borough. There is a wide variation in type, quality and condition of premises with a variety of uses and occupation type/terms (e.g. leases, tenancies-at-will etc.)

Officers in the council's Asset Management Team have been working on developing and codifying the council's approach and methodology when dealing with its portfolio of community buildings. This includes exploring a range of options for the provision of buildings for community use, setting out a fair and consistent charging policy including reference to the existing Property Procedures for disposals and lettings given at appendix 3.

Officers are also seeking to formalise the basis of occupation – moving away from informal or insecure bases of occupation – and ensuring that occupiers have a proper lease with a fixed term, providing security and certainty to both the tenant and the council. This piece of work also provides an opportune moment to consider a number of parallel issues including both landlord and tenant repairing obligations and payment of non-domestic rates.

The report, at section 12.1, sets out the basis for going forward with a property by property review of the community buildings portfolio. Using the information gathered in the review, the principles outlined in this report will be applied to each of the properties and occupying groups in order to ensure that each is occupying on a fair, level, transparent and secure basis.

The review will also allow officers to bring forward a further report, no later than May 2016, setting out how the council might recognise the wider community benefits being delivered by the organisations who occupy these properties.

It should be noted that this report is primarily concerned with asset management: how the council will manage its existing portfolio of community buildings. It is not about the wider resourcing needs of the third sector, although there is clearly a relationship. These matters will be addressed in the council's Voluntary and Community Sector Strategy 2016-2018, which is due to be launched in May 2016.

### **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Agree the principles to be applied to leases to be issued to tenants in council-owned community buildings, set out in section 9 of this report;
2. Agree that the basis for charging for these premises should be the open market rental value, for D1 use, subject to any recognition of community benefit;
3. Note that a proposed methodology for assessing and quantifying said community benefit will be presented to the Mayor in Cabinet, in a further report, to be considered no later than May 2016; and
4. Note that a property-by-property review of council-owned community buildings, as described in section 12.1, is taking place and the outcome of the review will also be presented to the Mayor in Cabinet.

## **1. REASONS FOR THE DECISIONS**

- 1.1 The third sector is an important part of the fabric of life in Tower Hamlets and plays a unique and crucial role in the delivery of services to residents of the borough. The broad range of third sector organisations in the borough also contribute towards building social capital and fostering community cohesion.
- 1.2 The financial crisis of 2008 resulted in an economic downturn that has had disastrous consequences for the third sector. This has resulted in both an increased demand in services as well as a reduction in funding, both on a national and local level. While the council is also facing similar challenges, the importance of helping mitigate the impact of these funding challenges on the third sector is recognised across board, and particularly by the Executive Mayor.
- 1.3 This policy sets out the principles in relation to how the council will allocate and charge for the portfolio of council-owned community buildings. The adoption of this policy will help the council satisfy its legal requirements in relation to securing best consideration when disposing of property, as well as demonstrating continued compliance with the best value duty.
- 1.4 It will ensure community groups are treated fairly and consistently, in a transparent and accountable manner when bidding for or occupying community buildings.
- 1.5 The recommendations in this report will also ensure the portfolio of community buildings is fit for purpose and in a tenantable state while recovering some of the expenditure the council incurs in owning, managing and maintaining this portfolio of buildings.
- 1.6 It will also ensure there are formal agreements in place in order to ensure there is clarity in the different roles and responsibilities of the landlord and tenant.
- 1.7 The adoption of this policy also features in the Best Value Improvement Plan, which was produced by the council following the issuing of directions by the Secretary of State for Communities & Local Government.

## **2. ALTERNATIVE OPTIONS**

- 2.1 The Mayor in Cabinet could choose not to adopt the principles set out in this report. This is not recommended as the adoption of the policy is part of the council's Best Value Improvement Plan. In addition, having a policy will

give certainty to the third sector, which will enable them to better plan for the future in relation to their property and general resourcing needs.

- 2.2 The Mayor in Cabinet could choose a different set of principles. Any changes would have to undergo assessment and a further report will be brought back to Cabinet for the Mayor's consideration.

### 3. **DETAILS OF REPORT**

#### **Key Definitions**

- 3.1 Community buildings – For the purposes of this report, the term community buildings means that part of the council's property portfolio which is occupied by those groups defined in 8.5 and 8.6. A broad definition is set out in para 3.6. They do not form part of what is generally considered to be the council's operational estate nor are they comprised in the HRA shops (investment) estate. However one or two buildings are used to deliver statutory services by commissioned groups e.g. Discovery House, Newby Place (respite care provision).
- 3.2 The term open market value (D1) used throughout this report is further explained in section 9.2. It is a rent based on the assumption that the property is offered on the open market but only bids from those users who are able to, and submit proposals that, comply with the restriction on the use class (see below) will be considered. For this reason commercial organisations would not be allowed to use the building and would therefore be excluded from bidding. The market is therefore restricted and the resultant rent will be lower than that which would be offered for an unrestricted use.
- 3.3 The use allowed under the lease will be very tightly defined in order to restrict bidding to community groups and consequently keep rentals down as described above. The permitted uses for buildings are expected to fall within class D1 of the Town and Country Planning (Use Classes) Order 1987. This comprises:
- 3.4 **Class D1. Non-residential institutions**  
Any use not including a residential use —
- (a) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner, .
  - (b) as a crèche, day nursery or day centre, .
  - (c) for the provision of education, .
  - (d) for the display of works of art (otherwise than for sale or hire), .
  - (e) as a museum, .
  - (f) as a public library or public reading room, .

- (g) as a public hall or exhibition hall, .
- (h) for, or in connection with, public worship or religious instruction.

3.5 However, when entering into the lease, the user clause will be drafted to further restrict the specific use within this category on a site-by-site basis in order to reflect the purpose for which the individual groups will occupy the property. This will help ensure the buildings are genuinely used for community use, and this use can be enforced under the lease.

3.6 Community group – this is a broad term referring to groups who form part of the voluntary and community sector. This generally refers to those organisations that are not-for-profit, social value driven and principally reinvest any financial surpluses to further social, environmental or cultural objectives.

#### **4. NATIONAL BACKGROUND**

4.1 Community assets have been high on the agenda since the Quirk review in 2007 and have remained the focus of numerous reports since then. The various provisions of the Localism Act 2011 have reinforced the desire for community participation and in some cases ownership of property previously controlled by local authorities.

4.2 However many authorities have experimented with asset transfer and whilst there have been a number of successes there are perhaps more failures.

4.3 Whilst the prominence of community ownership has slipped down the agenda for many authorities as other pressures on Central and Local Government take hold, there is still a need to ensure that any publically owned building is occupied as efficiently as possible and satisfies the purpose for which it is held. The generally held view is still, that local authorities should only hold property where there is demonstrable service need. However service need does not just mean office space from where a service is delivered and can include community buildings where the council is seen as the most effective provider of such space.

4.4 It is accepted that there is an important role and need for community centres, which provide much needed services and support to their local residents. They can be a place of learning, creativity, and most importantly social connectivity for people from all sorts of backgrounds as part of the community cohesion agenda.

## **5. LOCAL BACKGROUND**

- 5.1 The council currently owns some 79 community buildings located across the borough. The total gross internal area of the community buildings portfolio is c13,000 sq m. Amongst these, there is a wide variation in type, quality and condition of premises. There is also a variety of uses and lease types / terms.
- 5.2 The council is understood to be the largest provider of community buildings in the borough providing access for community facilities, accounting for around one third of all such provision.
- 5.3 Approximately half of the council-owned community buildings with community use are held on tenancies-at-will, subject to rents of £1 per day. It is understood that little of this rent is actually collected. The advantage of a tenancy-at-will, for the council, is that the tenant must give possession to the landlord on demand. For this reason there can be no defined length of term. This can be an issue for the tenant if it needs security to obtain grant funding. For other groups it is less important.
- 5.4 The remaining buildings are held on a variety of agreements comprising different terms and rental amounts. More recently, community buildings have been let on 5-year leases, but leases of between 2 and 60 years have also been concluded.
- 5.5 Since the adoption of the corporate landlord model in April 2015, the majority of these buildings are held corporately and are managed on a day-to-day basis by the council's asset management team. Some buildings are occupied by a community group but effectively managed by Tower Hamlets Homes. (e.g. Emmott Close OAP club which provides an office for the Ocean Estate residents warden who is employed by THH).
- 5.6 Building condition varies across the estate; maintenance expenditure on community buildings in recent years has been in the order of £400,000 to £500,000. Much of this is statutory compliance work (Legionella, electrical testing etc.) and reactive maintenance. However this may not represent all of the costs as works may also have been paid directly from service budgets.
- 5.7 Based on recent condition surveys there is known to be outstanding capital work required.

- 5.8 In addition there is a wide variety of approach to compliance with the Equality Act 2010 and many buildings are not adequately compliant. This ranges from level access to disabled toilet facilities.
- 5.9 It is accepted by the council that these buildings serve an important purpose in offering space to community organisations for a wide range of activities and are an essential contributor to community cohesion. In some cases they also contribute to service delivery. This is true both locally and nationally.
- 5.10 The council is not the only organisation to provide space for community organisations and others such as charities and faith organisations also contribute. However, there is no borough-wide register of spaces for community use. It is proposed that on completion of the review of council-owned properties consideration is given with the Third Sector team and the Tower Hamlets Council for Voluntary Services to compile such a register.
- 5.11 The council has commissioned a number of reports in respect of community assets in the past. This has included 2010's Consulting Inplace – Premises needs of third sector organisations and the May 2011 Community Halls and Rooms final report by Edith Fekarurhobo. However whilst the reports have made observations and recommendations, to date nothing has been adopted and/or implemented.
- 5.12 This report endeavours to start the implementation process.

## **6. OBJECTIVES AND REASONING**

- 6.1 The council needs a clear business rationale for a fair commercial policy for the leasing of buildings in its ownership, in order to:
- a. Meet the current legal requirement to secure both best value and best consideration<sup>1</sup>. This means having regard to open market rental value for the agreed permitted use. (see section 9.2)
  - b. To make the basis of any subsidies clear and transparent.
  - c. To ensure that community buildings in the council's ownership are fit for purpose, particularly as regards health and safety and preventative maintenance
  - d. Recover the costs of maintenance and repair of buildings, or makes clear where responsibility for these lie with the tenant.
  - e. Demonstrate a fair, consistent and justifiable approach to the letting of community buildings

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<sup>1</sup> S123 Local Government Act 1972 which requires the council to secure the best consideration, reasonably obtainable, when granting leases of more than 7 years. See also Revised Best Value Statutory Guidance DCLG March 2015

- f. Maximise the utilisation of community buildings conducive to optimum local benefit, encouraging shared use of buildings where possible
- g. Formalise tenancy agreements based on standardised contractual models
- h. Reduce, where possible, the amount of council management time spent on running community assets.

6.2 This report will start the process of considering how the council might assess and quantify the community benefit arising from the activities taking place in these buildings.

6.3 If a clear, justifiable and equitable policy on the pricing of rental arrangements for community buildings can be formulated this will enable the council to proceed with more formalised and consistent leasing arrangements based on fair and reasonable criteria.

6.4 This will also include charging rents which are based on open market value (D1), subject to any recognition of community benefit. Standardised lease terms more aligned with commercial lettings will ensure that the council meets its best value obligation whilst giving the tenant a little more security going forward.

## **7. CURRENT OCCUPATION AND USE**

7.1 Many of the buildings are controlled by a single organisation, usually a Tenant, Residents Association (TRA). In many instances the way that this has come to be is informal and in some cases unclear.

7.2 Some buildings are used by private or third sector organisations outside the council to provide social and educational services and these are discussed later in this report.

7.3 Other buildings are occupied by registered charities that may also fall into one of the above groups.

7.4 In some instances the controlling organisation may only use the building for its own purposes on relatively few occasions each week. It may have chosen to allow other groups to use the buildings at certain times but in the main there is no formal basis for this “sub-letting”.

7.5 In other cases, the occupant is a recognised faith group. In recently concluded leases, many of these have been on open market rental values (for D1 use).



7.6 This means that in many instances the benefit of occupation is to one organisation only rather than to the community as a whole and this does not necessarily satisfy the council's wider ambitions. The council will periodically check the usage of buildings in relation to leases and permitted activities.

## 7.7 **Status Quo**

7.7.1 It has been established that maintaining the status quo is not acceptable for a variety of reasons. At present the buildings are a drain on council resources in terms of management time and maintenance cost, whilst the benefit to the community as a whole is not always clear.

7.7.2 The General Fund meets the cost of statutory compliance for community buildings and there is a budget for £350,000 per annum set aside for this purpose. The Housing Revenue Account bears a large proportion of the other costs of maintaining community buildings in terms of carrying out repairs and maintenance as well as bearing the loss of potential rental income.

7.7.3 The council's in-house Asset Management Team manages the majority of the portfolio although some also have input from Tower Hamlets Homes.

7.7.4 The present system is seen as unfair, costly to the council and the resulting benefits are unknown and/or unquantified. The occupations may not conform to the council's desire to make best use of its assets; in particular a number of buildings are underutilised. Furthermore there is currently a risk of uncertainty as to the responsibility for the building as between the Asset Management Team, Tower Hamlets Homes and the occupier. This will be a problem if there is an accident or issues of non-compliance.

## 7.8 **Buildings retained by the council**

7.8.1 As can be seen from the above, it is likely that for the foreseeable future the council will retain ownership of much of the community buildings estate. However things need to change in order to ensure that the estate is used to benefit the community as a whole and not just individual groups.

7.8.2 It is important to ensure that the council is securing best consideration from its property, particularly where leases of longer than 7 years are granted<sup>2</sup>.

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<sup>2</sup> Best consideration is not required for leases under 7 years; section 123(2) LGA 1972'.

7.8.3 Finally a policy needs to be adopted which leads to consistent and fair lease terms including rent to all organisations that occupy or offer services from council-owned property.

## **8. OCCUPIER/TENANT GROUP**

8.1 It is important to define what is and what is not a community organisation. There are a huge variety of legal structures for organisations working in the community and voluntary sector ranging from unincorporated associations such as TRAs and sports or interest clubs to large charitable or private companies with turnover running to six figures and above.

8.2 It is important to consider the type of organisation when assessing affordability as it is not realistic to expect smaller clubs and TRAs to pay for their accommodation on the same basis as larger organisations; however this does not preclude any of these organisations fitting in with the overall policy proposed.

8.3 Firstly it is important to distinguish between true community or third sector organisations and commercial organisations offering services to the community.

8.4 The following is taken from Sandwell Borough Council's definition of the Third Sector and many of these types of group are represented in the LBTH community estate:

8.5 The third sector includes a very diverse range of organisations including some or all of the following components:

- Voluntary organisations
- Community groups
- Tenants and residents groups
- Faith groups
- Housing Associations
- Most co-operatives and social enterprises (provided profits are retained for the benefit of the members or community served)
- Most sports organisations
- Grant making trusts
- Private clubs

8.6 Organisations can take a variety of forms including one or more of the following:

- Mutuals
- Community interest companies
- Industrial and provident societies

- Not for profit trade associations
- Charitable trusts
- Companies limited by guarantee
- Unincorporated groups

## 8.7 Tenant Groups

8.7.1 However it is not necessary for all buildings to be occupied on the same basis particularly regarding rent. It is therefore proposed that occupiers are split into three groups and that rent is charged on the same basis according to occupier grouping.

8.7.2 This grouping will address the question of affordability, which would otherwise have the potential to lead to any charging policy to fail. If questions of affordability were not addressed, this could lead to rent arrears and then costly recovery action on the council's part. This could also threaten the stability and sustainability of the local third sector.

## 8.8 Summary of proposed tenant groups

Group	Tenant Group	Basis of Occupation
1	Private sector and larger organisations	Open Market rental (D1) value for the proposed use
2	Other organisations not falling into either of the other groups	Open Market rental value (D1), less recognition of community value of all or part.
3	Tenant and resident associations	Management agreement. No right of occupation, no rent. Maintenance covered from income

8.8.1 It is therefore proposed that the **first group** will pay the open market rental value (D1) and will comprise any private sector organisation not falling into one of the above types of organisations set out in 8.5 and 8.6; whether or not they are providing council statutory obligations or sponsored services.

8.8.2 It will also include charities and third sector organisations whose turnover exceeds a de minimus amount. This figure will be arrived at following the review set out in section 12.1 and analysis of how community benefit will be assessed and quantified. The figure will provide a benchmark; any organisation whose turnover exceeded this amount would be expected to have sufficient financial capacity to meet their proper running costs including accommodation cost but also that such organisations should be

adequately and properly staffed to administer such significant financial responsibility.

- 8.8.3 The **second group** will include all other organisations and other smaller associations except most TRAs. By definition these groups will be offering a benefit to the community in which they are located but may not be of sufficient size to generate a surplus to be able to afford a full open market rent. It may therefore be appropriate that the value of the community benefits offered is reflected in the cost of managing the building. More on this community benefit assessment is set out in section 10 of the report.
- 8.8.4 Therefore this group would be expected to enter into a standard form of lease on terms outlined elsewhere in this report– including an open market rental value (D1) – but part or all of the rent could be rebated according to an assessment methodology which will be submitted for the Mayor’s consideration no later than May 2016.
- 8.8.5 The **third group** comprise the true TRA accommodation This will normally comprise a relatively small area, possibly a single room, forming part of a social housing development which has been set aside specifically for the use of the residents of that development where no single group has overall control of the space but rather the TRA (sometimes with the assistance of THH) manages it for the use of residents of the community it serves.
- 8.8.6 It is proposed that recognised TRAs would occupy their room/hall on the basis of a management agreement with no rental charged, but also no right of occupation. The TRA would be expected to accounting for any income arising from renting out the space for events.

## 8.9 **Basis of Charge**

- 8.9.1 Where the occupier falls into the **first group**, then that tenant will pay the full rent. In addition there may be a service charge for external and structural repairs and maintenance.
- 8.9.2 Many of the organisations in the first group will already be occupying under a formal lease and it will in this case be a matter of ensuring that the rent and length of term are appropriate at the time of review / renewal. If there is a formal lease in place, then terms cannot be altered (other than by agreement) until the current lease expires.
- 8.9.3 It is proposed that:
- Where tenancies-at-will have been sent out (some as long as two years ago) but have not been signed by occupiers then these TAW

will be withdrawn and replaced with a standard lease on the new open market rental (D1) basis.

- All new lettings of community buildings going forward will be on the basis of a standard open market rental (D1) lease.
- On completion of the review, existing tenancies-at-will are terminated and a new lease offered.

- 8.9.4 Where a tenant is already in contract with the council to supply a service from council-owned property then the new rent and lease terms will come into effect when the contract is renewed or re-tendered. This means that the terms will be made clear in any tender documentation and will be reflected in the tenders submitted. The service provider will be entitled to provide alternative accommodation from its own resources providing the council deems these suitable.
- 8.9.5 This proposal will need to be agreed with the relevant service prior to tender documentation being sent out.
- 8.9.6 Nothing in the above will affect the operation of normal council grant-funding to eligible organisations. When considering future grant applications the council should ensure that adequate account has been taken of rental commitments.
- 8.9.7 The **second group** will also pay the rent and service charge but in this case the rent (only) may be offset by the value of the benefit that the organisation brings to the community. This offset would apply only to the parts of the building available for the use of the community as a whole as opposed to restricted use as in the case of a place of worship or playgroups (see below). The methodology for this will be submitted for the Mayor's consideration no later than May 2016.
- 8.9.8 One of the outcomes of the property review will be to seek to remedy historic arrangements where groups have been placed in buildings that are larger than they would typically need or require and the resulting impact of implementing this policy could be a financial disadvantage because the rent could be too high.
- 8.9.9 With the **third group**, the residents usually pay for some of this accommodation as part of their housing rent or service charge and in the case of new developments, the capital cost of providing the facility may have been met through s106 contributions.
- 8.9.10 Where this is the case it would not be equitable to charge in addition to this contribution. However where other groups or private individuals use the

building as well, it is important to ensure that these groups are not being subsidised by the resident's rental contribution; therefore these groups would still be expected to pay based on their use of the space. (This will usually be in the form of an hourly charge by the user group with income going to the TRA to mitigate running costs).

- 8.9.11 It would be expected that the management of this type of space would be transferred to Tower Hamlets Homes who would be responsible for administering the use of the space, collecting charges (based on a rate agreed with the council) and using this income to pay for maintenance and statutory testing.
- 8.9.12 It should be noted that Tower Hamlets Homes are also subject to the DCLG directions on the disposal of buildings and subject to the best value duty.
- 8.9.13 In the small number of cases where it is not practical for THH to manage space of this nature and there is a recognised group / TRA whose constitution meets the council's requirements, then this group could enter into a management agreement with the council rather than a formal lease.
- 8.9.14 Under this agreement the group would administer the building in the same way as THH above but would be required to account to the council on a quarterly basis for income and expenditure.
- 8.9.15 They will be expected to contribute to the maintenance cost of the property through the service charge detailed elsewhere. The management agreement would expect the group to carry out routine internal repairs and decoration over time although it is anticipated that this would be confined to decoration, carpeting etc. Any such obligation must include a requirement to comply with other terms of the agreement and with statute (e.g. must not drill into walls prior to asbestos assessment).
- 8.9.16 This will be examined more closely following the review, when new terms are being proposed for each of these particular cases.

## 8.10 **Playgroups And Places Of Worship**

- 8.10.1 There are two categories of users that occupy a disproportionate number of community buildings and require separate consideration. It is true that many members of the community make use of these facilities but they do not fall into the strictest interpretation of community facility.
- 8.10.2 Playgroups – These users make use of the building for most of the day 5 days per week. Some are term time only while some operate year round.

For the remainder of the time the buildings are not available for community use and due to the fitting out of play areas are not suitable for such alternative use.

- 8.10.3 In addition many such playgroups are quasi businesses making charges for looking after the children who attend and employing paid staff. The peppercorn rent that these users enjoy is effectively subsidising only those people who are able to place their children in the playgroup.
- 8.10.4 It is important to distinguish this type of playgroup from the mother and toddler groups who often make use of community halls and are operated and attended by parents of the children using the facility rather than paid staff.
- 8.10.5 It is recognised that many of these groups are providing services where the council is required to ensure there are sufficient such facilities available. In many instances parents are also receiving childcare allowance. However, by not charging a rental, the cost of providing this care remains hidden. It is proposed that going forward playgroups should be charged the full open market rental (D1) based on permitted use and that the Education Department through its early years function should be responsible for addressing any resultant funding shortfall in dialogue with the tenant.
- 8.10.6 Places of worship – It is acknowledged that places of worship are utilised by a large section of the borough's population. However, the congregants often contribute to support the running of the building and in most instances the organisation can afford to pay for its buildings.
- 8.10.7 As the council has a limited stock of community buildings, these assets are intended to serve as broad a segment of the community as possible. To that end, the council does not routinely provide places of worship for single denominations/faiths. At the same time, faith groups are not excluded from bidding for council properties when they are marketed. It is proposed that all buildings used solely for religious services or other services limited only to the congregation will pay full rental value based on the permitted use. This is the current practice for a number of the buildings that are solely used as faith buildings.
- 8.10.8 This will not prevent an allowance being made (subject to the assessment methodology to be agreed by May 2016) for parts of the building that are made available for use by other members of the community or general community use.

## **9. PRINCIPLES OF THE COMMUNITY BUILDINGS: ALLOCATION AND CHARGING POLICY**

### **9.1 Proposed Principle Lease Terms**

- 9.1.1 Where applicable, the building would be let on a standard form of lease for a period to be agreed. In most cases this would be for 3 years. By defining a term this may give occupiers sufficient security to invest in the property in such things as furnishings or internal decoration.
- 9.1.2 For some, particularly medium or larger organisations, there is the opportunity to seek grant funding from organisations outside the council e.g. Big Lottery Fund etc.
- 9.1.3 In these circumstances funders may look for secure leases in place for longer periods, sometimes up to 25 years; these could be accommodated in appropriate cases.
- 9.1.4 In all longer leases there would be a landlord's break option, on notice, in the event that the property was required for redevelopment. The law provides adequate remedies if the tenant breaches any of the other terms but these could be specified in the lease.
- 9.1.5 All leases will be excluded from the security of tenure provisions of the Landlord and Tenant Act 1954 (this will also reduce the open market rental value for the property). For some larger organisations this may be an issue but as they are likely to be paying full market rental this may be waived by negotiation in this case.
- 9.1.6 In any event, where organisations are in receipt of grant funding solely from the council, leases will not run beyond the period for which grant funding or any service contract is expected to terminate.
- 9.1.7 The tenant will be responsible for all outgoings in the way of charges for services (gas, electricity, water, rates etc.) and will be responsible for statutory testing, internal redecoration and security. Where appropriate, the tenant will also be responsible for external repairs and maintenance.
- 9.1.8 The organisation will be properly constituted with named persons responsible for overseeing the tenant's obligations.
- 9.1.9 As TRAs (the third tenant group) will not be occupying property on the basis of leases, this section does not apply to them.



## 9.2 **Open Market Rent**

- 9.2.1 Where the tenant satisfies the requirements of being a bona fide community organisation the rent charged will be the full open market value (D1) based on the permitted user set out in the lease.
- 9.2.2 It is important to define what is meant by open market rent in the context of this report. The general definition of Open Market Value (OMV) is well established. However there are a number of matters that will have an effect on the rental value including things such as length of lease term or any factors which would increase or reduce the demand for a building.
- 9.2.3 One of these factors is permitted use. Where a lease permits a virtually unrestricted use of a property then the lessor would expect a rental value that reflects the most valuable use of the building. Where the use is restricted then so is the market for that building and where there are fewer takers one would expect the rental value to be lower.
- 9.2.4 For example an office user who may be prepared to pay £40 psf for accommodation in Canary Wharf would not be interested in the lease of one of Tower Hamlets' community buildings as they would not be able to use it for their purpose.
- 9.2.5 However this does not mean that there is only one user for a building with a restricted user clause and providing the rent is realistic, community groups will compete amongst themselves for a building that they are permitted to use. This will establish a range of rents for this type of use which will by definition be lower than that for other uses. If after the grant of a lease, the usage of a building changes, then the council will re-visit the rental charge and /or seek to repossess the building.
- 9.2.6 Therefore the starting point for the rents proposed in these community leases will be this restricted user value as described at paragraph 3.3. This restricted value is referred to throughout this report as Open Market Value (D1).
- 9.2.7 While the open market rental value forms the starting point, the council may recognise the community benefits to be delivered from the activities to be carried out in the premises. This may result in abatement of the rental charge. More information on this is set out in section 10.
- 9.2.8 As TRAs (the third tenant group) will not be charged a rent as the costs of these facilities are paid for through the rent and service charges paid by the residents of the block/estate, this section does not apply to them.

### 9.3 **Service Charge**

- 9.3.1 In addition to the rent, the tenant may be required to pay a service charge. This will include a charge for managing the building including future appropriate structural maintenance and external decoration.
- 9.3.2 However, where it is appropriate the responsibility for this will rest with the tenant. This would apply to properties that are standalone and not part of a wider building, such as a standalone community centre in the middle of an estate. However, where the facility forms part of a wider building (e.g. on the ground floor of a block of flats) it will be more appropriate for the council (or THH) to commission and carry out the structural maintenance with an appropriate service charge to the tenant.
- 9.3.3 It is assumed that prior to the commencement of any new lease incorporating these terms that the council would ensure that the building is wind and watertight and in tenantable condition.
- 9.3.4 These measures will ensure that the building is safe at the start of the lease and will remain so throughout its term.
- 9.3.5 The tenant will meet all other outgoings including statutory testing (an estimate of what this would entail is set out in appendix 2), insurance, services (gas, electricity, water etc.) and non-domestic rates, except in the case of TRAs where these costs are already met within their housing costs.
- 9.3.6 In many instances they will be entitled to apply for rates relief and the council will put in place measures to ensure that these groups are properly signposted towards rates relief and appropriate grant assistance. In addition, the council will also make available a list of suppliers who will be able to carry out the appropriate statutory testing and issue the required certificates.
- 9.3.7 It is suggested that rent and advance service charge is paid monthly in advance in order that any non-payment may be addressed promptly.
- 9.3.8 The advance service charge is calculated by the council's surveyor estimating the total annual cost of performing the services from the commencement of the lease and that figure is then divided into 12 monthly instalments. At the end of the service charge year any surplus / shortfall will be carried forward to the following year in the form of an adjustment. At the end of the lease if there is any adjustment this will be re-paid/charged.

- 9.3.9 In such instances, the landlord will remain responsible for external and structural repairs. Except in the case of small TRAs, the costs will be recovered as part of the service charge.
- 9.3.10 It is important when assessing the advance service charge that surveyors are realistic as regards maintenance in order to ensure that it is not set at an unaffordable level. For this reason it is proposed to restrict the landlord's obligation to keeping the building wind and watertight with discretion to undertake further work in negotiation with the tenant. As already stated, the building will be put into a tenable state of repair by the council at lease commencement. With the exception of routine maintenance (changing light bulbs, internal window cleaning etc.) the tenant will not be required to improve the property beyond its condition at the commencement of the lease.
- 9.3.11 Any repairs or improvements that are undertaken at the tenant's expense and with landlord's consent will be ignored when calculating the rent on any lease renewal.

## **10. COMMUNITY BENEFIT**

- 10.1 Many organisations have attempted to formulate a method for assessing a financial value attaching to "community benefit". It is an intangible concept where each organisation may offer different benefits to its individual users meaning comparison of one organisation's benefit to another is usually very subjective.
- 10.2 Some councils such as Birmingham City Council have turned this into a scientific and mathematical exercise where applicants have to complete a multi-page questionnaire as part of the bidding process for community buildings.
- 10.3 At this stage this is not considered appropriate for Tower Hamlets' community buildings estate. The cost of administering such a system compared to the return is considered prohibitive.
- 10.4 However, it is important to have a mechanism that recognises the outputs delivered by the tenants in community buildings. It is proposed that while a property-by-property review is taking place (see section 12.1) consideration is given to how the council might assess and quantify those outputs. It is considered appropriate to carry out this piece of work alongside the refresh of the council's Voluntary and Community Sector Strategy.
- 10.5 The findings of this piece of work will be reported back to the Mayor in Cabinet no later than May 2016.

## **11. OTHER MATTERS**

### **11.1 Community Hubs**

- 11.1.1 Some of the buildings (e.g. Granby Hall) are large or occupy large sites. Many of the larger buildings are under-utilised. It is inevitable that when market rents are assessed for this type of building even on a restricted user clause, they will be unaffordable to some of the existing tenants.
- 11.1.2 The property review will consider opportunities for the council or other partners to take control and directly manage these buildings, making them available to the existing group at lower cost whilst encouraging other users, with the option of providing access via licences rather than leases. The lease will be sat with the overarching organisation, if not the council. The council may also consider providing access to its services from such a building either in person or digitally. Touch down points for staff could form part of this operating model. This will allow the council the opportunity of considering various models of service delivery in the community.
- 11.1.3 It is possible that one or two of the properties are too large to be operated by a single group and it may be more appropriate for the council to manage these facilities directly. This will be explored further as the review progresses and specific proposals will be formulated for review when it is considered appropriate.

### **11.2 Sub-Letting**

- 11.2.1 Tenants will be allowed and indeed encouraged to allow other bona fide groups to use the accommodation. This could form part of the assessment of community benefit.
- 11.2.2 The lease will regulate this type of sub-user by requiring them to enter into a prescribed form of licence with the tenant, setting out the obligations of the licensee. Council officers will assist with a suitable standard form of licence.
- 11.2.3 The council should also take steps to ensure that support is in place to help groups to publicise the availability of space within a building. This may include assistance with website design and links from the council website, or advice and one off grant support to help with advertisements, posters and other publicity via the Third Sector Team.

- 11.2.4 Groups who are acknowledged as “good” operators i.e. already running their community holding successfully to the benefit of everyone, should be invited and encouraged to help and mentor other groups wishing to move forward and / or where possible or necessary be asked to take over the running of additional buildings in their area.

### 11.3 **Community Asset Transfer**

- 11.3.1 Tower Hamlets and indeed many of the Central London boroughs are in a different position to local authorities in other areas of the country. Many of the properties are not stand alone buildings (such as the typical village hall elsewhere) but are an integral part of larger often multi-storey developments. For this reason it is important for the council to retain control over these properties in order to secure the future wholesale redevelopment of an area or of individual blocks at the appropriate time.

- 11.3.2 While this report has not considered the merits or otherwise of transferring assets to the community, there may be instances arising from the review where this may be an appropriate option. For example where it is likely that the property is not potentially part of future development or structurally integral to a larger block of property, or is not directly linked to service delivery, then disposal to the community should be considered; providing any acquiring organisation has satisfied the council as to its viability, sustainability and community credentials and has been identified through an open process in which other similar organisations have been allowed to participate.

### 11.4 **Partner Asset Transfer**

- 11.4.1 It is possible that some of these premises may be more appropriately managed by whoever manages the remainder of the properties in a specific block such as housing associations and this may be considered further by the review.

### 11.5 **Tenant Handbook**

- 11.5.1 A Tenant Handbook will be prepared for each of the buildings. This will include operating procedures for any plant on site, It will set out clearly both the landlord’s and the tenant’s obligations and duties. It will also contain contact numbers for maintenance reporting, emergencies and general building advice etc. Standard agreements will also be provided for room hire.

## **12. NEXT STEPS**

### **12.1 Property-by-property review**

- 12.1.1 A property-by-property review has been started in order to gather information on occupiers, terms of occupation, condition of accommodation, which of the three groups the current occupier falls into etc.
- 12.1.2 Detailed condition surveys for each of the buildings will be prepared or updated and costed. Any essential repairs necessary prior to the lease will be programmed.
- 12.1.3 It is anticipated that the review will be completed by end of March 2016.
- 12.1.4 Once this review has been completed, the outcome of the review will be reported back to the Mayor, alongside a proposal for how the council might recognise the community benefit that arises from the activities taking place in the premises.
- 12.1.5 Consultation will also take place with service representatives, Local Members and the third sector. A proposal for each property incorporating a lease based on the terms outlined in this paper will then be prepared and discussed with the occupying groups.
- 12.1.6 This discussion will explain what is proposed and why and what other assistance can be offered. This discussion will also explain the proposed methodology for assessing and quantifying community benefit.
- 12.1.7 Occupiers under a tenancy-at-will will be offered terms for a new lease as set out above. In order to terminate existing arrangements, it will be necessary to issue a notice to quit.
- 12.1.8 In some instances it may be necessary to serve formal notices under the Landlord and Tenant Act and this may take time. However once the old arrangement is terminated, providing the council is satisfied with the tenant, a new arrangement will be completed.

### **12.2 New lettings**

- 12.2.1 Any new lettings will reflect the terms set out in this report.
- 12.2.2 New lettings will follow the council's adopted procedures for disposals and lettings shown at appendix 3. In addition each interested party will be allowed to submit a business case outlining the benefits that they will offer in using the building and a decision will be made having regard to this.

However, where possible it will be expected that such groups will find a formula to share the building, if necessary with the help of council officers.

- 12.2.3 Where the tenant decides that they do not wish to proceed on the basis of the new terms offered then the council would take steps to secure possession. Unless the council wishes to pursue an alternative use or redevelopment of the property then the council would market the property as available for community use. This will also be the case for any new property identified as suitable for community use.
- 12.2.4 Expressions of Interest will be invited using a targeted advertising campaign. This will detail the proposed lease terms including rent.
- 12.2.5 Expressions of Interest should include: -
- 1) Details of the organisation bidding, its constitution and management structure.
  - 2) Details of its objectives
  - 3) A business plan including any capital investment proposals and sources of funding.
  - 4) A cash flow and financial forecasts.
  - 5) Details of how the property is to be used and particularly how it is to be made available to groups including times of availability and proposed rental charges.
- 12.2.6 More detailed advice as to what is required would be set out in the invitation to bid documentation and it is proposed that officers in the Third Sector Team would be available to support and give guidance on the preparation of these submissions.
- 12.2.7 An officer panel made up of members from the Asset Management and Third Sector teams plus any other relevant service will consider submissions.
- 12.2.9 Providing all the criteria (from stage 1 and 2) are met a lease will be granted to the successful organisation.

### **13. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 13.1 This report requests that the Mayor in Cabinet considers the proposed basis for allocation of the 79 community buildings held by the Council, together with the methodology of charging for occupation.

- 13.2 The proposed allocation and charging policy will complement the Council's Asset Strategy and the Corporate Landlord model that has been introduced to determine property needs, and should enable assets to be used more efficiently.
- 13.3 As part of the process, arrangements for the letting of buildings will be formalised, with standard leases replacing 'tenancies at will' as necessary. This will enable rental charges to be reviewed and set at an appropriate level. The maintenance liability and the responsibility for statutory charges will also be formalised through incorporation into the legal agreements.
- 13.4 The report proposes that the levels of rent and service charges levied will be dependent upon both the nature of the organisation involved and the services or activities that are undertaken within the community building. The charging criteria for the different categories of organisation are summarised in the table in section 8.8, with details of the three group classifications detailed in paragraphs 8.8.1 to 8.8.6, together with the proposed charging basis.
- 13.5 It is proposed that the organisations within group 1 will incur market rental charges while the rents levied to group 2 bodies will be below market rates. Group 3 consists of tenant and resident associations, with the proposal that these organisations do not pay rent. In the case of organisations within groups 2 and 3, the reasons for the discounted charges will be clearly documented and approved in accordance with the Council's Best Value duty and, if appropriate, its grants policy. The level of discount / subsidy will be dependent upon the service that is provided from the building, or will be offset by the value of the benefit that the organisation brings to the community.
- 13.6 As outlined in paragraph 8.9.4, where an organisation is already in contract with the council to supply a service from council-owned property then the new rent and lease terms will come into effect when the contract is renewed or re-tendered. The tenders received should reflect the fact that the bidders will be operating from Council buildings and the lease arrangements must be taken into account.
- 13.7 Overall, it is anticipated that savings will be made as a result of the allocation and charging policy, either through the generation of additional rental income, or by a reduction in maintenance and other costs. At this stage however, these savings are not quantifiable and therefore have not been built into the budget process for 2016/17. It is anticipated that savings will predominantly be generated in the longer term as leases are formalised, however savings will be incorporated into budgets as they are



realised over the course of the property by property review that is being undertaken (see section 12.1). Over time, the policy should lead to a better use of the Council's assets, with buildings only being retained if they provide a service or generate income.

13.8 The cost of the Community Buildings review is being met from within existing budgetary provision.

#### **14. LEGAL COMMENTS**

14.1 The report sets out the overarching principles which it is proposed be applied when determining the future terms of use of community buildings..

14.2 The Council's powers in relation to property disposal is set out in legislation. Having regard to the type of properties held by the council for the purpose of community use, Section 123 of the Local Government Act 1972 ('LGA') and Section 32 Housing Act 1985 ('HA') are most relevant. The HA applies to land held under the Housing Revenue Account.

14.3 The LGA provides that the Council may dispose of land, but that where it does so, it must dispose of real property (other than by way of a lease of under 7 years) for a consideration not less than the best that can reasonably be obtained, failing which it requires the consent of the Secretary of State before disposing. The General Consent Order 2003 provides consent for particular circumstances, such that specific consent is not required for the disposal of any interest in land which the Council considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area, subject to the condition that the undervalue does not exceed £2,000,000 (two million pounds).

14.4 The HA applies whenever a local authority disposes of land held by it for housing purposes; Section 32 states that a local authority may not dispose of any land ( including by lease) held by them without the consent of the Secretary of State. The Secretary of State has issued The General Housing Consents 2013 which permit the disposal of land held for housing purposes without the need to obtain express consent in certain circumstances, including disposal of land for a consideration equal to its market value, or where the land is 'vacant' ( as defined in the Order).

14.5 In addition to powers to grant leases, the Council also has power to enter into licences or ad hoc use arrangements, either under legislation relating to specific functions ( for example powers in relation to recreation), or under

broader powers, including the general power of competence under Section 1 Localism Act 2011.

- 14.6 While there may be circumstances in which the council's legal right to terminate or vary any current arrangement may differ from one property to another, the proposals set out in the policy are within the powers of the Council. Legal advice on individual properties will be provided on a case by case basis, as and when required.
- 14.7 It is proposed that the rent to be applied for use of Council community buildings is the open market rent, which is to be determined having regard to the D1 planning use. It is proposed that there be a discount of this rent in certain circumstances linked to the type of organisation seeking to lease the building, and the service provided by them. The basis upon and the means by which this reduction will be calculated and awarded is not yet finalised.
- 14.8 The LGA and HA specifically permit a disposal at less than best consideration/market value as outlined above. Accordingly where there is a reduction in rental this may be permitted under the property legislation. Rent reduction may be regarded as a grant system. Where that is the case local authorities have the power to make such arrangements under statutory powers including Section 1 Localism Act 2011.
- 14.9 The Council is obliged under section 3 of the Local Government Act 1999 to "make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy efficiency and effectiveness". This duty, commonly referred to as the 'best value duty', is separate and distinct from the best consideration, or market value duty in the property legislation. Best value is in part a financial consideration in terms of value for money, which can be demonstrated by tendering, or marketing properties to obtain the highest rental price. The proposals are that open market rent as described in this report be obtained. Best value can also include consideration of community or social value, such that use by a particular community group for less than market value can satisfy the best value test.
- 14.10 In carrying out its functions, the Council must comply with the public sector equality duty set out in section 149 Equality Act 2010, namely it must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and to foster good relations between persons who share a protected characteristic and those who do not. This includes the council's actions as a landlord. How this duty is met is addressed in the paragraph below headed 'Tower Hamlets First'.

14.11 The Secretary of State for Communities and Local Government Directions made on 17th December 2014 pursuant to powers vested in him by Section 15(5) and(b) of the Local Government Act 1999 (“the Directions”), provide at paragraph 4(i) that the Council must “take the actions set out in Annex A...”. Paragraph 5 of Annex A requires that the Council, until 31 March 2017 “obtain the prior written agreement of the Commissioners before entering into any commitment to dispose of, or otherwise transfer to third parties, any real property other than existing single dwellings for the purposes of residential occupation”. Any disposal of land or buildings under the proposed policy will therefore require the agreement of the Commissioners.

14.12 The Directions provide at Paragraph 4(ii) and Annex B provide that the Council’s functions in relation to grants be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant). In the event that any future discount facility is regarded as a grant, that proposal will require a decision of the Commissioners, as will any individual decisions to award grants, unless the Commissioners choose to delegate the function to the Council.

## **15. ONE TOWER HAMLETS CONSIDERATIONS**

15.1 Supporting the third sector will increase social capital as well as foster and strengthen community cohesion. The role of the third sector in helping reduce poverty is well established; through advice provision, and increasing the employability and job prospects of local residents.

15.2 While 78% of residents agree that people from different backgrounds get on well together in Tower Hamlets, positively and actively encouraging sub-letting and shared usage of buildings will also help bring different parts of the Tower Hamlets community together.

15.3 The review described in section 12.1 will allow the council to better understand the occupiers and uses of the portfolio of community buildings. This will allow a more detailed assessment of the equalities profiles – across all the equalities strands in the Equality Act 2010 – of the users of our buildings.

## **16. BEST VALUE (BV) IMPLICATIONS**

16.1 The proposal in this report sets out the foundation for a policy on charging and allocation of the council’s community building portfolio. The production

of this policy featured in the council's Best Value Action Plan, which was drawn up following the issuing of Direction from the Secretary of State for Communities & Local Government in December 2014. The production of this policy will help demonstrate the council's continued compliance with its best value duty.

16.2 The council will also ensure that the final policy, particularly the potential methodology for assessing and quantifying community benefit is subject to consultation with those likely to be impacted by it. As this is being explored while the council's Voluntary and Community Sector Strategy is being developed, it would be appropriate for this issue to be considered at the same time.

16.3 The proposed principles in this report will ensure that properties are occupied on the basis of formal leases or, in the case of TRAs, management agreements. They represent an efficient and effective use of the council's estate by seeking to recover some of the costs incurred in holding these properties and clearly setting out the respective roles and responsibilities of the landlord and tenant.

## **17. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

17.1 There are no immediate sustainability implications arising from this report. As part of the property-by-property review, the service may identify poor performing buildings and proposal measures to increase their efficiency, subject to the availability of funding.

## **18. RISK MANAGEMENT IMPLICATIONS**

18.1 Having a clear, consistent and transparent policy on charging and allocation will minimise the risk of challenge on decisions the council takes in relation to allocating and charging for community-owned buildings.

18.2 It also provides increased clarity on the respective roles and responsibilities of the tenant and the council (as landlord). The tenant will be responsible for carrying out all statutory testing, and the requirement for this will be enforced through the terms of the lease.

## **19. CRIME AND DISORDER REDUCTION IMPLICATIONS**

19.1 There are no immediate crime and disorder reduction implications arising from this report.

## **20. SAFEGUARDING IMPLICATIONS**

- 20.1 There are no immediate safeguarding implications arising from this report. Community groups who work with young children or vulnerable adults will be expected to comply with all relevant legislative requirements, as well as any specific conditions arising from the award of any grant from the council.
- 20.2 This element will be managed by the Third Sector Team and the relevant service directorate.
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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- None.

#### **Appendices**

- Appendix 1 – Schedule of buildings and terms
- Appendix 2 – Schedule of testing
- Appendix 3.- Property procedures for disposals and lettings

#### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

- None.

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