

Report for: Cabinet – 12th March 2024

Title: Community Assets Policy

Report authorised by : Jess Crowe – Director of Culture, Strategy and Engagement

Lead Officer: Oliver Bennathan – Business Manager for Culture, Strategy and Engagement

Ward(s) affected: All

**Report for Key/
Non Key Decision:** Key decision

1. Describe the issue under consideration

1.1 This report sets out proposals to develop a new policy which will allow Council officers to determine subsidy levels on leases for Voluntary and Community Sector (VCS) organisations operating out of Council buildings.

2. Cabinet Member Introduction

2.1 This paper sets out proposals to develop a new policy to determine subsidy levels on leases for voluntary and community sector (VCS) organisations operating out of council buildings and is an opportunity to ensure equality, equity and fairness across Haringey assets, as well as support for organisations which bring social value to Haringey.

2.2 At the moment there are a range of leases in our VCS property portfolio: some rents are zero or peppercorn and others are close to market rent. Many leases have expired and there is no formal policy or framework for determining the basis on which VCS organisations should occupy Council-owned buildings. This poses a risk to us in terms of potential accusations of unfairness of treatment, lack of transparency, or ambiguity regarding responsibilities for building maintenance.

2.3 In initiating the development of this policy we have looked at the approaches adopted by other Councils and consequently propose to develop a social value matrix which will enable Haringey's VCS organisations to operate from Council owned buildings with subsidised leases determined by objective criteria. This matrix, and the way organisations will utilise it, will be developed in coming months through engagement with the VCS sector and will allow the VCS sector to continue to deliver socially impactful work to build a fairer, greener Haringey.

2.4 I am seeking approval for a process of engagement with the VCS Sector to co-produce a social value policy framework to determine how and when subsidies may be applied to leases held for council properties by VCS organisations.

2.5 Within this framework, a social value matrix will be included which will enable VCS organisations to record the social value that they generate and in turn enable the Council to subsidise the rent payable for any Council assets that they occupy, in a transparent and objective manner.

2.6 I am also seeking approval to identify an early adopter from the 23 organisations identified in the Council's existing VCS portfolio as occupying community centres with currently expired leases, to identify practical lessons to inform the final policy.

2.7 This draft policy will return to Cabinet for sign off when a full policy and approach has been developed alongside the VCS sector.

3. Recommendations **Cabinet is asked to:**

3.1 Approve a process of engagement with the Voluntary and Community Sector (VCS), as set out in paragraph 4.5, to co-produce a social value policy framework to guide determinations as to how and when subsidies may be applied to leases held for council properties by Voluntary and Community Sector (VCS) organisations, as set out in paragraphs 6.7 and 6.8.

3.2 Note and agree that Living Under One Sun and the Selby Centre should be treated separately in advance of a final policy, given the advanced status of these projects as set out in paragraph 4.7 of this report.

3.3 Note that a further cabinet report will be delivered in late 2024, which will present a full policy on community assets for cabinet approval.

4. Reasons for decision

4.1 The Council is proud of the support it provides to the Voluntary and Community Sector (VCS) to provide vital support to Haringey's communities, particularly the most vulnerable. We do this in a variety of ways, whether by commissioning them directly to provide services, building their capacity and sustainability through the work of the capacity building partner and bringing external funding into the borough, or by providing them with affordable premises for offices or other spaces from which to carry out their activities. This report sets out the principles for a new approach to provide greater clarity around how we manage and deliver this last type of support.

4.2 At the time of writing, there are a diversity of leases in the Council's VCS property portfolio. That includes leases from zero or peppercorn to something closer to market rent. Many of these leases have expired and there is no formal policy or framework for determining the basis on which VCS organisations should occupy Council-owned buildings, resulting in inconsistencies and a variety of historical arrangements and leading to the potential for accusations of unfairness of treatment, or at least a lack of transparency. This also leads to a lack of clarity regarding responsibilities for building maintenance, and a number of the properties are in a poor state of repair which needs to be addressed.

4.3 The Chriss Buss authored Property Independent Review found, with respect to Voluntary and Community Sector leases, that the Council had failed to maintain 'a proper landlord and tenant relationship that is ensuring that both parties (Landlord and tenant) had fulfilled their mutual obligations under the lease agreement.' This report and its recommendations were accepted in full by Cabinet in April 2023. The recommendations, including recommendations related to the VCS sector, are being delivered through the Council's Strategic Asset Management and Property Improvement Plan (SAMPIP). This was developed partly in response to the Chris Buss authored report.

4.4 The SAMPIP includes a Property Review Process. In accordance with this and our wider Property Governance procedures, all leases that have expired should go through this review process. 25 properties have been identified as Community Centres within the 88 VCS classified buildings. 23 of these Community Centres fall within the category of having expired leases, which are proposed to be prioritised through this policy when it is finalised.

4.5 Based on the experience of other Councils, we propose to develop a social value matrix which will enable VCS organisations to operate from our buildings with subsidised leases which will be determined by objective criteria. This matrix, the criteria it contains, and the way organisations will utilise it, will be developed in coming months through engagement with the VCS. We will undertake this engagement in collaboration with Public Voice and MIND in Haringey, our new VCS Strategic partner. The new policy will allow the VCS to continue to deliver socially impactful work in a way which also supports the Council's corporate objectives as set out in the Haringey Deal and our Corporate Delivery Plan 2022-24 to build a fairer, greener Haringey.

4.6 The lease policy, once agreed, will additionally provide clarity to both VCS organisations and to the Council about where responsibility lies for building repairs and maintenance.

4.7 There are two organisations – The Selby Centre and Living Under One Sun – with whom the Council is at an advanced stage of entering into a long-term partnership based around area regeneration programmes with external funding streams and where there is a property lease arrangement involved. The Council will need to conclude agreements with these organisations in the next few months, and they are sufficiently unique as partnerships to warrant

their own, bespoke, agreements that should not be considered as precedents for any subsequent leases.

4.7 The final policy will return to cabinet in the autumn of 2024 for sign off when a full policy and approach has been developed alongside the VCS. That policy will also benefit from any learning achieved through early adopters of this process.

4.8 The Council's preferred approach is that an agreed subsidy will be subtracted from the rental invoice issued to organisations, and that this mechanism for the delivery of a subsidy will be worked up in detail with the VCS, working closely with Public Voice and MIND in Haringey, as the new capacity-building partner for the sector.

4.9 During engagement with the VCS Sector and Public Voice, the Council intends to identify an early adopter from the 23 organisations identified in the Council's existing VCS portfolio as occupying community centres with currently expired leases, to identify practical lessons to inform the final policy.

5. Alternative options considered

5.1 Do nothing. If the Council asked its Property and VCS team to manage the portfolio without a new policy, this would mean there would be no policy basis other than renewing the many lapsed leases at market rent for these properties which would be unaffordable for many VCS organisations. There would also be no policy rationale for letting council properties to new VCS groups and could potentially leave the Council vulnerable to allegations of arbitrary, inconsistent, or preferential treatment of its different VCS tenants. This is not a viable alternative.

5.2 Circular Grant. An alternative methodology to applying a rental discount is for the organisation to be charged full market rent and for the Council to provide a grant in arrears for the value of the agreed level of subsidy, subject to the organisation delivering agreed outcomes under an SLA. The same social value calculation can be used as in the discounted lease approach. The circular grant method requires another part of the Council to have their own budget lines for these grants, or for part of the rent received to be attributed to those budget lines.

5.3 The circular grant approach is rejected on the basis that many organisations in the VCS sector will have insufficient cashflow to cover initial payments of market rent. There is also an organisational ambition to move away from circular grants, and a recognition that while it may be 'cleaner' from a property management point of view to adopt this approach, it requires significantly more administration and complexity of management for both the VCS and Council, which we need to minimise at a time when all budgets are under pressure.

6. Background information

6.1 The Cost of Living Crisis following on from the Coronavirus pandemic has left Haringey's residents extremely vulnerable. This has greatly increased the urgency of the work that the VCS is in a unique position to deliver, providing a range of affordable and accessible services and support to communities across the borough.

6.2 Haringey has a rich fabric of VCS organisations who deliver this important work. Some of these organisations – but not all – occupy Council-owned buildings, under a variety of arrangements. Some have active leases, on a variety of terms and rental arrangements, from zero or peppercorn to something closer to market rent. Others have expired leases and are holding over until a firm decision is made by the Council as to the terms of the new lease or future purpose for the building. Others may have licenses or tenancies at will. There is no formal policy or framework for determining the basis on which VCS organisations should occupy Council-owned buildings, resulting in these inconsistencies and variety of historical arrangements and leading to the potential for accusations of unfairness of treatment, or at least a lack of transparency.

6.3 The bottom line is that we cannot deliver great services to our residents without providing an excellent, fit for purpose and sustainable operational asset base. Our community facilities portfolio, with over 80 facilities identified, is a fundamental part of our resident offer through working with our Voluntary Community Sector (VCS), however we are not maximising this opportunity.

6.4 These community facilities are held within the commercial portfolio. VCS classified buildings account for 88 properties and provide £0.811m pa in rental income, an average of £9.5k per site. As well as the historic inconsistencies described above, there are a range of challenges and common issues from a property perspective across the majority of this portfolio, which are:

- Lack of Strategic Alignment
- Sub-optimal utilisation of facilities – low numbers, unknown data and unclear alignment with council strategic objectives
- Restrictive leases which limit the outcomes for all parties
- Poor lease management arrangements
- Poor condition and lack of investment

6.5 The policy that we intend to coproduce with the sector will enable the Council to address this and engage with our voluntary community sector, given a large number of leases require renewal, via the incentive of a subsidy based on social value.

6.6 This report does not pertain to social value as defined in the Public Services (Social Value) Act of 2012, which encourages commissioners of public services to think about how they can secure wider social, economic and environmental benefits beyond the direct delivery of a specific service. That is to say, it refers to *additional value*.

6.7 The social value policy to be brought back to Cabinet will require a different set of criteria to measure social value as it relates to the *core purpose* of the voluntary and community sector organisations seeking a lease to use our buildings, as well as what might be considered additional benefits. The social value matrix, as already used by other councils, could take the below form. Haringey’s social value calculator, including what are counted as criteria, will be coproduced with the VCS sector.

Social Value Criteria	Metric	Subsidy Value
E.g. Local employment	E.g. Jobs created/residents supported into work	Points or percentage

6.8 The points or percentage allocated for each criterion met would be calculated and then added to determine the total amount of subsidy applied, up to a maximum.

7. Contribution to the Corporate Delivery Plan 2022-2024 High level Strategic outcomes’

7.1 There are two items on the Voluntary and Community Sector in the Corporate Delivery Plan 2022-2024. One is: ‘The VCS have a stronger voice in council decision-making and strategic development.’ This will be fulfilled through the proposed engagement with the VCS sector on the development of this policy. The second CDP item on the VCS is: ‘The VCS in Haringey is demonstrably more resilient, sustainable and collaborative.’ A transparent, fair and affordable system for determining leases for VCS organisations should make the sector more resilient and sustainable, and the policy itself will be a collaborative endeavour.

7.2 More broadly, the social value calculator is planned to take account of the broader strategic ambition of the Corporate Delivery Plan 2022-24 to deliver a fairer, greener Haringey.

8. Carbon and Climate Change

8.1 One of the likely social value metrics to be included in a social value calculator is ‘environmental impact.’ As such, this policy will empower the Council to support VCS organisations undertaking work to reduce carbon emissions across the borough.

8.2 Work on this policy also presents the opportunity to achieve greater clarity on the responsibilities for repairs as indicated in paragraph 4.6. This may include works that improve the EPC ratings of buildings occupied by VCS

organisations, which would lead to greater energy efficiency, reducing the carbon impact of the Council's VCS portfolio.

9. Statutory Officers comments (Director of Finance (procurement), Head of Legal and Governance, Equalities)

Finance

9.1 There are no immediate financial implications arising from the recommendations in this report. If the recommendations are agreed, Cabinet will be presented with a further report in late 2024, following engagement with the VCS, setting out a full policy on community assets. This policy will include a social value policy framework to determine how and when subsidies may be applied to leases held for council properties by Voluntary and Community Sector (VCS) organisations. It is likely that this will have financial implications for both the Council and the VCS, the details of which will be set out at that time.

Procurement

9.2 Strategic Procurement note the contents of this report. Whilst lease and property matters sit outside the Public Contract Regulations 2015, where the lease arrangements form part of a wider procurement activity, which encompasses services; consideration will need to be given as to whether the procurement activity falls within the Concession Contracts Regulations 2016 (CCS). Strategic Procurement will provide the relevant advice and support where this arises.

9.3 Strategic Procurement recognises having a consistent and structured approach to engaging VCS and the use of community assets will provide a clear sustainable strategy when considering tendering for public sector contracts.

9.4 Strategic Procurement confirms there are no procurement related matters preventing Cabinet approving the Recommendations stated in paragraph 3 above.

Assistant Director for Legal & Governance

9.5 Cabinet is asked to approve a new approach to the arrangements for Council owned community centres run by the voluntary and community sector. The policy will need to be approved by Cabinet. In formulating the policy officers will have to take into consideration various legal issues.

9.6 Under the Public Services (Social Value) Act 2012 authority must consider—

- (a) how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
- (b) how, in conducting the process of procurement, it might act with a view to securing that improvement.

9.7 The Council must also comply with the Equality Act 2010. In particular, the Council must, in the exercise of its functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the legislation, (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.8 The Council has a number of properties that are let and the policy will have an impact on the way the Council lets these properties. The Council has a fiduciary duty to Council tax payers and must obtain best value. The grant of a lease for more than 7 years is a disposal for the purposes of section 123 of the Local Government Act 1972. In these circumstances, the Council must obtain best consideration for the lease and can only do otherwise with the consent of the Secretary of State or in cases of a short tenancy (i.e. less than 7 years). The Secretary of State has issued a General Consent which may be available to the Council should it seek to dispose under value.

9.9 The Subsidy Control Act 2022 sets out certain obligations with regards to subsidy. The Council must (a) consider the subsidy control principles before deciding to give a subsidy, and (b) not give the subsidy unless it is of the view that the subsidy is consistent with those principles. However, in the event the proposed subsidies are considered to come within the “Minimal Financial Assistance” rules, then the Council may not “need to comply with the majority of subsidy control requirements” (as set out below). Legal advice should be obtained on how the policy should deal with these legal requirements.

9.10 Extract from [Subsidy Control rules: quick guide to key requirements for public authorities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/subsidy-control-rules-quick-guide-to-key-requirements-for-public-authorities) –

Minimal financial assistance (MFA) allows public authorities to award low-value subsidies (up to £315,000) without the need to comply with the majority of the subsidy control requirements.

MFA subsidies are exempt from the substantive subsidy control requirements, meaning that subsidies given as MFA will not need to be assessed against the subsidy control principles or energy and environment principles.

However, there are two prohibitions that apply to all subsidies including MFA. These are the prohibition on giving subsidies relating to goods for export performance and the prohibition on domestic content [\[footnote 5\]](#).

MFA subsidies over £100,000 are also subject to the transparency rules described in [Step 6](#).

MFA is capped at a threshold of £315,000, meaning that no individual recipient can receive more than this amount over the applicable period (3 financial years) [footnote 6](#). MFA subsidies are subject to cumulation rules, under which MFA subsidies cumulate with each other and with other subsidies that fall within the category of 'Minimal or (SPEI) financial assistance' [footnote 7](#). It also includes any aid given under the EU state aid de minimis regulations and subsidies given as small amounts of financial assistance under the UK–EU Trade and Cooperation Agreement after 31 December 2020 but before this section of the Act comes into force. This prevents enterprises being able to receive many subsidies that are individually of low value, but that cumulatively exceed the £315,000 threshold.

It is not compulsory to use the MFA exemption for small awards. If you decide not to rely on the MFA exemption for such an award, you will need to assess the subsidy against the subsidy control principles and comply with the other subsidy control requirements as would ordinarily be the case without an exemption.

When deciding whether to use the MFA exemption, public authorities should be aware that additional MFA cannot be given to a beneficiary that has already reached their MFA threshold. Consequently, it is important to note that if you give a particular subsidy as MFA, it will mean the beneficiary is limited in being able to receive further subsidies as MFA in the future.

9.11 In the event that the Council is proposing to commission services from a person to whom it is proposing to grant a lease, consideration should be given as to whether the arrangement would amount to the award of a concession contract and advice should be obtained from Legal and/or Procurement officers. In the event that a concession contract is contemplated, the Council must comply with the provisions of the Concession Contracts Regulations 2016 and the Contract Standing Orders in its Constitution.

Equality

9.12 The council has a Public Sector Equality Duty (PSED) under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act.
- Advance equality of opportunity between people who share protected characteristics and people who do not.

- Foster good relations between people who share those characteristics and people who do not.

9.13 The three parts of the duty apply to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

9.14 Although it is not enforced in legislation as a protected characteristic, Haringey Council treats socioeconomic status as a local protected characteristic.

9.15 This report is regarding approval to begin developing a new social value framework to determine how and when subsidies may be applied to leases held for council properties by voluntary and community sector organisations, this will be coproduced with the VCS.

9.16 This report currently has no equalities implications, but any approach developed following this report could have indirect equalities implications based on the organisation it impacts and who that organisation serves. However, given the decision is to use a social value model, the most likely outcome is that this decision would positively impact those who serve residents with protected characteristics.

9.17 Any final decision on the council's approach to a social value model for lease subsidies will be subject to full equalities analysis and an equality impact assessment (EqIA) will accompany the social value frameworks final cabinet report (currently expected to be September 2024).

10. Use of Appendices

Appendix 1 – VCS Property Portfolio. Exempt report (This report is not for publication as it contains information classified as exempt under Schedule 12A of the Local Government Act 1972 under the category (3) information in relation to financial or the business affairs of any particular person (including the authority holding that information)).

11. Background papers

11.1 None